

## **The complaint**

Ms A complains that Marks & Spencer Financial Services Plc trading as M&S Bank declined her claim under Section 75 of the Consumer Credit Act.

## **What happened**

On 17 June 2023, Ms A bought a puppy through a third-party money transfer company using her M&S Bank credit card. She says that the puppy was misrepresented as it wasn't healthy and became sick the same night she bought it. She says the puppy had to receive treatment meaning she incurred veterinary bills. Ms A says the puppy was intended to be trained as an assistance dog and she had explained this to the breeder. She also said that the breeder swapped the puppy the day before she collected it saying she was receiving a calmer puppy.

Ms A contacted M&S Bank to make a Section 75 claim, but said it rejected her claim as the breeder said she should return the puppy. Ms A said she wasn't prepared to do this as it was against the puppy's welfare. Ms A says that no party involved has agreed to refund her the cost of the puppy or the veterinary fees. Ms A has explained that she is disabled and that this issue has caused her a lot of anxiety and distress. She says she has now needed to rehouse the puppy causing further distress to her and her child.

M&S Bank says that Ms A wished to raise a dispute about the payment she made in June 2023 for a puppy. It says that it was unable to raise a chargeback as the breeder offered to take the puppy back. It said it declined her claim under Section 75 because the payment was made through a third-party money transfer company and not directly to the breeder. It said this meant the debtor-creditor-supplier link, which needed to be present for a successful Section 75 claim had been broken.

Ms A wasn't satisfied with M&S Bank's response and referred her complaint to this service.

Our investigator didn't uphold this complaint. He noted that chargeback is a voluntary scheme, operated by the card issuer, in this case Mastercard. He said we would expect a chargeback to be raised if the claim had a reasonable prospect of success. But in this case as the breeder had said Ms A could return the puppy and she hadn't done this (while noting her reasons) he said the chargeback wouldn't be successful. Regarding a Section 75 claim he didn't think that M&S Bank was wrong to say that by using the third-party money transfer in the payment chain, the debtor-creditor-supplier agreement had been broken and so Ms A didn't have a valid claim under Section 75.

Ms A didn't accept our investigator's view. She said that when she contacted the breeder, they said they didn't want the puppy back and that after this she was advised not to return the puppy and the puppy was too ill to return. She reiterated that the puppy was intended to be trained as an assistance dog but given its health conditions this would likely not have been possible. Ms A says that the puppy was clearly misrepresented, and she didn't accept that she wasn't protected by paying for the puppy using her credit card. She said she should be protected under the Consumer Rights Act.

Ms A explained she has been caused a lot of stress, worry and heartbreak while looking

after the puppy and then having to have it rehoused. Ms A also felt she had been treated less favourably due to her disability.

### **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.

Ms A bought a puppy in June 2023. Sadly, the puppy was sick on the day Ms A brought it home and following this the puppy required veterinary treatment and needed to spend time in an animal hospital, all of which resulted in further costs to Ms A. I appreciate that Ms A not only had to incur financial costs but also suffered the upset of having to deal with a sick puppy. I am sorry to hear that Ms A had to re-house the puppy given its issues (specifically noting the puppy had been intended to be trained as an assistance dog) and I do not underestimate what a difficult and distressing decision this must have been.

Ms A has said that she feels she has been treated less favourably due to her disability. While we take any allegation of discrimination seriously, I should first explain that we are an informal dispute resolution service, meaning we don't have the power to decide whether or not M&S Bank is in breach of the Equality Act 2010, as only a court has the power to do this. What we can do is take relevant law and regulation into account when deciding what's fair and reasonable in the circumstances of a complaint.

In this case, Ms A raised a dispute with M&S Bank as she wanted a refund for the amount she had paid for the puppy as she says it was misrepresented. When a customer disputes a transaction, we would expect M&S Bank to consider whether a chargeback can be raised and / or whether there is an eligible claim under Section 75. I can see that M&S Bank did consider both of these.

### *Chargeback*

Chargeback is a voluntary scheme run by the card scheme, in this case Mastercard. It is intended to resolve disputes between the card holder and the merchant. Banks don't have to raise chargebacks, but we would expect a bank to do so if there is a reasonable chance of success. In this case I do not think that M&S Bank did anything wrong by not raising the chargeback. I say this because it appeared that the breeder had offered to take back the puppy (although Ms A has said that it initially didn't offer this and then she was advised not to do this). I also think that given how the payment was made the card scheme would likely treat this transaction as a money transfer. Given this, I do not find it unreasonable in this case that the chargeback would be considered unlikely to be successful and so I accept it was reasonable not to raise this.

### *Section 75*

Ms A wanted her payment for the puppy to be considered under Section 75. Section 75 allows, in certain circumstances, the borrower under a credit agreement to an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. In this case the puppy is considered as a good.

However, for a claim under Section 75 there has to be a valid debtor-creditor-supplier agreement. While Ms A used her credit card to make the payment this was then made through a third-party money transfer provider. Because of this the debtor-creditor-supplier agreement was broken meaning that a claim cannot be made under Section 75.

So, while I note the comments Ms A has raised about the health of the puppy and that she

feels this means it was misrepresented to her, in this case I cannot consider this any further due to the required debtor-creditor-supplier agreement not being in place.

In conclusion, I am very sorry to hear of the distress and financial costs Ms A has suffered as a result of purchasing the puppy. I am not disputing the concerns she has raised about the breeder, but this complaint is against M&S Bank and so I have to consider whether I find it has acted in a reasonable way and treated Ms A fairly when dealing with her chargeback and Section 75 claim. In this case I do not find that M&S Bank was wrong not to raise the chargeback given its unlikely chance of success. I also accept that based on how Ms A made the payment the debtor-creditor-supplier agreement was broken and because of this she didn't have a valid claim under Section 75.

I know this isn't the outcome Ms A wants but unfortunately in this case I do not find I can uphold her complaint.

### **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 Ms A to accept or reject my decision before 6 February 2024.

Jane Archer  
**Ombudsman**