

## The complaint

Mrs D is unhappy with the outcome of a claim she made to Marks & Spencer Financial Services Plc ("M&S") under section 75 of the Consumer Credit Act 1974 ("section 75").

## What happened

In June 2022, Mrs D and her husband booked a cruise package with a company I'll call 'S'. The cost of the package was £7,600 and Mrs D paid S £1,600 on her M&S credit card to secure the booking.

Unfortunately, while Mrs D and her husband were on the cruise ship, Mrs D's husband banged his head on a glass door and sustained a cut and bleeding to his nose and experienced shock and dizziness. Mrs D says he was attended to by medical staff who didn't have the appropriate equipment to treat him.

When Mrs D returned from the cruise, she contacted S about what had happened to her husband. She also mentioned to them that the agreed transfers from airport to hotel, and to and from piers, were delayed and the final transfer from the airport to their home didn't take place.

Mrs D and her husband were offered a credit of £1,000 towards another cruise which she rejected. The parent company of S then offered Mrs D's husband £1,100 for what had happened to him on the cruise, and they subsequently offered Mrs D this amount and a further £75 for what they called 'issues surrounding the transfer'.

Mrs D made a claim to M&S under section 75. They rejected the claim and then sent her a final response letter as she remained unhappy. M&S said what happened to her husband was a health and safety matter rather than a breach of contract or misrepresentation. And they said Mrs D's husband couldn't bring a claim against them because he wasn't the account holder (or additional card holder) for the credit card.

M&S said they asked Mrs D for details of the travel arrangements that she said hadn't been provided but these hadn't been sent. This included what Mrs D had said to S about agreed transfers but also her contention that she and her husband didn't travel in business class on the flights as agreed.

Our investigator didn't recommend the complaint should be upheld. He said M&S had acted fairly in asking Mrs D to provide further information and they were still willing to investigate if she sent this to them.

Mrs D didn't agree with our investigator and so the complaint was passed to me for a decision.

I issued my provisional decision on 23 November 2023, in which I said the following and which forms part of my final decision:

*'In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is section 75 which says that, in*

certain circumstances, if Mrs D paid for goods and services, in part or whole, on her M&S credit card, and there was a breach of contract or misrepresentation by the supplier, M&S can be held responsible.

For a valid claim under section 75 there must be a debtor-creditor-supplier relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card. I'm satisfied that this, and other necessary criteria, were in place for Mrs D to be able to make a valid claim.

Mrs D's claim to M&S covered several things that happened on the cruise, the first of which was the injury suffered by her husband. I'm sorry to hear that he was injured, and I hope he has recovered from this.

I don't though currently think that M&S need to do anything in respect of this. As I've set out above, Mrs D needs to have a claim for breach of contract against S for her to have a valid claim against M&S. Any claim for injury or compensation that flows from the treatment of that injury and/or from the impact of that injury to the affected person would be made by the claimant to whom the injury occurred, which was Mrs D's husband. As he doesn't though have a contractual relationship with M&S (because Mrs D is the card and account holder), this means M&S can't be held liable for those aspects.

That doesn't mean Mrs D doesn't have a potentially valid claim at all here. I say this bearing in mind the requirements of the Consumer Rights Act (CRA) which sets out that services need to be supplied with reasonable care and skill. So, if S didn't provide the service, in other words the cruise, with reasonable care and skill, then this could be a breach of contract for which M&S is equally liable.

I've looked at Mrs D's description of what happened. She says other people on the cruise had already walked into the glass door before her husband did and there was no sign on or near the door. The difficulty with this part of Mrs D's claim though is that I don't have any independent evidence that this happened to other people or that concerns had been raised to S before Mrs D's husband had the accident, which S failed to act on.

It's also unclear to me whether the door was unmarked for a reason or that it was clearly not visible, and I would need to see reasonable evidence of that. For example, the door may have had a handle that was visible. I'm not suggesting that it did have this. But there are many variables here to consider and for me to say that S failed to act with reasonable care and skill, I would need to see further evidence other than Mrs D's testimony.

The other parts of Mrs D's claim relate to agreed services not being provided. She's said the agreed transfers from airport to hotel, and to and from piers, were delayed and that the final transfer from the airport to their home didn't arrive. Mrs D also says she and her husband didn't fly business class as promised.

I don't though have much detail on the delays including for how long each transfer was delayed or why this happened. Nor have I much detail on how the delayed transfers impacted Mrs D. For example, did that mean Mrs D missed excursions or other elements of her holiday? I accept that delays would be inconvenient and frustrating. But, without more detail about this and how this impacted Mrs D's overall experience, I'm not currently inclined to say M&S should make an award in respect of this.

