

The complaint

Mr S complains that Marks & Spencer Financial Services Plc, trading as M&S Bank, won't refund a purchase he made using his credit card.

What happened

Given the facts of this complaint are well known to both parties, I won't go over every detail here; instead, I'll summarise events up until this point:

- Mr S used his M&S credit card to pay a £1,200 deposit to a booking agent, who I'll call "T". The deposit was for a cruise. Mr S, his wife, daughter, son-in-law and grandchild were all attending for a family holiday – celebrating a special birthday.
- Mr S' son-in-law paid the remaining cost of the cruise, which was operated by a company I'll call "F"; Mr S says he subsequently reimbursed his son-in-law, in part, for the cost of him and his wife. In total, Mr S says the cruise for the whole party cost around £6,750. Mr S' portion of that cost, for him and his wife, was just over £3,300 according to the booking confirmation.
- Unfortunately, Mr S and his party experienced several issues while on board. I won't list everything here but, by way of example, they were unhappy with the food; frustrated at being left without running water in their cabin, and they were dissatisfied with noise and maintenance work.
- Mr S said this all resulted in a special holiday going drastically wrong, and that their enjoyment of the cruise was entirely deprived. So, he complained.
- In the end, Mr S was reimbursed £1,000 by F – but he remained unhappy. He thought M&S should reimburse the full cost of the holiday via a claim under Section 75 of the Consumer Credit Act 1974.
- M&S disagreed, and it didn't agree to pursue a Section 75 claim – nor did it uphold Mr S' subsequent complaint. M&S didn't consider there to be the requisite debtor-creditor-supplier relationship in place which would allow a Section 75 claim to proceed.
- Mr S contacted this Service for an independent review. An Investigator here considered what had happened; having done so, they didn't recommend that M&S take any action. While the Investigator thought the necessary relationship between the parties involved *did* exist, they didn't consider there to be strong enough evidence to determine that M&S should reimburse the full cost of Mr S' holiday.
- In short, the Investigator considered many of the issues raised by Mr S to be subjective – and not substantive enough to clearly demonstrate a breach of contract. While there had clearly been problems, the remedy put in place by F – that being a £1,000 refund – was enough to resolve things in the circumstances.
- Mr S disagreed, and he asked for an Ombudsman's decision.

I issued a provisional decision in September 2025. I said:

At the outset, I'll say that I'm left in no doubt over Mr S' strength of feeling on the matter. It's clear that what happened had a profound effect; he'd arranged a special trip with his family – to celebrate an important birthday – and it's certainly unfortunate, to say the least, that his party didn't enjoy their cruise through no fault of their own.

That said, I'm not going to recommend that Mr S receives the full refund he seeks as resolution to the complaint. Of course, that'll be greatly disappointing for him – so, I'll explain why.

Broadly speaking, in scenarios like this, there are two main ways a customer can try to recover money paid to a supplier. They can approach their bank or credit provider – like M&S here – to recover the money through a chargeback, which is a voluntary process operated by the relevant card scheme (like Visa, or Mastercard); or, a customer can ask that their bank or credit provider assess whether they have a valid claim under Section 75 of the Consumer Credit Act 1974 ("S75").

Here, as I understand it, M&S didn't attempt a chargeback for Mr S – and it didn't think he had a valid claim under S75 either. I'll address both aspects in turn.

Section 75

For S75 to apply, the law effectively says that there must be a debtor-creditor-supplier ("DCS") agreement, and a clear breach of contract or misrepresentation by the supplier in the chain.

The three parties in the agreement are:

- a debtor – the person who has an obligation to make repayments to the creditor under the credit agreement. That's Mr S here.*
- a creditor – the credit provider. In this case, that's M&S.*
- a supplier – the party who provides the goods or services to the debtor and receives payment from the credit provider.*

There's some ambiguity over the agreement here; ultimately, it really comes down to T's role and what T is responsible for and whether it's the organiser, or the retailer, of the package Mr S bought. In assessing that, I've reviewed the terms and conditions of T and of F; crucially, I've also considered the Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs') – these are the deciding factor for who is liable for the performance of a package.

I'm broadly satisfied, under PTRs, that T is responsible for the performance of the package here – but, in any event, I don't think I need to make a formal finding on it. That's because, fundamentally, even if T was indeed responsible for the performance of the package holiday, I'm not persuaded that M&S ought to refund Mr S in full. The PTRs I've referred to above set out that the supplier is to provide an "appropriate" price reduction, if certain things go wrong.

While there's no doubt Mr S and his party didn't enjoy their cruise to the extent they'd hoped, and I accept some issues they encountered likely breached terms of the

contract and/or implied terms – like that as set out in the Consumer Rights Act 2015, to provide a service with reasonable care and skill – I think the price reduction offer Mr S received from F is fair remedy and appropriate, as per PTRs, in the circumstances.

