DRN-5557758

The complaint

Mrs X complains that Marks & Spencer Financial Services Plc trading as M&S Bank ("M&S Bank") failed to obtain a chargeback and rejected her claim under section 75 Consumer Credit Act 1974 ("s.75")

What happened

In September 2024 Mrs X booked three airline tickets for her husband and his parents using her M&S Bank credit card. These cost £1,134.96. Prior to boarding the passengers were told they had to put their hand luggage in the hold. Mrs X has explained that this included her husband's critical medical equipment and medication. Luggage was lost and only delivered back some days later.

A claim for the costs incurred was made to the airline and it said that the claim failed due to no receipts being provided, only credit card paperwork. However, as a gesture of goodwill the airline reimbursed expenses of £90.23. Mr X responded to the airline to say this was not sufficient.

Mrs X contacted M&S Bank and it considered a chargeback claim and a claim under s.75. The airline challenged the chargeback and M&S Bank explored s.75. However, it concluded that the required debtor-creditor-supplier ("DCS") agreement was not in place. Mrs X complained but M&S Bank rejected her complaint so she brought the matter to this service. It was considered by one of our investigators who didn't recommend the complaint be upheld. He concluded that M&S Bank had correctly made a chargeback and there were no grounds for taking it further after the airline challenged it. He also didn't consider the required DCS agreement was in place.

Mrs X didn't agree and said she was party to the contract and referenced two situations where this service had upheld complaints. She also referenced the decision in Durkin v DSG Retail Ltd [2014] UKSC 21 which she said: "confirmed that a credit provider is jointly liable with the supplier under Section 75 when there is a pre-existing contractual link between the consumer and the supplier, financed by the creditor". She argued the same logic applied to her situation.

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 have every sympathy with Mrs X, but I do not consider I can uphold her complaint. I will explain why.

Firstly, I will address the chargeback. A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants. It allows customers to ask for a transaction to be refunded in a number of situations, such as where the goods or services are defective.

There's no obligation for a card issuer to raise a chargeback when a consumer asks for one. And chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by merchants. It's important to note that chargebacks are decided based on the card scheme's rules – in this case VISA's – and not the relative merits of the cardholder/merchant dispute. So, it's not for M&S Bank – or me – to make a finding about the merits of Mrs X's dispute with the airline.

M&S Banks's role is to raise the appropriate chargeback and consider whether any filed defence by the airline complies with the relevant chargeback rules. And from what I've seen, that's what M&S Bank did here.

The airline challenged the claim and showed that the flights had been taken so the service had been delivered. Under the chargeback rules that is a reasonable defence and I do not consider M&S Bank needed to do more.

The second route available to Mrs X is a claim under s 75 which is what M&S Bank considered. This legislation offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part. For s. 75 to apply, the law effectively says that there has to be a

: • Debtor-creditor-supplier chain to an agreement and

• A clear breach of contract or misrepresentation by the supplier in the agreement.

M&S Bank concluded there was no DCS agreement and so the claim failed. Mrs X doesn't agree and says, in brief, that she contracted with the airline due to her making the bookings and paying for the tickets.

The supplier here for the purposes of s 75 is the airline which received payment for the service. As Mrs X has explained she booked the flights and made the payment but she was in effect financing these for her husband and his parents (who are named on the booking documentation). This satisfies me that Mrs X was not contracting with the airline – and therefore would not have a claim against it in court for anything that went wrong. The airline entered into a contract with the three people who were taking the flights – their names are on the tickets and Mrs X's role as the funder does not make her a contracting party.

In simple terms the airline entered into an agreement with each passenger to fly them to their chosen destination on the agreed flights. Paying for the flights does not mean that Mrs X entered into a contract. She was an intermediary in the transaction and so there is no DCS agreement in place.

Because of this she doesn't have a 'like claim' against M&S Bank via s. 75 for any breach of contract or misrepresentation by the airline. So I agree with M&S Bank that there isn't the correct DCS relationship for a valid s.75 claim against it in respect of this transaction.

Mrs X has referenced two examples of decisions taken by this service which she has not identified which she says supports her arguments. Each case is decided on its own facts and so I am not persuaded by this argument and in any event there are a significant number of decisions where fellow ombudsmen have taken a similar view to the one I have reached.

Nor do I think the Durkin judgement comes to her aid. That applies where there is a contractual link, but Mrs X does not have such a link, she was, in essence the funder of the booking and not a party to the contract between the airline and the passenger.

Even if it was held that there was a qualifying DCS agreement in place I do not see that there has been a breach of contract or misrepresentation. The airline's conditions of travel set out its liability when bags are lost or delayed. It operates within the Montreal Convention and its website states the following:

"Did you have to buy extra items at your destination, such as clothing and toiletries, because your checked baggage was delayed? Report this to us within 21 days from the day your luggage was delivered to you. Make sure to keep the receipt of the items you bought and send us a copy to request compensation for these expenses. We'll do our best to help you."

Mr X didn't keep the receipts for his purchases, but did have the credit card receipts which didn't meet the requirements of the airline for compensation. However, it did pay compensation for the purchases shown on those credit card documents. I appreciate Mr X told the airline he had incurred more expenditure, but he did not retain the evidence to support this so the airline was not contractually obliged to refund him for undocumented costs.

Nor does the airline guarantee that passengers will be able to take carry on luggage. So again I cannot see that there was any breach of contract or misrepresentation due to the luggage being placed in the hold.

I appreciate Mrs X will be disappointed by my decision, but I do not consider I can uphold her complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs X to accept or reject my decision before 15 September 2025.

Ivor Graham
Ombudsman