

The complaint

Ms J complains that Marks & Spencer Financial Services Plc ('MSFSP') has unfairly declined her claim for a refund against a retailer.

What happened

In early 2023 Ms J discovered woodworm damage to the flooring (the 'flooring') of her home. She received advice and was told that before treatment could be applied the flooring had to be stripped of all varnish and sanded. So, in February 2023, Ms J contacted a flooring company, who I will refer to as 'T'. After visiting Ms J's home, T provided a quote for £268.80 for the supply of eight linear meters of pine reclaimed floorboards (the 'floorboards') – these were to replace parts of the flooring that had become unsafe. Once these were fitted by Ms J's carpenter, T would return to sand the whole flooring, apply wood stain and then three coats of a branded sealant. T also agreed to help with the moving of Ms J's furniture to allow for the works to be carried out. The total cost for T's 'refurbishment' service was £1,320. All payments were made prior to the supply of the floorboards and refurbishment of the flooring.

In April 2023, Ms J arranged for a carpenter to fit the floorboards supplied by T. And in June 2023, following the fitting, T sanded the floorboards. A woodworm treatment specialist applied the necessary treatment to the flooring area. And T returned to finish the job. However, after T's agents applied the second coat of sealant, Ms J complained saying she had noticed at this point the floorboards T supplied were 'vastly different' from her original flooring. Correspondence between T and Ms J ensued. But when no agreement could be reached, T offered Ms J a refund of £150 (later increased to £200) – this refund was in lieu of the final coat of sealant. It also offered to supply enough sealant to finish the job. Unhappy with this offer, Ms J contacted MSFSP for help.

In July 2023, MSFSP initiated a chargeback, but this was defended by T who said, amongst other things, that it thought any problems with the floorboards not matching the existing flooring, could have been the result of the fitting which it wasn't responsible for. After Ms J had an opportunity to respond to T's defence, MSFSP decided not to pursue the matter any further. From November 2023, MSFSP began considering Ms J's claim under section 75 of the Consumer Credit Act 1974. Ms J submitted additional supporting documents in March 2024. After reviewing this, MSFSP asked Ms J to provide an independent expert report to confirm the problem with the supplied floorboards was due to T rather than the fitting. Ms J refused and her claim was closed in April 2024. She complained to MSFSP about both the section 75 claim and chargeback. MSFSP offered Ms J £100 in compensation for customer service failings but maintained its position as far as not offering her a refund in respect of T.

Ms J referred her complaint to our service maintaining the floorboards supplied by T were vastly different from the original floorboards. She also said: the floorboards have developed other problems; T initially agreed to replace the floorboards so accepted it was in breach of contract; a sales manager from the branded sealant manufacturer has confirmed after a visual inspection, that T didn't use its sealant; the carpenter was not at fault; the work is not only poor standard but incomplete; another firm has quoted her £625 to finish the job, which is more than T's offer; Ms J wants a full refund from T along with payments for consequential losses; and overall, she's unhappy with MSFSP's customer service.

Our investigator didn't recommend upholding this complaint as she thought MSFSP had acted fairly and reasonably in how it handled Ms J's claims and thought the £100 it offered for customer service failings, was fair. Ms J disagreed and asked for an ombudsman's 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 appreciate Ms J has very strong feelings about what happened here. I want to assure her that I've thought carefully about everything she's said and sent to us, but I won't be commenting on everything she's said or provided. Instead, I'll focus my decision on what I consider to be the key matters which simply reflects our informal remit. I also won't consider the customer service issues in respect of the incorrect data being sent to Ms J in the process of the section 75 claim – this was dealt with separately.

Chargeback

In certain circumstances, when a cardholder has a dispute with a merchant, the card issuer can attempt a chargeback. The chargeback process is run through the card scheme operator (Mastercard). So, even if MSFSP pursues the chargeback to the end of the process it is the card scheme operator that makes the final decision. Generally, we say it's fair for a card issuer to attempt a chargeback if there's a reasonable prospect of success.

I think the most likely reason code under which MSFSP initiated this chargeback was 'Goods or Services Were Either Not as Described or Defective'. Under this reason code for disputes about the quality of goods, one of the condition's is that the cardholder either has returned the goods or informed the merchant the goods were available for pickup. I can't see that happened here. Even if I were satisfied all the conditions had been met, I can see T submitted what appears to be compelling evidence in response to MSFSP initiating the chargeback. Amongst other things, T said any potential fault could've been due to the way the floorboards were fitted by a separate contractor (the carpenter). I note MSFSP gave Ms J a chance to respond but from what I can see, she didn't add anything substantially new to what she submitted in the first instance. Under the Mastercard scheme this notes that an expert report to support the cardholder's position is optional. I note Ms J didn't want to obtain an independent expert report when asked to do so as part of her section 75 claim. But given the nature of the dispute, and in light of T's defence, without this type of additional evidence, I'm not persuaded Ms J's chargeback had a reasonable chance of success. In my view, I consider MSFSP has acted reasonably and fairly in deciding not to pursue the chargeback further.

Section 75

When something goes wrong and the payment was made with this type of credit, it might be possible to make a section 75 claim. This section says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier. It's important to note that I'm not determining the outcome of a claim a party might have under section 75 or breach of contract. Rather, I take into account the relevant law in this regard as well as all the other circumstances when reaching my decision.

