

The complaint

Miss G complains that Marks & Spencer Financial Services Plc (M&S) didn't agree to refund her after she made a claim for incomplete plumbing works.

What happened

In 2020 Miss G approached a company I'll call 'T' about replacing a boiler in her home. As time progressed Miss G's plans for her home renovations changed and by 2022 additional works were needed. Miss G sought quotes for this work from contractors including T. Overall T provided three quotes for the work. The first quote was provided in October 2020, this was for the removal of an Aga, the second quote was given in February 2022 for a new boiler and the associated plumbing work. And the third quote was provided in May 2022 for general plumbing works.

T began work on the project in May 2022 and provided revised versions of the February and May 2022 quotes on 9 June 2022. Miss G said that before the revised quotes were provided, she sent T a detailed quote from another supplier and understood that the revised quotes included the works listed by the other supplier.

Based on the quotes provided, Miss G was expecting the works to cost around £20,000. In September 2022 T sent an invoice to Miss G for £12,000. Miss G paid this in two instalments using her M&S credit card. The first payment of £8,000 was made on 11 October 2022 and the second instalment of £4,000 was paid on 26 October 2022 using the same credit card.

Work on the project continued but in November 2022 T wrote to Miss G saying it felt the project was running away a bit and set out what the total cost of the project was likely to be. This sum totalled nearly £30,000.

Unhappy with the increased cost Miss G questioned T about the reasons for this and asked for a breakdown of the costs for the project. T didn't provide a breakdown and said that to continue work on the project it would need Miss G to pay it for the work completed to date and then pay it weekly going forward. As an agreement couldn't be reached between Miss G and T, T didn't return to the project and Miss G looked to make a claim under section 75 of the Consumer Credit Act 1974 (section 75).

Around the same time T issued court proceedings to recover the money it believed Miss G owed it for the work already completed. Whilst the matter was being dealt with through the courts M&S decided to pause its investigation into the section 75 claim. However, when M&S was provided with evidence that T had discontinued the court action, it went on to consider the claim.

M&S considered the information Miss G provided, including comments from other plumbers and a defects report, but explained it didn't think there had been a breach of contract. Unhappy with M&S's response, Miss G referred the case to this service. One of our investigators considered the case and didn't think M&S had acted unfairly.

Miss G didn't agree with our investigator's view, so her complaint has been passed to me for

review and decision.

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.

Having done this, I reached a provisional decision saying:

“As Miss G made payment using her credit card, both the chargeback process and section 75 were available to M&S when considering the claim. So, I've considered both here.

Chargeback Claims

Whilst chargeback provides an avenue for a bank to raise a dispute with a merchant where something has gone wrong, it doesn't cover all eventualities, it isn't a legal right and isn't guaranteed to get a customer a refund. But I'd consider it good practice for a credit provider to attempt a chargeback where the circumstances are appropriate and there's a reasonable prospect of success. Strict rules and timeframes apply to chargebacks, and these are set out by the card scheme operator (in this case Mastercard) and can't be changed by either M&S or this service.

I can't see that M&S attempted a chargeback in this case. But I must consider that it isn't clearly defined what the payments Miss G made in October 2022 were specifically for. As we can't be certain what the payments were for exactly, it's hard to prove under the chargeback rules that the merchant failed to deliver the item or service paid for, or that the item or service paid for was defective.

So, I'm not persuaded on the evidence available that the chargeback would have had a reasonable prospect of success.

Given this, I don't think there has been any loss to Miss G as a result of a chargeback not being raised.

Section 75 Claims

Section 75 makes the provider of credit (M&S in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when the criteria for a section 75 claim are met. Section 75 won't apply to any single item where the supplier has attached a cash price of £100 or less, or more than £30,000. In addition to this there needs to be a direct relationship between the debtor, creditor, and supplier otherwise known as a DCS agreement.

I can't see that a contract between Miss G and T was signed but I can see that a quote was provided to Miss G by T and that it appears this was accepted. I can see that Miss G used her M&S credit card to make payments directly to T and the value of the quotes fall within the parameters of section 75. Given this, I have no concerns about the value of the claim or the DCS agreement, and I'm satisfied that the case meets the criteria for a valid section 75 claim.

I think it would also be helpful for me to be clear here that my role isn't to pass judgement on T's business practices but rather to assess whether I think M&S reached a fair outcome when it considered Miss G's section 75 claim.

Having reviewed the arguments made by M&S, I'm not persuaded that T made it clear

enough on all the quotes that they were only valid for 30 days. And that meant if the work hadn't been completed within 30 days of the quote being given, that the prices could change.

However, I've reviewed the quotes, the communications between T and Miss G, alongside the invoices and dates of payment. I've also considered the communication between M&S and Miss G and her representative at that time. Having done so, although I don't agree with M&S's reasoning, I'm not persuaded there was a breach of contract here based on the evidence available and I'll explain why.

