

## The complaint

Mr V complains about how Lloyds Bank PLC handled a chargeback. He also complains about its response to his Subject Access Requests (“SARS”) and about a third party’s data being added to his file.

## What happened

In July 2020 Mr V bought a custom-made bed from a retailer I will call “E “. Mr V also paid E to install the bed. Mr V used his Lloyds Bank debit card to buy the bed. As soon as the bed was installed by E, Mr V was dissatisfied with it. Specifically, he was displeased that he was unable to use the wheeled drawers under the bed, as the wheels got stuck in the carpet. Mr V’s position is that this means the bed is not as described and not fit for purpose and therefore this means there has been a breach of contract on the part of E.

Further, Mr V tells us that one of the main reasons why he bought the bed was because he was told by E first verbally and then in writing that the bed came with a 15 year warranty. However, after he bought the bed he found that the warranty was actually for 5 years. Although Mr V does not have a copy of the warranty because E has not sent him a copy. Mr V told us he had asked E more than once, for a copy of the warranty, but he has received nothing. Mr V considers the warranty, and the bed were misrepresented to him.

Mr V was unable to resolve these issues with E, so he complained to Lloyds Bank.

Lloyds Bank asked for further information to help it raise a chargeback. (A chargeback is a process that only Lloyds Bank could have initiated in this instance, which might have resulted in Mr V getting a refund. I’ll talk more about the mechanics of a chargeback request in the what I’ve decided and why section below).

Mr V indicated that he provided the information that Lloyds Bank asked for and that he provided it in good time. But subsequently Lloyds Bank said it had no record of receiving it, as a result Lloyds Bank had not started a chargeback.

In any event, by the time Lloyds Bank explained all this to Mr V, it was too late to raise the chargeback as the relevant deadline had been missed. Mr V is unhappy about this as his stance is that Lloyds Bank never mentioned the deadline. Mr V also indicates this all matters because if a chargeback had been raised, in his opinion, it would have been successful, and as a result he would have got back all of his money.

Moreover, Mr V made two SARS, but Lloyds Bank did not respond. Therefore he complained to the Information Commissioner’s Office (“ICO”). On further investigation, once it had been contacted by the ICO, Lloyds Bank agreed it had not handled his SARS correctly and offered him £150 to make up for this, but he rejected this.

In addition, during the course of his complaint Lloyds Bank told Mr V it had two cases on his file but one of the cases was not his. Rather, it had been added to his file by mistake. Mr V considers this to be a data breach in relation to him. Lloyds Bank offered Mr V, £100 to make up for this and for other service failings, but Mr V refused this offer too.

Lloyds Bank saw things very differently from Mr V. Initially, it said it could not help Mr V any further with the chargeback. This was because he’d not sent it the relevant information in time to support the claim and now it had missed the relevant deadline. In any event, as he had not returned the bed to E nor shown that he had tried to before the chargeback then that

would have been a bar to a successful chargeback too. Later it appeared to say it had received some of the information it needed from Mr V before the chargeback deadline but not all of it. Later still it said it had made a further request for new information on 30 November 2020 and Mr V had not responded to that.

As to the SARS, Lloyds Bank had received two requests from Mr V. It had intended to pass the requests on to an internal team that handles these requests, but it had not done so. It apologised and offered Mr V £150 for this, but he declined to accept this, as I have already mentioned. However it subsequently complied with his request, after it was contacted by the ICO, and Mr V confirmed that he had received the information he is entitled to.

Lloyds Bank had added a third party customer's dispute notes to Mr V's file by mistake. It offered Mr V £100 for this, as mentioned above. He declined the £100 telling it £500 was a more appropriate award for this error.

Dissatisfied, Mr V complained to our service.

Once Mr V's complaint was with us both Mr V and Lloyds Bank provided us with further information.

Mr V provided us with copies of emails between himself and E. In an email of July 2020 E said that the warranty was for 15 years. But in an email of September 2020 E told Mr V the warranty was for 5 years. Mr V saw this as being clear-cut evidence of misrepresentation which would have been sufficient to lead to a successful chargeback for the chargeback reason "*Not as described*".

Lloyds Bank told us it had contacted Visa (this is the company whose chargeback rules would have applied to the chargeback if it had gone ahead). Visa told it with regards to the information about the warranty that Mr V had supplied this would have made no difference to the chargeback. Lloyds Bank gave this summary of what Visa told it.

*"We would only have chargeback rights for the value of the warranty, as this is the part that is 'Not As Described'. This would only be applicable if the warranty had a separate value, E.g. - the customer paid an additional sum to obtain the warranty. As this doesn't seem to be the case, the bank didn't have [a] claim right for the warranty discrepancy."*

One of our investigators looked into Mr V's complaint. Our investigator found that the £250 already offered by Lloyds Bank was a fair offer and he had no proper basis for asking Lloyds Bank to take any further action.

