

The complaint

Miss G complains that Marks & Spencer Financial Services Limited (MSFS) hasn't refunded a payment she made.

What happened

In October 2023, Miss G paid a deposit of around £75 to a company I'll call F, offering her a photoshoot to assess her suitability for a career in modelling. On the day of the shoot, Miss G paid a further £2,225 using her MSFS credit card. The additional fee was for a package which she said was for a portfolio of images and a website to host them on, plus modelling support.

Miss G contacted MSFS for assistance in getting her money back. She told MSFS that she was unhappy because:

- There was pressure to pay
- No cancellation which was illegal
- No model support was given
- She wanted to downgrade the package or reduce the price

MSFS initially declined to take things further, but Miss G made a complaint and insisted that she had been scammed, she did not understand the contract, and it was illegal that it wasn't cancellable. MSFS ultimately declined to offer a refund.

Miss G raised a complaint about MSFS not refunding her, but MSFS didn't uphold that complaint.

Our investigator didn't uphold the complaint. He didn't think MSFS had acted unfairly in the way it had dealt with Miss G's request for a refund.

Miss G didn't agree; in summary she said:

- MSFS didn't raise a chargeback
- The contract wasn't fulfilled as she didn't get model support
- The link for the "webfolio" doesn't exist anymore and the contract stated it would be for a year
- F advertised on social media as an avenue to get paid modelling jobs

The complaint has been passed to me for a final decision.

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've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't

considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I also want to say I'm very sorry to hear that Miss G was unhappy with the goods and services provided by F. I appreciate it cost a significant sum, and I can't imagine how she must have felt.

Miss G made a payment using her credit card issued by MSFS. I've therefore thought about whether MSFS treated her fairly when she asked for help with getting her money back in relation to that payment.

I need to consider whether MSFS – a financial services provider – has acted fairly and reasonably in handling Miss G's request for a refund. I have to make the distinction between the financial services provider (MSFS) and the supplier (F) here as we can't look directly at what happened with F. I've gone on to think about what statutory protections and other methods are available in situations like this.

When something goes wrong with goods or services that were paid for, at least in part, by credit card, the card provider can offer to assist in some way. It might have a legal obligation to the account holder under section 75 of the Consumer Credit Act 1974 ("CCA"), or it might be able to help through other dispute methods such as "chargeback".

Chargeback allows for a refund of the money paid with a credit or debit card in certain situations, such as when goods or services have been paid for and not received. But there isn't an automatic right to get a refund from the card provider. I would expect a card provider to attempt a chargeback if there was a reasonable prospect of success. This is determined by the claim being in line with the rules of the card scheme to which the card belongs.

MSFS didn't attempt a chargeback, and they declined any liability under section 75. I agree with our investigator's assessment of whether a chargeback might have been successful.

There are strict detailed conditions which set out what is needed to raise a chargeback dispute. These might include providing copies of the contract, evidence of what was agreed, and the relevant terms and conditions. It would also likely need to include evidence that the goods weren't received or that the service wasn't as described. I've thought about what Miss G told MSFS initially – she thought she had been hypnotised and promised deals, and later that it was a scam. But I don't think this was enough for MSFS to indicate that the chargeback stood a reasonable prospect of success. I'm also minded that it had access to communication between Miss G and F which indicated that the dispute was mainly about the cost of the goods and services, so it was likely that any chargeback would have been robustly defended on that basis.

Considering all of this, I have to conclude that MSFS wasn't wrong not to pursue a chargeback for Miss G. It didn't have a reasonable prospect of success as it wouldn't have been able to comply with the card scheme's rules.

Section 75

Section 75 of the CCA gives the account holder (the "debtor") the right to make a like claim against their credit card provider for breaches of contract or misrepresentations by a supplier

of goods and services. But certain conditions must have been met including the debtor-creditor-supplier (DCS) agreement and financial limits.

I'm satisfied this transaction meets the financial limits, but the DCS agreement isn't quite so clear as the receipt and contract shows a slightly different name to the company that is listed on the statement. This might mean that there is an additional party which creates difficulties for how the DCS agreement works. But I don't need to undertake a detailed analysis of the DCS issue because I don't think there was sufficient evidence of a breach of contract or misrepresentation anyway. I'll explain why.

We've got limited information about the contract itself. But I have enough to show that Miss G was told she would receive 50 digital images and a "webfolio". She was also given instructions on how could share her "webfolio" with a model network/platform. The contract also refers to a Z-card and a Unique hosting address, which haven't been selected and there isn't clear information about what it means. And there's a lack of evidence of what wasn't supplied, I think this has led to evidentiary challenges for MSFS when considering the claim.