Importantly here, there is no contract setting out the specific works to be undertaken, a time frame for those works, and the total cost of the works. So, I must rely on the other written information available. I appreciate that Miss G has said she had conversations with T but as I wasn't party to those, I can't be certain what was discussed. So, to understand what was agreed by the parties I've turned to the quotes provided by T:

- Quote 0326 – dated October 2020. This was for the disconnection of the Aga, removal of it to the garage, to cap off the oil and circulation pipes at a total cost of £734.89 including VAT*
- Quote 2744 – dated February 2022. This quote was for the removal and disposal of the existing boiler, cylinder/tanks and the supply and installation of a new boiler, filter, controls, condensate, water treatment, and pipework and fittings (excluding a plume kit). This was at a total cost of £7283.05 including VAT.*
- Quote 3348 – dated May 2022. This quote was for general plumbing works, time, and materials. It set out a rate of £42 per hour plus VAT for a qualified plumber and £15-£30 per hour plus VAT for an apprentice. It set out that materials would be charged at cost plus 23%. The quote set out clearly that the price given was a budget based on an estimation of time and that it wasn't fixed. It made it clear that costs may increase or decrease dependent onsite time needed. The estimated provided was £12,795.71 including VAT.*

It appears that the works in relation to quote 0326 were completed. However, it's unclear what works were completed in relation to the other two quotes. I think it's evident that the boiler wasn't supplied or fitted, however it's unclear how much of the other work under that invoice was completed. Similarly, it's unclear how much general plumbing work took place. Miss G has said that T failed to complete works within a reasonable time and as such breached their contract with her. Although there is no actual contract as such, I've considered this point using the information available. It's clear that this was a big project and that work was staged. But none of the quotes specify a timetable for the works, give an indication of how long the works might take, or set out when the work quoted for is expected to be completed by.

It appears Miss G was willing to pay £12,000 to T for its work up to the date of the invoice in September 2022. The invoice doesn't specify what works or materials T is invoicing Miss G for, other than to say it's an interim payment for the first fix. I also can't see that Miss G questioned what the £12,000 was to be paid for, or that she raised any concerns at the time, that the project was taking longer than expected or agreed.

Given the nature of the work, the lack of detail around what work T had agreed to carry out, and that it seems there were changes made during the project, it's now not possible to determine what a reasonable time for the work would have been. So, as what a reasonable time is, is a question of fact, on the evidence available, I'm not satisfied there was a breach of contract because T, failed to undertake work in a reasonable time.

Miss G has also said that she doesn't believe T undertook £12,000 worth of work before it left site. I've reviewed the breakdown of works completed provided by T after it had left site and I can see it claims Miss G still owes it over £5,000 for the work it had already undertaken. Miss G disputes this and has provided comments from other contractors who gave quotes for the remaining work. One of these contractors estimated that T had carried out work to the value of around £4,500. However, no detailed breakdown is given and it's unclear what information this contractor used to reach this estimate. I appreciate Miss G seeks to rely on this to prove she paid for works that weren't received. But I must take into consideration the contractor here was also quoting Miss G for further work. Given this and the level of the detail given by the contractor about the works already carried out, I'm not persuaded this is an accurate, independent, account of the value of the work undertaken by T. So, I'm not satisfied this demonstrates Miss G paid T for more work than it did.

Miss G has said she feels it amounted to a breach of contract when T increased the price mid-way through the project. Whilst quotes were given and accepted, I can't see there was any contract setting out an overall price for the works. The largest of the quotes, and where the bulk of the increase appears to have come from, was given on a time and materials basis. It's clear from the quote this price wasn't fixed and was subject to change. So, I can't agree there was a breach of contract here.

I appreciate Miss G believes the quote for the boiler work should have been honoured. I can see in the breakdown provided by T it said the boiler hadn't yet been purchased and the manufacturer of the boiler had increased prices which would have to be passed on to Miss G. I can understand why Miss G feels the boiler could have been purchased earlier to avoid price increases. But importantly, I can't see that any of the payments requested by T and made by Miss G were for the boiler. So, it can't be said that T failed to supply and fit a boiler that Miss G had already paid for. Even if it could be said that T breached their contract in relation to the boiler when it looked to increase the price, it can't be demonstrated that Miss G made a payment to T for a boiler using her M&S credit card. So, I can't reasonably conclude that M&S should be held equally liable for this breach.

Miss G has also said that T raised the price beyond what was reasonable for the service. What's reasonable for any particular service will depend on several things including the costs of materials and labour in this case. Miss G has provided a number of quotes, but I can't see these are directly comparable. We don't know exactly what works T were due to carry out and from the information available it seems changes were made to plans during the project which may have resulted in extra costs. So, it's impossible to tell whether T's estimated costs were unreasonable.

In addition to this, after the breakdown in the relationship with T, Miss G obtained quotes from other contractors (one of which was eventually employed) to complete the work. I can see Miss G paid the contractor who continued the works around £17,000, bringing the total amount paid for the works to around £29,000, which is a similar sum to the total given in the revised quote provided by T in November 2022. So, on the information available, I can't fairly say M&S should have found that T's price increase was so unreasonable as to amount to a breach in contract.