I've noted that S agreed to pay Mrs D £75 in respect of 'issues surrounding the transfer'. I don't know exactly what this referred to, but I suspect this was because the final transfer from the airport to Mrs D's home didn't happen as she has said. I say this because S

*referred to 'transfer' in the singular rather than the plural so it's unlikely this covered the delayed transfers Mrs D has referred to.*

*I've looked at the booking confirmation that was sent by S to Mrs D and it sets out that 'private executive transfer' was included. The section in the booking confirmation titled 'private executive transfer' states that S 'offers chauffeured transportation from guests' home to their departure airport and return service home at the end of their vacation'.*

*S offered Mrs D £75 for what happened, so it seems they accept the final transfer didn't happen as agreed. As such, that would be a breach of contract and I think it reasonable therefore for M&S to pay Mrs D the amount S offered, if S hasn't already paid this to her. I say this noting that I haven't seen any evidence that Mrs D incurred costs above this amount by having to arrange the transfer herself.*

*The final part of Mrs D's claim is that S failed to arrange business class air travel as agreed. I've looked at the section titled 'air arrangements' in the booking confirmation form which shows that Mrs D and her husband would be flying business class across four flights in total. It isn't clear to me though whether Mrs D didn't fly business class at all or whether only some of the four flights were business class. It's also not clear to me whether Mrs D paid a specific price for business class compared to the price for economy class and what the difference in price was. I say this because S's terms and conditions, a copy of which Mrs D sent to M&S as part of her claim, sets out that the business class flights were 'specially priced'. I don't know the details of how and why these were specially priced; it could be for example they were specially priced to the equivalent of the cost of economy class flights.*

*As such, it's very difficult for me to be able to direct M&S to make an award when I don't know enough of the detail behind what happened, and the costs associated with this.*

*I also note that S's terms and conditions sets out under the section 'included air programme' that 'economy class will be substituted when necessary'. So, it doesn't appear that S guaranteed business class flights or that a mistake was made in not providing them.*

*While I appreciate that my provisional decision will come as a disappointment to Mrs D, I only currently intend to ask M&S to pay her the £75 that S offered in respect of issues with the transfer. I realise that S offered Mrs D more than this, but that was also in respect of the injury suffered by her husband. As I haven't currently found that M&S needs to do anything in respect of that part of the claim, I won't be asking them to pay the full amount that S offered. If Mrs D wishes to accept S's offer in its entirety, assuming it is still open to accept, then she should contact S about this.*

*My provisional decision*

*My provisional decision is that I uphold this complaint in part. I intend to instruct Marks and Spencer Financial Services Plc to pay Mrs D £75'.*

*I invited Mrs D and M&S to send me any further comments and evidence to consider.*

*M&S said they accepted my provisional decision.*

*Mrs D replied saying:*

- *they reported the incident with the door to cruise management and were assured by their suite butler that statements had been taken from staff witnesses and others.*

- when they arrived at Istanbul, there was no one to meet them in a crowded airport and no English language signs. The pick-up didn't arrive for over an hour and then they waited for another passenger who didn't arrive. They arrived late for their meal at the hotel and a shopping tour as a result.
- the journey from the hotel to the port was delayed and the hotel had to remind the company they hadn't been picked up.
- one of the flights was an overbooked economy flight with no food on board other than a small packet of crisps.

### **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.

I'm sorry to disappoint Mrs D but I haven't been persuaded to change my provisional findings on her complaint.

I mentioned in my provisional decision that I hadn't seen any independent evidence of what had happened on the cruise ship that led to Mrs D's husband having the accident. And I set out that there were a lot of variables to consider, such as whether the door in question clearly wasn't visible or was unmarked for a reason. I still haven't though been sent anything else other than Mrs D's testimony about what happened and I'm afraid this isn't enough for me to find that there was a clear breach of contract on the part of S to provide services using 'reasonable care and skill'. So, I won't be awarding anything in respect of this part of the complaint.

I've considered Mrs D's comments about the delays. I appreciate this would have been inconvenient for her. However, it seems she was still able to have the meal at the hotel and was able to go on the shopping tour. I might have been minded to make an award if for example neither of those things happened, but that's not the case. And I don't think that S (and therefore M&S) could be found at fault for a passenger not arriving for the pick-up in question.

I've also thought about what Mrs D has said about the flights. I mentioned in my provisional decision though that S's terms and conditions set out that economy class would be substituted when necessary. So, although I can appreciate that Mrs D didn't enjoy the flight, it did go ahead as planned.

Overall, I find that M&S need only to pay Mrs D the £75 that S offered her for the transfer from the airport to her house that didn't happen. I don't think M&S handled Mrs D's claim poorly and I note they've said they would consider any further information she could send in respect of her claim. That seems reasonable to me. I will leave it for M&S to decide whether Mrs D's comments in response to my provisional decision changes how they wish to resolve the matter.

### **Putting things right**

M&S should pay Mrs D compensation for S failing to provide the transfer from the airport to her home.

### **My final decision**

I uphold this complaint in part and direct Marks & Spencer Financial Services Plc to pay

Mrs D £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 January 2024.

Daniel Picken  
**Ombudsman**