

## **The complaint**

Mr A has complained about how Marks & Spencer Financial Services Plc trading as M&S Bank (M&S Bank) handled his request for a refund for two separate transactions.

## **What happened**

In September 2024, Mr A made two payments to a travel agent, I'll call T, using his M&S Bank credit card. The payments were for return flights for multiple passengers. Mr A explained that due to an error made by the airline he and the group were unable to board the flight, resulting in him having to pay for additional flights the following day and incur other expenses.

Unable to resolve matters with T and the airline, Mr A approached M&S Bank and asked it to assist him in getting a refund, as well as reimbursement for his losses. M&S Bank attempted a chargeback for each transaction and decided not to pursue them further when it received the merchant's response, which said the group missed the flights. It went onto consider a Section 75 claim, as set out in Section 75 of the Consumer Credit Act (CCA) 1974 (Section 75), which it declined because it said the debtor, creditor, supplier relationship was not in place, as the payment was made to an agent rather than the airline, and as such Section 75 was not applicable.

Unhappy that M&S Bank didn't change its position after raising a complaint, Mr A referred his complaint to this service for an independent opinion.

One of our Investigators considered the complaint and didn't find that M&S Bank had treated Mr A unfairly. They explained that M&S Bank attempted the chargebacks and acted fairly when it decided not to pursue them further, as there was little to no chance of them succeeding, due to the defence provided by the merchant. They also said that M&S Bank handled the Section 75 claim fairly because there was no evidence of a breach of contract, given the travel agent's liability was limited to booking the flight and M&S Bank was not equally as liable for the actions of the airline.

Disagreeing with our Investigator's view, Mr A said that Section 75 liability exists when payments are made to travel agents and maintained that M&S Bank were liable for the actions of the airline. Since referring his complaint to this service a dispute service considered Mr A's complaint about the airline and due to a lack of response from the airline it upheld his complaint and deemed compensation to be due by the airline but said it was unable to impose this against the airline.

As no agreement was reached about the matters involving M&S Bank, the complaint was 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.

My summary above and comments below will focus on what I consider to be the key points to this complaint. Whilst I've considered everything in detail, if I don't comment on a particular point, it's because I don't feel that I need to in order to reach a fair answer on this complaint. It's not meant as a discourtesy, but instead it reflects the informal nature of this service.

I'd like to start by saying how sorry I was to hear about the impact the issue had on Mr A and I understand the importance of the trip. Whilst I have the upmost empathy for the situation he was in, I must put those feelings aside when thinking about what's fair and reasonable in the circumstances of this complaint.

To be clear I am only determining whether M&S Bank treated Mr A fairly in how it handled the disputes, and not the actions of T, nor the airline as the actions of those firms don't fall within this services remit. Whilst there may have been issues, it doesn't necessarily mean that M&S Bank treated Mr A unfairly.

There were two ways in which M&S Bank could potentially assist Mr A in getting a refund for the transactions, either a chargeback or a Section 75 claim. I've considered each in turn.

### Chargeback

There are set rules and criteria under which M&S Bank would need to follow as part of the chargeback process. These rules are set by the card scheme and cannot be altered or amended by M&S Bank under any circumstances. Part of these rules set out the situations in which a chargeback can be raised in the form of reason codes, along with specific criteria for each code.

A chargeback isn't an automatic right for consumers and in Mr A's circumstances M&S Bank had discretion to decide whether to attempt them or not. However, in treating Mr A fairly I'd expect it to attempt them if the scheme rules provided a specific option for his disputes, and they had a reasonable prospect of success. Once a chargeback has been attempted, it would be for M&S Bank to decide whether to pursue them further to each subsequent stage, depending on whether it considered a good prospect of success remained.

