

## **The complaint**

Miss M complains that Marks & Spencer Financial Services Plc trading as M&S Bank ("M&S Bank") did not accept her claim under Section 75 Consumer Credit Act 1974 ("s.75").

## **What happened**

In August 2018 Miss M purchased a new dishwasher from a retailer ("the merchant") using her M&S Bank credit card. She says that the merchant was due to deliver and install it, but an error was made in the transaction and delivery and installation was carried out by the manufacturer.

Miss M says that when it was delivered she explained to the men that her old dishwasher contained mouldy water and it should not be opened, but they ignored this. She has explained that the dirty water spilled into her kitchen causing damage.

Miss M has provided email exchanges with the merchant and its agent. These indicate that a claim was made against the merchant's insurance and it seems some cleaning was undertaken. Miss M made a claim for £30,000 but there is no evidence of any compensation being paid and I note the agent denied any liability on the merchant's part. It also said the installation was carried out by the manufacturer and not by the merchant.

In 2024 Miss M contacted M&S Bank seeking £30,000 compensation. It asked for further details in support of the claim including the contract. While waiting for these it contacted the merchant, but received no reply. It also contacted the merchant's agent which denied any responsibility. M&S Bank said it would consider the claim further once Miss M supplied the additional information. She explained she had sent the information and she re-sent it.

Miss M brought a complaint to this service and our investigator contacted M&S Bank. It said it had not received the evidence Miss M had sent. In reaching her view our investigator said that there was no clear evidence that the merchant had been contracted to install the dishwasher and remove the old one. She didn't think there was evidence of a breach of contract. Miss M said that the merchant had made a mistake and incorrectly arranged for the machine to be delivered direct by the manufacturer so there was no reference on the invoice to delivery or installation. She asked that her complaint be considered by an ombudsman.

## **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 Miss M, but I do not consider I can uphold her complaint. I will explain why.

### **S. 75**

When someone makes a payment on their credit card, in order to make a valid s. 75 claim against their credit card issuer they need to have used the credit card to pay a company they

have a claim against for breach of contract or misrepresentation. S. 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because s. 75 itself is worded in the following way:

“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.”

To be successful in this claim it is necessary to establish a breach of contract. Miss M has given us an archived copy of the purchase details which show she purchased a dishwasher from the merchant on 23 August 2018 which was to be delivered direct. This shows a price of £249. She has also provided the merchants “Easy Installation” guide. This gives details of the optional installation and disposal service. It does not show that Miss M entered into any agreement with the merchant to make use of this service. There is no documentation which demonstrates that she had a contract with the merchant for the removal of the old machine.

I have reviewed her credit card account statement from the time and I see that she paid the merchant £289 on 14 August 2018. It has been assumed that this was for the dishwasher, but I note the dates are different and the amounts are also different. I have considered whether the extra £40 paid was for installation and disposal of the old machine, but without clear evidence that this is what Miss M purchased I do not think it reasonable to expect M&S Bank to uphold her claim. She has asked that it pay her £30,000 and it is reasonable that the bank be given clear evidence that there was a breach of contract by the merchant.

I have noted the response to M&S Bank by the merchant’s agent which states that the installation of the dishwasher was completed by the manufacturer and neither it nor the merchant accepted any liability for any damage. It also said it had liaised with the manufacturer and it said the installation crew denied that any damage had been caused by them.

In conclusion, I do not consider there has been clear evidence to show that there was a breach of contract by the merchant and so I cannot say that M&S was wrong to seek further information in order that the claim be substantiated. If that evidence is uncovered it is open to Miss M to present it to M&S Bank.

### **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 Miss M to accept or reject my decision before 23 July 2025.

Ivor Graham  
**Ombudsman**