

The complaint

Mrs J complains that Marks & Spencer Financial Services Plc ("M&S") rejected her claim for a refund for a faulty car engine.

What happened

In May 2023 Mrs J paid £7,727.18 for a replacement engine for her son's car. She paid for this using her M&S credit card. The engine failed in August 2024 after covering some 14,000 miles and the car was taken back to the garage which had fitted it. It identified that there was a fault with one cylinder, but said the engine would need to be stripped to understand the full extent of the problem. It offered to do so at no cost to Mrs J. However, it suggested the car may have been lacking oil or had been over revved. Mrs J confirmed the car had been serviced and well maintained and believed there to have been a fault with the engine or its installation.

No resolution could be reached and the car was taken back by Mrs J. She contacted M&S to make a claim under section 75 Consumer Credit Act 1974 ("s.75"). It asked for an independent report, and this was arranged by Mrs J. The detailed report concluded:

"In our opinion based on the visible evidence we would conclude when carrying out diagnostic testing fault codes were found in the engine control module as follows:

- *P1794:16-28 - Battery Voltage Circuit*
- *P0300:92-AF - Detected Random Misfire*
- *P0301 :92-AF - Misfire Detected In Cylinder #1*
- *P0304:92-AF - Misfire Detected In Cylinder #4*
- *P0562: 1 C-2C - System Voltage Low"*

It went on to say:

"When the engine was started from cold the engine management light illuminated and it was found an engine misfire was present. We were also able to confirm that oil was present upon the removal of the engine cover with no signs of any visual leaks.

At this stage we consider dismantling of the engine should be carried out to ascertain the root cause. We would recommend the removal of the cylinder head to confirm the condition of the pistons and valves. We also recommend checks are carried out to the spark plugs and fuel injectors."

M&S took the view that the evidence didn't establish that there had been a fault at the point of sale. Mrs J brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He didn't consider the report allowed him to say that M&S should uphold Mrs J's claim. He also noted that there may be an issue with the lack of a clear debtor-creditor-supplier agreement since the invoice had been made out

to Mr J and not Mrs J.

Mrs J arranged for the engine to be dismantled and she submitted the garage's findings. This said:

"engine timing out, at TDC. back of cams in time, WT out of time, assembly by installer poor.

Removal of the cylinder head shows various amounts of over heating, the liner walls have pushed together where the engine has got rather hot.

Piston 1 is wet on the face of the crown. Piston then removed to show side piece of piston missing. Excessive heat/poor fuel/injector has lead to engine failure."

It was put to M&S which commented to say it was vague and it would need to see a more detailed explanation of the cause plus photos. Mrs J provided photos of the engine while stripped, but could not obtain a more useful report.

At this point Mrs J asked that the matter be referred to 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 Mrs J, but I do not consider I can uphold her complaint. I will explain why.

This complaint has been submitted as a claim under s. 75. 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 ("DCS") agreement and

- A clear breach of contract or misrepresentation by the supplier in the chain.

Our role isn't to say if there has been a breach of contract or a misrepresentation for a valid claim under s. 75 but to consider if M&S has come to a fair outcome based on the evidence provided.

It is not clear if there is the required DCS agreement in this case. The debtor is Mrs J and the creditor is M&S. The supplier is the garage, but it invoiced Mr J and so it did not supply anything to Mrs J. Further enquiries would need to establish if there is a DCS agreement in place, but as I do not consider the complaint succeeds on other grounds I do not consider it necessary to reach a view on this issue.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Goods are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account things such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition, and other things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

In order to uphold this complaint, I would need to be persuaded that M&S was given evidence to demonstrate there was an inherent fault with the engine at the point of supply, as opposed to a fault which occurred due to general wear and tear.

I appreciate the efforts Mrs J has made in trying to get to the bottom of the cause of the engine failure. The independent report carried out in January 2025 does not indicate the cause of the failure and the more recent brief report on the dismantling of the engine doesn't give a cause. That makes it difficult for M&S to say the engine was faulty at the point of sale or was installed incorrectly.

The car had covered some 14,000 miles since the engine was fitted, apparently without issue and been installed for around 14 months. It is reasonable to assume an engine would last longer than that, but it is also reasonable to think that if it had been faulty at the point of sale the problem would have arisen earlier. However, I cannot say that the way the car was driven was a cause. Quite simply there is not enough evidence to identify the cause and therefore there isn't enough support for the s.75 claim. The onus is on Mrs J to provide sufficient evidence to support her claim. She has tried to do so, but I cannot say that the material provided to the bank is such that it should have upheld her claim.

I have also considered the issue which has exercised Mrs J, that the car was driven for 87 miles between it being taken back to the garage and being returned to her. However, I do not think this has an impact on M&S' handling of her claim; it is an issue for the garage to address.

I do have every sympathy with Mrs J and the situation in which she finds herself and I appreciate she will be disappointed with my decision.

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 J to accept or reject my decision before 17 October 2025.

Ivor Graham
Ombudsman