

The complaint

Mrs P complains Marks & Spencer Financial Services Plc trading as M&S Bank (“M&S”) has declined a claim she brought under section 75 of the Consumer Credit Act 1974 (“CCA”). Mrs P is represented in her complaint by a claims management company, “FA”.

What happened

I issued a provisional decision on this complaint on 16 February 2024, in which I set out the background to the complaint, and my findings on it, in detail. I will not repeat everything in this final decision, but will summarise the key points regarding the background:

- Mrs P had a timeshare-like product with a company, “C”. She was contacted by another company, “J”, around November 2020. Mrs P entered into a contract with J and paid it £18,392, which included two payments on her M&S credit card.
- The contract said it was for the guaranteed release of Mrs P from her timeshare, but she also said J had made promises about claiming compensation for the mis-sale of the timeshare. The contract offered a full refund guarantee if Mrs P was not released from her timeshare within 12 months of 2 December 2020.
- A company, “FT”, wrote to Mrs P on 15 November 2021 to say that she had been released from her timeshare. J ceased trading and Mrs P says no compensation claim has ever taken place on J’s instigation. She wrote to M&S setting out a section 75 claim in March 2022, arguing J had made misrepresentations in relation to the potential compensation claim. M&S declined Mrs P’s claim, and her subsequent complaint about its decision. The matter was referred to the Financial Ombudsman Service.

In my provisional decision I said I was not minded to uphold Mrs P’s complaint. My findings could be summarised as follows:

- The technical conditions for Mrs P to make a section 75 claim against M&S were in place, meaning it was necessary to establish whether there had been a breach of contract or misrepresentation by J.
- The available documents showed J was a referrer or lead generator for another company, “CSG”, which then passed on the work of releasing Mrs P from her timeshare to FA (her current representatives). It was apparent that a compensation claim had most likely been discussed as the documents said such a claim was to be taken forward by an unnamed third party.
- A misrepresentation was a false statement of fact or law made by one person to another and which induces that other person to act in a way which is to their detriment – for example entering a contract they wouldn’t have otherwise. I thought it was likely Mrs P had a conversation with J about a compensation claim, based on the documentary evidence. However, I noted we had not had any direct testimony from Mrs P about her recollections of what she was told by J until recently, and the

testimony we did have was vague, didn't cover what had happened after she'd paid J, or really explain what she felt had gone wrong with her agreement with them. I felt unable to conclude she must have entered the contract with J as a result of misrepresentations made by J.

- A breach of contract occurs when one party to the contract fails to honour its express or implied terms. Mrs P's contract with J had guaranteed that she would be released from her timeshare within 12 months of 2 December 2020, or she'd get her money back. It appeared that Mrs P had in fact been released from her timeshare within the allowed period – and she'd received a letter from FT confirming this. I had some doubts about whether FT's actions had been sufficient, but I noted that they met the definition in the contract of what would be considered a successful release from Mrs P's timeshare.
- The contract had not said very much at all about the matter of the compensation claim, for example how much was being claimed or how long it would take. It did however, say that the claim was "speculative" and it was to be handled by a third party, not J. I thought the contract was too vague around the matter of the compensation claim for me to be able to conclude it had been breached.
- I concluded, overall, that M&S had not acted unfairly or unreasonably in declining Mrs P's section 75 claim. This was because there was insufficient evidence of J having breached the contract or having induced Mrs P to enter the contract by making misrepresentations to her.
- I also considered whether M&S should have attempted to reclaim the money Mrs P had paid on her credit card via the "chargeback" process. I noted that she contacted M&S within 120 days of the end of the 12-month service period in the contract, so she was "in time" to try to make a claim. However, I considered the evidence she provided to M&S at that point had been insufficient for a chargeback to be successful and, in fact, appeared to show J had completed the services it had contracted to provide. I concluded M&S had not been wrong to decide not to pursue any chargebacks either.

I invited both parties to the complaint to let me have any further submissions they wanted me to consider, by 1 March 2024. Neither party has responded to the provisional decision, and so the case has been returned to me to make a final 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.

Given neither party had submitted any new evidence or arguments for me to consider, I see no reason to depart from the findings I made in my provisional decision, which I've summarised above.

It follows that I conclude M&S did not treat Mrs P unfairly or unreasonably in declining her section 75 claim or in failing to attempt chargebacks in relation to the transactions on her credit card.

My final decision

For the reasons explained above, I do not uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 April 2024.

Will Culley
Ombudsman