I think of particular relevance to this complaint is the implied terms under the Consumer Rights Act 2015 ('CRA'). Amongst other things, the CRA says every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill. And any goods should be of satisfactory quality when

supplied. The quality of goods is satisfactory if they met the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The CRA also says goods should be as described. If T was in breach of any of these implied terms or the express terms of the contract, or, for example, misrepresented the goods it was supplying to Ms J, I'd think MSFSP should put things right for her.

Ms J's main complaint is that the floorboards didn't match other parts of her flooring, and she says T didn't warn her about this after it did a survey of her home. T said it didn't, and couldn't, make these types of promises because Ms J's existing flooring was over 100 years old, and the reclaimed floorboards were second hand. From what I can see, Ms J doesn't say T's agent specifically said anything about the floorboards to be supplied would be an exact match for her existing flooring – rather she says she wasn't warned about this possibility. So, in my view, there doesn't appear to be sufficient evidence to show T, or its agent, either misdescribed the floorboards or misled Ms J about them matching her existing flooring. And given the circumstances – the age of Ms J's flooring and the fact the floorboards were second hand not, for example, tailor made – I can't reasonably or fairly say T didn't act with reasonable care and skill.

In any event, having reviewed the evidence including the photographs of the flooring area, I don't think there is persuasive evidence of Ms J's claims about the floorboards not matching. I can see the photographs do show, what appears to be, white powdery substance on the flooring area which Ms J attributes to T failing to use the branded sealant. But I think her claims about the issue with the sealant and the floorboards not matching are complicated due to a number of intervening events. This includes the role of Ms J's carpenter who fitted the floorboards. T says that the carpenter didn't do enough to, in essence, blend in the newly fitted floorboards with the existing flooring. T then sanded the flooring, and my understanding is that after this, the application of woodworm treatment was applied by a specialist who, like the carpenter, wasn't part of T's business. T then applied two coats of sealant to the flooring area. It was only after all of these events that Ms J said she noticed there was a problem with the floorboards.

In all these circumstances, I don't think MSFSP was being unreasonable when it asked Ms J for an independent expert report to support her claims about the flooring. I don't think the facts speak for themselves - I consider there are too many other variables which could've caused the issues Ms J complains about including the fact the flooring hadn't had the final coat of sealant applied. I note Ms J provided a statement from a sales manager from the manufacturer of the branded sealant who said, in their view, its sealant wasn't used on the flooring. Ms J also provided a statement from a third party floor supplier who provided her with a quote for replacement floorboards and fitting. I've taken these statements into account. But given these parties were acting in a sales capacity rather than an 'independent' capacity – and the fact each statement missed out key information, such as whether any faults were connected to the supply or refurbishment work or (for example) the fitting – I don't find these statements persuasive.

I understand Ms J was concerned about the cost of employing an independent expert to look at matters. But MSFSP did say she'd be reimbursed if the expert report supported her claim of breach of contract. Ms J says MSFSP changed its position about her needing an independent expert report. From listening to the relevant calls, I think it was made reasonably clear to her from the outset that an expert report *may* be needed at some future point if the initial evidence wasn't sufficient to support her claim. And given Ms J's concerns about the costs of obtaining a report, I think the agent acted fairly and reasonably for not asking for this until all other avenues had been exhausted. I also note that MSFSP did give Ms J the option of obtaining a detailed statement from her carpenter and requested clearer photographs of the flooring areas before it asked her to provide an independent expert report. Ms J didn't want to provide what was requested as she thought further evidence was unnecessary. However, given the issues I've highlighted above, I'm not persuaded by Ms J's arguments here.

Ms J makes the point that T didn't apply the final coat of sealant. She denies stopping T's agents from finishing the job but it's clear she became unhappy with T's work, and I can see she didn't take it up on the offers to either complete the work, or to pay compensation and supply enough sealant to finish the job. In my view, I don't think it would be fair or reasonable to ask MSFSP to pay for the unfinished work as an offer has been made and from what I can tell is still open to Ms J to accept. In all the circumstances, I consider MSFSP has handled her section 75 claim fairly. So, whilst I know Ms J will be disappointed with this outcome, I'm not upholding her complaint about MSFSP not accepting liability under section 75. Ms J doesn't have to accept my decision and would be free to pursue the matter by other means (such as court). She may wish to seek appropriate legal advice before doing so.

MSFSP's customer service

Ms J makes several complaints about the customer service she received from MSFSP. I should start by saying that using financial services won't always be totally hassle free and we wouldn't award for things which aren't more serious than the normal nuisances of everyday life. So, whilst I appreciate Ms J was still receiving notices to complete the claim form after MSFSP closed her claim, which I understand has now stopped, I can't say there's sufficient reason to award compensation as the impact appears minimal. Ms J complains about delays to the claims process. But from what I can see part of the reason for the time taken, was due to the defence from T which Ms J was given a fair opportunity to respond to. All in all, I can't fairly say MSFSP caused any unreasonable delays beyond what I'd normally expect for a chargeback followed by a section 75 claim particularly when both parties are strongly defending their respective positions.

Ms J was upset when MSFSP didn't initially provide her with clear information about why it declined her chargeback, which it quickly rectified. Given this was a one off incident which didn't result in Ms J losing out financially, I think the £100 MSFSP offered for the distress and inconvenience caused, was fair. I won't be asking MSFSP to pay anything further.

My final decision

My final decision is that if it hasn't already done so, Marks & Spencer Financial Services Plc should pay Ms J the £100 it offered her in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 3 July 2025.

Yolande Mcleod
Ombudsman