To explain, some of Mr S' grievances here are subjective – like food quality, or frustrations with noise. There were some changes to the cruise's itinerary too. One stop was missed entirely; there was an amendment to another stop and a full extra day at sea – but such alterations are generally permitted within F's terms and conditions. It's not inherently unreasonable, in my view, to think that cruises might have to make amendments to their planned route; bad weather, or other force majeure events, could come into play. That's just what happened here. So, I'm not minded to say a breach of contract, or misrepresentation, occurred because of those aspects.

That said, F has acknowledged that several things did go wrong with Mr S' cruise; I think the lack of running water in Mr S' cabin, for example, does demonstrate a breach of reasonable care and skill. In such circumstances, a price reduction is a fair way to resolve things, and F did, in the end, offer to refund Mr S £1,000. That's around 80% of what he paid using his M&S credit card, around 30% of Mr S' portion of the holiday cost, and about 15% of the total cost of the holiday. In my view, that's an appropriate price reduction – which is what the PTRs set out Mr S is due – for a completed holiday. I think too that it's a fair amount when taking a broad, holistic view of the problems experienced against the cost of the holiday.

As I understand it, Mr S didn't – and still hasn't – accepted the offer from F; that's important, because if he had, given the offer was on a full and final basis, any "like claim" against M&S would be extinguished. But as he hasn't accepted it, Mr S can now contact F and do so if he wishes; crucially, if it transpires that the supplier now can't or won't pay, then M&S should pay instead given its liability under a "like claim". I don't, though, intend to require M&S do any more than that.

Chargeback

For completeness, I've thought about chargeback too – but I don't think this would've been a successful route to the outcome Mr S seeks either. Card schemes set various rules covering things such as what sort of scenarios are eligible for a chargeback, the kind of evidence required, and how long a person has to submit one. A cardholder isn't able to demand that a chargeback is attempted though, and they're not guaranteed to be successful. A card issuer can choose not to pursue a chargeback if there isn't a reasonable prospect of success.

M&S didn't attempt one here, but I don't think Mr S has been caused a loss as a result. The basis for any chargeback in Mr S' circumstances, I think, would be for goods and services not being as described or being defective. I'd consider it very likely that any chargeback attempt would've been successfully defended; as I've said above, many of the issues Mr S was unhappy about are subjective and F could also point to the £1,000 refund it agreed to provide.

Conclusion

I've no doubt that what I've set out here will greatly disappoint Mr S; this won't be the answer that he's hoping for, and I am truly sorry to hear that he and his family didn't enjoy their holiday.

That said, I do hope he understands the reasons for my decision. In conclusion, I'm minded to find that Mr S has been offered an appropriate remedy, by the supplier, for the issues he faced with the cruise – by way of proportionate price reduction – and that M&S doesn't need to take any further action. That is unless the supplier won't honour the £1,000 offer it made – in which case, M&S will need to reimburse Mr S with that amount instead.

M&S didn't reply to my provisional decision, but Mr S did; he clarified that he was seeking to recover around 33% of the cost of the cruise – not a full refund – and that the cabins, which he'd also paid to upgrade, had been full of problems. Mr S also highlighted the PTRs.

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.

Before going any further, I'd like to thank Mr S for his response to my provisional decision – and for his patience in what has been a long-running dispute. I surely understand this matter is of significant importance to him; I'll say again too that I truly am sorry to know that he and his party didn't enjoy their cruise. That said, while this will of course be disappointing for Mr S, I'm not going to depart from my provisional conclusions.

Having re-reviewed the submissions to date, it seems the level of price reduction – specifically, what an appropriate amount would be – is the remaining sticking point here. And while I appreciate the clarification from Mr S that he considers around 33% to be an acceptable price reduction, I'm afraid I don't share that view. To keep things succinct, I'll simply say that coming to a fair price reduction isn't an exact science. The fact is that Mr S will hold his own view of what's appropriate – which is, of course, entirely understandable – but in my view, taking into account the proportion of the contract that was performed correctly, and the subjective nature of some issues raised, I remain of the opinion that a price reduction of around 15% of the original contract price is reasonable.

I also have to consider what Mr S is able to claim. From what I have, it seems the invoice for the cabin upgrade was separate from the original booking. There's a chance that means it formed a separate contract; but even if I'm mistaken about that, I don't think we need to explore it further – and I say that because, in the round, I still think a £1,000 reduction in the original price is broadly a fair and reasonable amount to resolve this dispute, even with the cabin upgrade in mind. So, that's what M&S should arrange to pay Mr S *if* the supplier hasn't already, or if it isn't willing to.

My final decision

My final decision is that I uphold Mr S' complaint. Marks & Spencer Financial Services Plc, trading as M&S Bank, ought to have considered a claim under Section 75 of the Consumer Credit Act 1974 and pointed Mr S back to the supplier's offer; or, in the event the supplier wouldn't pay, reimbursed Mr S itself. So, that's what it should do if the supplier now can't, or isn't willing to, pay Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 November 2025.

Simon Louth
Ombudsman