I've thought about the sorts of reason codes that might be applicable to the dispute and I consider 'Goods or Services Not provided' to be the most appropriate. M&S Bank started the chargeback process for each transaction, which involved notifying the merchant's bank of the dispute. I consider this to be fair. At this stage the disputes could either be accepted, in which case a refund is provided, or it can be defended. The latter is what happened in this case and the merchant provided supporting evidence in its defence, including booking information, e-tickets, information from the airline and terms and conditions. M&S Bank considered this evidence and decided not to pursue the chargebacks further, explaining this to Mr A. Whilst I appreciate that this was disappointing for Mr A, I think this was fair action to take in the circumstances.

I say this because having considered the evidence provided, I'm not persuaded this demonstrates an error was made by T that prevented Mr A from using the flights. In my view, it seems that T booked the tickets as requested, the flights went ahead as scheduled and as such were available for Mr A and the other passengers to use. There's insufficient evidence that T provided a defective service or that any refunds were due. As I'm not persuaded that the chargebacks had a good prospect of succeeding it follows that I don't find M&S Bank treated Mr A unfairly by not pursuing them further.

### Section 75

In certain circumstances, Mr A can make a like claim against M&S Bank for any breaches of contract or misrepresentations by the supplier of goods or services, when payment is made via credit card. This is through a Section 75 claim.

In order to say that M&S Bank treated Mr A unfairly in how it handled his claim, I'd need to be satisfied that the necessary criteria had been met and if so, that a breach of contract or misrepresentation had been evidenced.

For there to be a successful claim under Section 75 there are certain criteria that also need to be satisfied. One of these is that there needs to be a valid agreement between the debtor, the creditor and the supplier, as set out within the CCA. This is often called the debtor-creditor-supplier (DCS) agreement, or D-C-S link. In this case the payment was not made to the airline and there were multiple passengers under the booking, which is relevant when determining if the necessary DCS agreement is in place.

Mr A made the payment to T and in return it agreed to book the requested flights. Given a Section 75 claim is a like claim against M&S Bank as Mr A could have against the supplier he made the payment to, he would need to evidence to M&S Bank that T breached its contract or made a misrepresentation, to have a successful claim. I'm not persuaded that this has been evidenced, given T booked the flights as requested and the terms and conditions made it clear that T was not responsible for the supply of the travel services. I haven't seen any evidence to suggest that T didn't carry out the services with reasonable care and skill, as required by the Consumer Rights Act 2015. On this basis, I'm not persuaded that M&S Bank treated Mr A unfairly when it declined his claim.

Mr A says M&S Bank are responsible for any failings of the airline and quoted case law to support this. Mr A's point is that multiple parties involved in a transaction doesn't affect the DCS agreement, however the case he quoted was in relation to payments processed by a merchant acquirer, which doesn't apply to the particular transaction in dispute, as it's not the issue here.

Mr A had two contracts, one with T, as I've set out above this was to book the requested flights, and one with the airline to supply the services he paid T for. Given Mr A didn't make the payment directly to the airline, the required DCS agreement between himself, M&S Bank and the airline didn't exist, so the necessary criteria for a Section 75 claim had not been met. And from what I've seen the arrangement was for T to book flights only, as opposed to a package holiday, so T is not liable for the performance of the holiday. It follows that I don't find that M&S Bank treated him unfairly by declining his claim on this basis.

Mr A has since produced evidence which he says reinforces his Section 75 claim. This evidence was not available to M&S Bank at the time it considered his claim and I need to determine whether M&S Bank treated Mr A fairly in how it dealt with the issue based on the evidence presented to it up until the final response letter was issued. The evidence shows that another dispute scheme said he was due compensation, but this appears to be because the airline didn't respond, rather than a finding being made on reasonable care and skill. As such, I don't think this necessarily changes things, as it doesn't persuade me there was a breach of contract. I note the response provides information about court action and I should point out that Mr A does not need to accept this decision and could instead take matters to court, should he wish to.

It follows that I'm not persuaded that M&S Bank treated Mr A unfairly in how it handled his claim, based on the information it was supplied with.

**My final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 January 2026.

Daniella Roberts  
**Ombudsman**