

The complaint

Mr S complains about the way in which Marks & Spencer Financial Services Plc handled a claim made under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

In February 2020 Mr S was refurbishing his home. The refurbishment included laying floor tiles in an extension. Mr S bought tiles from a supplier which I'll refer to as "C". C's invoice was dated 22 February 2020 and records that Mr S bought and paid for 542 tiles at a total cost of £4,305.85, including VAT. He paid in full using his M&S Bank credit card.

Because of the Covid-19 pandemic and its associated restrictions, Mr S was unable to start work as he had planned. He says that he collected around a quarter of the tiles in mid-2021. However, when he tried to collect the remainder in the middle of 2023, C was unable to locate them.

Mr S therefore contacted M&S Bank to make a claim under section 75. The bank took the view that Mr S had not shown that C had broken its contract with Mr S and so did not agree to meet his claim. Mr S referred the matter to this service.

One of our investigators considered what had happened but did not recommend that the complaint be upheld. He noted that, since the tiles had been priced individually (at £6.62 plus VAT), Mr S's transaction with C fell outside the relevant financial limits of section 75. And he noted as well that chargeback could not apply because of the length of time which had passed between the credit card payment and the claim being raised.

Mr S did not accept the investigator's recommendation and asked that an ombudsman review the case.

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 shall deal briefly with chargeback. It is a process run by the card schemes for dealing with some disputes about payment settlements. It can be used, for example, where goods are paid for with a card but are not delivered – as Mr S says happened in this case. But it is also subject to time limits. The maximum time limit for bringing a claim is 540 days from the date of payment – which applies where goods or services are to be provided after the payment date. In this case, Mr S did not raise a claim until more than three years after the payment, so there was no prospect of raising a successful chargeback claim.

I turn then to section 75. It says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in

respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

...

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

The investigator took the view that the exception at sub-section (3) applied, because the invoice showed that each tile cost less than £100. Mr S did not accept the investigator's assessment, or his reasoning. He said that he had not bought individual tiles; rather, he had bought the quantity of tiles needed to cover his floor, based on its area. He also referred to one of our published decisions, where the bank (not M&S Bank) had made a similar argument but where the ombudsman had nevertheless gone on to consider the merits of the underlying claim against the supplier.

I can understand Mr S's arguments here. It is most unlikely that he asked C to supply 542 floor tiles; I accept his account that he provided C with the dimensions of the floor or floors he wished to cover and took advice from C about how many tiles he would need. I accept too that it was probably not possible to buy individual tiles, save as samples or where some tiles in a pack were damaged.

However, the wording of section 75(3)(b) clearly says that the relevant financial limits depend on the price attached to an item by the supplier. Of course, C could have used a different method of pricing – for example, by weight, by box or by pallet. Had it done so, it's possible that the transaction would have fallen with the financial limits. But I have to look at how C actually set out the price, not how it might have done. And I think it is clear from the invoice that the basis of C's pricing was the individual tiles, not any other measure.

I have also considered Mr S's comments on the published ombudsman's decision where a bank had raised a similar issue. The ombudsman in that case concluded that there was insufficient evidence of a breach of contract and so did not uphold the complaint on that basis. She did therefore need to address the issue of financial limits and did not do so.

I therefore agree with the investigator that section 75(1) does not apply in this case.

In view of that finding, I do not need to consider or decide whether Mr S does in fact have a claim for breach of contract against C. I will however comment briefly on M&S Bank's handling of Mr S's claim.

I note that Mr S told M&S Bank that he had a recording of a telephone call in which C appeared to admit that it had not delivered all of his tiles. M&S Bank told him however that it was "... *unable to accept call recordings as evidence* ...". That is a rather surprising statement to have made. A card provider which is considering a section 75 claim ought to consider all available evidence which might assist it in reaching a fair outcome. In this case, there was no delivery note for the portion of tiles which had been delivered, and C had provided no evidence that it had delivered the remainder.

I have listened to the recording to which Mr S was referring. In it, C acknowledges that its own records do not say how many tiles were delivered, but they do refer to a weight of 600kg. That is consistent with Mr S's claim that he took delivery of around 150 tiles.

It may be of course that M&S Bank would have declined the claim on other grounds in any event (as I have found it was entitled to do), but that was not the reason it gave for not considering the available evidence.

Be that as it may, I agree with the investigator that Mr S's claim did not meet the conditions set out in section 75 and that M&S Bank was entitled to decline his claim.

My final decision

For these reasons, my final decision is that I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 May 2025.

Mike Ingram
Ombudsman