

## **The complaint**

Ms C has complained about the way Marks & Spencer Financial Services Plc trading as M&S Bank dealt with her request for money back.

## **What happened**

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But, to summarise, in December 2024 Ms C paid £189 using her M&S Bank credit card for treatment from a supplier I'll call "S".

Ms C said the treatment caused adverse side effects including headaches and migraines, so she requested a refund from S. Ms C said S initially agreed but later refused unless she signed a restrictive agreement preventing her from sharing her experience. She raised a claim with M&S Bank but it was declined, and Ms C complained. M&S Bank paid Ms C £50 for not logging the complaint sooner.

Ms C decided to refer the matter to the Financial Ombudsman. She didn't think her claim or complaint were investigated properly. She thought M&S Bank made unreasonable evidence requests and didn't support her. M&S Bank made a further offer to try to resolve things proactively, but Ms C didn't accept it. One of our investigators looked into things and thought M&S Bank's original answer was fair.

Ms C didn't agree. She explained she was unhappy with how M&S Bank treated her at what was a distressing time. She said she was unwell and in pain and needed help but she was faced with a process that wasn't supportive. She said she didn't feel like a valued customer.

As things weren't resolved, the complaint has 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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Ms C and M&S Bank that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to set out that I'm very sorry to hear Ms C wasn't happy with the treatment. I can't imagine how she must have felt, but I thank her for taking the time to bring her complaint.

It's important to set out up front that even if the complaint was upheld, I'm unable to make an award for loss of amenity so if Ms C was looking to pursue this aspect of the complaint, she may wish to seek independent legal advice because I can't cover it in a decision. I mention this because of the nature of the claim and the impact Ms C said the treatment had on her.

What I need to consider is whether M&S Bank – as a provider of financial services – has acted fairly and reasonably in the way it handled Ms C’s request for getting money back. It’s important to note M&S Bank isn’t the supplier. I’ve gone on to think about the specific card protections that are available. In situations like this, M&S Bank can consider assessing a claim under section 75 of the Consumer Credit Act 1974 (s.75) or raising a chargeback. The thrust of Ms C’s claim and complaint has been about how M&S Bank handled her s.75 claim so this is what I’ve focussed on.

## S.75

S.75 is a statutory protection that enables Ms C to make a like claim against M&S Bank for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with her for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. The value of the transaction falls within the financial limits. And I think the necessary relationships exist between the parties.

In cases such as this it is often complex to assess the quality of the service Ms C paid for. Results from such treatments are subject to many variables. I agree that the absence of a contractual document with terms and conditions should not mean the claim was automatically declined. But I’m conscious Ms C has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 (‘CRA’). I’m mindful it is the manner in which the service was provided that is the crucial issue for me in considering whether there’s been a breach of an implied term in relation to the service.

I’m not a treatment expert, and neither is M&S Bank. Without sufficient supporting evidence, I don’t think M&S Bank was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I don’t think it saw enough to determine the service S offered wasn’t carried out with reasonable skill and care. While one of the medical notes Ms C provided said the symptoms she was facing may have been a side effect of S’s treatment, those notes and the fitness for work notes don’t clearly set out the treatment wasn’t carried out properly. So overall, I don’t think M&S Bank’s answer to the claim was unfair.

I do need to point out that I’m not saying that something didn’t go wrong with the treatment, merely that I don’t think M&S Bank was provided sufficient evidence to be able to conclude there was a breach of contract.

### *Chargeback*

As I've said above, the thrust of Ms C's complaint was to do with M&S Bank's handling of the s.75 claim but, for completeness, I've also considered whether M&S Bank should have also considered raising a chargeback. The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back. While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

I can see M&S Bank decided quite quickly that the type of claim better lent itself for consideration under s.75 as opposed to chargeback. For similar reasons to what I've said above, I don't think there was sufficient supporting evidence that would have led to a successful chargeback because there wasn't enough evidence to show the services provided by S were defective. So even had M&S Bank raised a chargeback I don't think it would have led to a better outcome for Ms C.

### *Claim handling*

I appreciate Ms C was unhappy with the way M&S Bank handled the claim, and she didn't receive the answer she wanted. I think M&S Bank broadly responded to Ms C's requests fairly. While I know Ms C was unhappy with the outcome, and that she spoke to several different agents, I think M&S Bank progressed the claim within a reasonable amount of time. I do appreciate Ms C was unhappy M&S Bank asked her for evidence that she didn't have. And it had to ask her to resend attachments. I think M&S Bank was trying to obtain the sort of evidence it would normally need to consider a claim like this. M&S Bank offered £50 for not logging the complaint sooner. It issued a final response letter within a couple of months of the original claim being raised. I can understand Ms C found the situation frustrating, but I think the compensation seems like a fair recognition of what went wrong. I'm not going to direct it to take further action.

### **My final decision**

My final decision is that Marks & Spencer Financial Services Plc trading as M&S Bank has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 4 February 2026.

Simon Wingfield  
**Ombudsman**