Overall, based on the evidence available to me and provided to M&S, I'm not persuaded that it can be adequately shown that there has been a breach of contract here. There is no definitive contract setting out what works T would complete, by when and what the final cost of this would be. Whilst some of the quotes are specific about what work is included, it's not clear that T charged Miss G for this work in its September 2022 invoice. So, it can't be said that Miss G has paid for works that weren't completed. The largest quote was provided on a time and materials basis and so would always have been subject to change. The interim

invoice for the first fix, suggests that the works were not completed as of September 2022 and that it wasn't expected by either party that works would be completed or partially completed by this point. So, on the evidence available I can't be satisfied that T failed to deliver work to the value of £12,000.

Miss G provided M&S with photos of work she believed to be incomplete or not carried out with reasonable care and skill by T. It appears much of this has been advised by the contractor who completed the work, and they have invoice Miss G for completion of some of the work started by T. Again, given the testimony Miss G has provided is from a contractor who was tendering for and who then completed the remaining work, I can't be certain of their independence on the matter.

I must also consider that T provided a response explaining some of the work was temporary to provide toilet facilities or while decisions were made and parts waited for. It explained that works at the property couldn't be progressed further at the point the relationship broke down and works stopped.

I'm satisfied that T left site without completing works, and on the evidence available I'm persuaded, that at the time Miss G paid the invoice she wasn't expecting works to be completed. And, based on the evidence available, I haven't seen enough evidence to persuade me that the works that were carried out by T, although incomplete, weren't done with reasonable care and skill.

I've also reviewed the defect report Miss G provided which was undertaken by an independent third party. It's clear from this report that the soil pipes weren't finished as the inspector required. However, based on the evidence available, at the time of the relationship breakdown between T and Miss G, works were ongoing and mostly unfinished, including the fitting of the sanitary ware and the associated pipework. Whilst I don't doubt work to the soil pipes was unfinished at the time T left site, it's unclear what works were or should have been in a finished state at the time of the invoice in September 2022. As there's no contract and the invoice provides limited information, I can't be sure that Miss G had paid T for the completed works to the soil pipes or that the work was or should have been in a completed state by September 2022 (particularly as it appears Miss G was still waiting on the supply of sanitary wear at that time). Given this, on the evidence available, I've not seen enough here to satisfy me that Miss G paid T for completed soil pipe works, and T failed to do that work with reasonable care and skill.

In summary, on the evidence available, it's not clear enough to me, that there has been a breach of contract here. So, whilst M&S's reasoning differed from what I have set out here, I don't think it acted unfairly when it declined Miss G's claim.

I've also considered the delays in M&S dealing with the claim. These claims can often take weeks or months to resolve once an investigation has started, and I haven't seen anything to suggest that M&S significantly delayed the claim once it began its investigation. I can see there was a lengthier period where M&S decided it needed to wait for the outcome of the claim T had brought against Miss G through the courts. I appreciate this will have been frustrating for Miss G. However, given the outcome of the court action could have had an impact on the claim M&S was being asked to consider, I don't think it was unreasonable of M&S to delay looking into the claim until that matter had been resolved.

I understand what a disappointment this must be to Miss G and I've no doubt how upsetting a frustrating this matter will have been for her. However, I must decide whether I think M&S has acted unfairly in its consideration of her claim. And on the evidence available I'm not persuaded M&S has acted unfairly in this case."

M&S has responded accepting my decision; however, Miss G has provided several reasons why she doesn't accept my provisional decision. I'd like to reassure her that I have carefully considered the points she has raised. However, I haven't seen any new information in her submission that changes my findings on this case.

Miss M has explained that M&S failed to raise a chargeback in time, and she believes her claim would have succeeded if it had been raised. I appreciate this would have been frustrating for Miss G. But for the reasons set out in my provisional decision, I don't think a chargeback claim would have had a reasonable prospect of success. So, I don't think Miss G has been disadvantaged by a chargeback claim not being raised.

Miss G has also made comments about the existence of a contract under section 75. I'd like to be clear here that I haven't disputed that there is a contract for the purpose of section 75. Rather my point was that the only documentary evidence of the works to be done and the terms under which the work would be completed are the quotes and invoice. So, it was these I would have to rely on in establishing what was agreed between the parties.

Miss G has provided further comments on what works should have been completed, the increased cost of the works, the value of the works completed by T, why she believes the contract was breached, and the amount she believes M&S should refund her. I appreciate the effort Miss G has spent providing these comments and I've considered these carefully. I appreciate this will be disappointing for Miss G, but having done so, I haven't seen anything materially new here that would lead me to depart from my provisional decision. And I don't think there is any more I can meaningfully add to my findings on these points.

My final decision

My final decision is that I don't uphold Miss G's complaint for the reasons I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 5 December 2025.

Charlotte Roberts
Ombudsman