

The complaint

Mr M complains about the way Marks & Spencer Financial Services Plc (“M&SFS”) dealt with a breach of contract claim he sought to make against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 (“section 75”).

What happened

Mr M was seeking a refund in respect of flights he’d arranged through a travel agent “T” a few years earlier, which hadn’t gone ahead due to the Covid-19 pandemic. The airline no longer flew to Mr M’s chosen destination and had returned Mr M’s payment to T. But Mr M’s efforts to recover his money from T were proving unsuccessful. He turned to his credit card provider M&SFS, to see if he could get his money back under section 75.

M&SFS told Mr M it couldn’t help. It said because he’d made his travel booking through an agent, T, there wasn’t a valid debtor-creditor-supplier agreement in relation to the flight booking and so section 75 didn’t apply. Mr M was dissatisfied with the response and asked us to look into matters.

Our investigator found that while the airline booking wasn’t covered by section 75, the arrangements with T did meet the necessary requirements. However, she wasn’t satisfied that what Mr M had been able to evidence amounted to a breach of contract such that his claim against M&SFS would have resulted in a more favourable outcome. Mr M noted that he had since successfully recovered his money from T. But he felt he’d been put to unnecessary difficulty in doing so, and that M&SFS should compensate him for this. He’s asked for this review.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I note that while Mr M has been able to recover payments on other occasions via chargeback, the timescale involved in this particular transaction was such that this wasn’t an option M&SFS would have been able to pursue. The focus of this claim has therefore been on section 75.

I understand why Mr M found M&SFS’s response frustrating. It could – and should – have tried a little harder to understand what Mr M was seeking to claim. If it had, it would probably have understood that Mr M’s claim was founded in a failing on the part of T, rather than the airline. That rather negates the bank’s point about the lack of a debtor-creditor-supplier agreement. But like our investigator, I don’t consider that looking at this correctly would have necessarily led to Mr M successfully recovering his money from a claim against M&SFS. It would still have been open to the bank to decline to meet his claim of breach of contract.

I’ve no doubt that Mr M was the recipient of some particularly poor service from T. It held on to the money it had recovered from the airline for some time, and it seems that it was mainly down to Mr M’s determined efforts that he eventually persuaded it to refund him. But in order

for Mr M's section 75 claim against M&SFS to be successful, he'd have to demonstrate rather more than poor service from T. He'd have to show that the service was so poor that it amounted to a breach of contract, or that T was in breach of a contractual obligation to refund him.

Based on the evidence Mr M has submitted I have to say it likely falls short of demonstrating a breach of contract by T – and by extension, M&SFS. Mr M hasn't, for example, pointed to any particular term of his contract with T that he believes has been breached. Although he has provided extracts from the airline's operating policy in relation to Covid-affected bookings, his agreement with T doesn't assume responsibility for refunding him in the event of cancellation.

That doesn't mean Mr M isn't entitled to seek the return of the money he paid, and I'm pleased to see he was able to obtain this through his own persistence. It's simply that I don't consider the case is fully made out for a successful section 75 claim in breach of contract. With this in mind, I don't consider M&SFS is responsible for compensating him for the efforts he went to in corresponding with T. And ultimately, it was this action that enabled his refund.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 October 2024.

Niall Taylor
Ombudsman