

## **The complaint**

Mrs B complains about a claim she made to Marks & Spencer Financial Services Plc (M&S) in respect of a timeshare relinquishment service not having been received.

## **What happened**

In August 2019, Mrs B entered into an agreement with a company who I'll call T, under which she would obtain release from a timeshare product she held with another company. Mrs B says T also promised to undertake a compensation claim on her behalf. Mrs B used her M&S credit card to make a £500 payment to T. She then made two bank transfers, bringing the total amount paid to T to £10,896.

In March 2024, Mrs B made a claim under Section 75 of the Consumer Credit Act 1974 (Section 75 CCA) to M&S. She said the contract had been misrepresented and she had not received the services promised. M&S gathered information about Mrs B's claim and then made an offer of £10,896 to Mrs B to settle her complaint, without any admission of liability.

In August 2024, Mrs B went back to M&S to ask for additional interest at 8% simple to be paid to compensate her for the time value of money lost since the date of the original transaction. M&S said it usually only applied interest when it had made an error and would not be doing so on this occasion, so Mrs B raised a complaint about this matter.

M&S reviewed the complaint and made an offer without acceptance of liability. It said it would offer a total of £11,236.07 which included the claim amount, interest at 8% simple from the date it received the claim (19 March 2024) until the date of the final response (19 September 2024). The offer was valid for 28 days.

Mrs B brought her complaint to our service. She specifically asked us to consider whether she should be paid interest at 8% simple from the date she made the transaction rather than when the claim was brought to M&S. M&S continued to make the same offer when outlining its position to our service.

Our investigator reviewed the complaint and said he thought the offer made was fair. Our investigator made clear that he had not looked at the merits of the Section 75 claim, but if he had and the claim was successful, he would be asking M&S to pay the £10,896 Mrs B had paid towards the services she is complaining about. Our investigator said there was no obligation to pay interest from the date of the transaction and M&S had settled the claim promptly so he couldn't see any other reason why the offer should be increased.

Mrs B disagreed with this outcome. She said the principle of restitution is to place the claimant back in the position they would have been in had breach not occurred, and as financial detriment occurred from when the payment was made in August 2019, interest should be applied from that date. Mrs B said M&S failed to act swiftly and effectively in addressing the claim and is liable for the financial harm the breach of contract has caused her. Mrs B said courts routinely apply interest from the date of loss and we have overlooked analogous cases and judicial discretion under Section 69 of the County Courts Act 1984. Mrs B further said our outcome does not fully engage with the argument that the financial

loss stems from the misrepresentation at the time of the transaction.

The investigator continued to disagree that any more should be awarded and so Mrs B requested an ombudsman consider her complaint. So, the complaint has now been passed to me to decide.

### **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 would like to start by saying that I have provided a brief summary of the events that occurred above. I intend no discourtesy by this and can assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.

In this decision, I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects the nature of our service as a free and informal alternative to the courts.

Mrs B would like us to consider whether she should be paid interest at 8% simple on the refund amount from the date of payment having been made. In the normal course of events, in order to ascertain whether additional interest is due, we need to look at both the specifics of the disputed transaction and identify what we think the likely outcome for a Section 75 claim would be. However, as M&S has made an offer already and told us it is still willing to honour that offer, I will focus only on whether interest should be paid from the date of the transaction or the date the claim was received by M&S in this decision.

Our power to award interest comes from Section 229(8) of the Financial Services and Markets Act 2000. DISP 3.7 of the Financial Conduct Authority (FCA) handbook explains the types of award and directions we can make to put things right, including our ability to award interest. The award that an ombudsman may make is generally grounded in the principle of fairness.

Looking more specifically at this complaint, the CCA 1974 does not specify how interest should be awarded when there has been a breach of contract or misrepresentation, or from when it should be applied. So, I have considered what I think is fair and reasonable in the circumstances of this complaint.

Generally, when awarding interest, the aim is to compensate the consumer for not having the money available to use – so we ask the business to pay interest on top of the money award, from the time that the consumer was out of pocket. But this principle works more comfortably when it is the business who has made the error and caused the customer to be out of pocket, rather than a situation where the business has been brought into it through connected lender liability.

I find therefore, that we need to think of this more practically. The event that triggers an ability to raise a complaint in a Section 75 claim is the review and outcome of the claim having been started and provided by M&S (rather than the payment towards the transaction being made). In the same way, I therefore cannot see that it would be fair and reasonable for us to require M&S to pay interest on something that it had no control over, until the point when it did come under its control – when the claim was raised.

M&S has said that it will pay interest from the date it received the claim until the date it issued the final response letter. I think this is fair. I don't require it to make payment from the

date of the transaction and I cannot see that Mrs B has provided any argument that supports a finding of this nature. Mrs B says we have not considered that the contract was misrepresented – I am unable to comment on the merits of the Section 75 claim as this has not yet been done by the business, however I will say that I haven't seen any specific representations that Mrs B say were made to her which induced her to enter into the contract.

Mrs B further says M&S failed to act swiftly when reviewing the claim. I can see it received the claim in March 2024 and by August 2024 had made an offer of the amount paid towards to the contract. There are no specific timescales for Section 75 claims to be resolved within. M&S used this time to complete an investigation into the claim and I don't find this to be wholly unreasonable. But in any event, Mrs B has been compensated for this period with interest which I find to be reasonable.

Mrs B states the courts routinely apply interest from the date of loss. Although I do not disagree with this, I fail to agree that it is M&S who should bear responsibility for that loss in these circumstances. M&S received a claim, gathered information and made a reasonable effort to resolve the claim by making an offer. Having reviewed the offer as outlined in the final response letter, I find it to be a reasonable resolution to the concerns raised. So, I am not recommending M&S do anything further on this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint against Marks & Spencer Financial Services Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 August 2025.

Vanisha Patel  
**Ombudsman**