I note Miss G said she was pressured to buy a portfolio, and the support didn't exist at all. She said that a legitimate company wouldn't ask for money to pay for a portfolio to get a modelling job and this is why she believes it was a scam. Miss G raised the issue very quickly after making the transaction but most of her contact with the supplier appears to refer to the price being unaffordable. Her first contact with the supplier the next day complains that she doesn't have the money to pay for the transaction on her credit card, and that it is too expensive. She also refers to downgrading to the lowest package which implies that she had conversations about the various packages available and has some awareness of what she had agreed to. But she's also referred to a figure between £500 to £1,000 which she said was what she'd be happy to pay. I'm sorry to hear Miss G feels she was pressured but it's difficult for me to make an assessment on how much pressure was applied. On balance I don't think there's sufficient evidence for me to safely conclude that she was unfairly pressured into the contract.

Miss G said that it is illegal not to allow cancellation in a contract. The contract was entered into in person, so it doesn't automatically include the right to a cooling off period, and I'm conscious that the nature of the goods mean that they were bespoke, which makes it unlikely the supplier would be willing to accept a cancellation.

The Consumer Rights Act 2015 (CRA) is relevant in this case. Part 1 of Schedule 2 of the CRA sets out a list of terms which may be regarded as unfair. The terms that I've seen, do specify that the contract isn't cancellable in a transparent and prominent way as required. Miss G was also aware of the price. Miss G supplied part of a copy of the contract, so it follows that she's seen this. An assessment of the appropriateness of the price can't be considered where the contract meets these requirements. I can't say a term is unfair simply because it describes a product that the consumer considers represents poor value for money or sets a price that is higher than other businesses charge. Miss G might want to get legal advice on whether she can challenge this directly against F. But in terms of a claim under Section 75 against MSFS, it isn't something that appears to have led to a breach of contract or misrepresentation.

Miss G also said to F that she didn't sign the agreement, and that what she signed was different. She's provided parts of her copy of the contract, but I'm also aware she's authorised the transaction with her card which I think shows her intention to enter the contract. However, she's not provided any plausible explanation of what the difference was between the two contracts. There is a distinction between changing your mind and being unhappy with a product, to demonstrating that there has been a breach of contract or a misrepresentation.

Miss G accepts that she received the photos. She's also provided an email which includes a link to a portfolio which I assume is the "webfolio". I've noted the email also explains that Miss G needs to send the portfolio to the model manager, presumably the individual that will provide the ongoing support. The model support is not clearly made out in the contract. So, it's difficult to be sure what this means. It's not clear that Miss G has done what she needed to do to get the support. Based on what I've seen I don't think there has been a clear breach of contract because the goods or services haven't been supplied.

Miss G said that the link for the "webfolio" doesn't exist anymore. This implies that it did work and doesn't anymore. I've not seen anything clearly set out in the contract she's provided which said that it would be available for a year. The contract has a field which says, "unique hosting address". I'm not sure what that means, but it doesn't have any indication it has been selected. So, it would be difficult to say that MSFS had clear evidence there was a breach of contract.

And, when considering misrepresentation, I'm looking at two things – whether there was a false statement of fact and, if there was, whether the false statement of fact induced Miss G to enter into the agreement. There doesn't appear to have been a clear false statement of fact which induced Miss G into the agreement.

Miss G said that F advertised on social media as an avenue to get paid modelling jobs. Miss G hasn't been able to provide anything persuasive to demonstrate she was promised something that wasn't provided as part of the contract. I've looked at F's website and the communication that Miss G said she was sent before the day of the photo shoot, and that promotes the main selling points of getting a portfolio of photos for various reasons, including modelling or influencing. But I've not seen anything compelling which indicates that she was told she was guaranteed modelling work. So MSFS' answer on that point wasn't unfair.

Miss G has provided us with online reviews and links to information online about F and other suppliers which she says demonstrates it is operating a scam. I'm aware of the scams that have been publicised, and our service has also seen complaints about modelling scams.

I appreciate that Miss G thinks this was a scam, but in the specific circumstances of this case, I don't think MSFS acted unfairly or unreasonably in the way it tried to assist her to get her money back.

I understand that Miss G will be disappointed, but she doesn't need to accept my decision and she'll be free to pursue the matter by other means, such as through the court.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 13 June 2025.

Caroline Kirby
Ombudsman