Lloyds Bank appeared to accept our investigator's recommendation, Mr V did not and he responded at length setting out his reasons for rejecting the recommendation. I've summarised below the points raised in Mr V's responses (there were several responses):

- Mr V reiterated his earlier stance.
- Mr V also thought we had not looked at the right things when considering whether the chargeback would have succeeded. Specifically, he told us we should have looked at the Unfair Trading Regulations 2008 ("the Regulations") when assessing this point.
- Mr V considers that Lloyds Bank's delays in dealing with his chargeback caused him prejudice. It appears he was referring to the fact that the deadline for the chargeback was December 2020, but he did not get a final explanation from Lloyds Bank about the chargeback until it sent him its final response letter in March 2021.
- Moreover, Mr V told us we should have asked Lloyds Bank why it was still contacting him about the chargeback in March 2021 when the deadline for the chargeback was in December 2020.
- Further, Mr V's stance is that Lloyds Bank had a contractual obligation to raise a chargeback once it asked him for information to support the chargeback.

- Mr V told us that he had talked to Visa and Visa told him that it does not set the rules for chargebacks, rather chargebacks are governed by “a *bank-to-bank rule*”.
- In Mr V’s opinion the inaccurate information he had been given about the warranty should have given him chargeback rights in relation to the whole purchase.
- Mr V told us he had tried to return the bed. But E would not come and collect it and it had told him that if he tried to return the bed to it, then this would be trespass and fly tipping and it would report him for this.
- Mr V had never received a text message from Lloyds Bank on 30 November 2020 asking him to supply further information to support the chargeback.
- Mr V invited this service to come and inspect the bed.
- Mr V does not consider that the compensation he has been offered to date by Lloyds Bank goes far enough.

Mr V indicated that he wanted an ombudsman to take a fresh look at his complaint.

### **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.

First, I’m very aware that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

### *Chargeback*

As Mr V paid for the goods and services using his debit card and wanted a refund, I’ve thought about whether Lloyds Bank dealt with his request fairly.

The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules only. This means that chargebacks are decided based on the card scheme’s rules, not on the relative merits of a cardholder/merchant dispute.

In certain circumstances the process provides a way for Lloyds Bank to ask for a payment Mr V made to be refunded. However, a chargeback will only be successful if, among other things, there is a valid chargeback reason as defined under the chargeback rules. And the evidence required under those rules is provided. That said those circumstances include where goods or services are defective, aren’t supplied or as described by the company Mr V paid.

A chargeback doesn’t guarantee a refund. E’s bank could have put forward a defence to any chargeback claim. If the chargeback is defended, Lloyds Bank could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the

outcome.

The chargeback process is a voluntary one (and customers like Mr V have recourse against suppliers via the courts) so Lloyds was under no absolute obligation to carry one out. However, it is a tool which is available as a means of resolving disputes. There will be times where it is fair and reasonable to use it to support a customer, such as where there is some prospect of success. However equally sometimes the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback.

The chargeback rules also require that the goods have been returned or that an attempt has been made to do so before the chargeback is raised.

It follows from what I've said above that chargebacks are not governed by "*a bank to bank rule*" as Mr V contends. Neither was it open to Lloyds Bank to insist that the provisions of the Regulations be applied to the chargeback. Neither was Lloyds Bank obliged under contract law to raise a chargeback.

We would expect Lloyds Bank to check the nature of the problem against the list of possible chargeback reasons, which it appears to have done. It was also reasonable for it to ask for information from Mr V to support the chargeback. I've looked at the information it asked him to supply, and I am satisfied that this was required.

Moreover the chargeback rules set out deadlines which must be followed, Lloyds Bank had no leeway here. Mr V tells us Lloyds Bank never told him about the deadlines in particular the deadline in December 2020. But according to Lloyds Bank's records which I have no reason to doubt in the circumstances, I can see he was told about the December deadline. Moreover given how key the deadlines are to this process I find it unlikely that Lloyds Bank would not have mentioned this point.

There has been a lot of to and fro and emphasis on what information was asked for by Lloyds Bank and what was provided by Mr V and when. And whilst this is something I have to look at I think the key point is whether the chargeback would have been successful. That said, it seems to be agreed now that Mr V did supply some of the information Lloyds Bank asked for. I know that Mr V tells us he never received Lloyds Bank's information request of 30 November 2020 but its records which again I have no reason to doubt in the circumstances show it did make this request. So on balance I don't find that Mr V had supplied all the required information by the chargeback deadline.

I don't see anything that persuades me that Lloyds Bank unduly delayed taking action and this in turn prejudiced the chargeback. The difficulty here is that by the time Mr V complained to Lloyds Bank the December 2020 deadline was fast coming up. It is correct Mr V did not get a final response from Lloyds Bank until after the chargeback deadline had passed. But I am satisfied nothing turns on this, although I recognise Mr V does not agree. However I say nothing turns on this because what Lloyds Bank had to do was gather together the information necessary for the chargeback or at least try to before the deadline and I am persuaded it did this. The date on which Lloyds Bank sent out its final response had no impact on this either way.

But even if I was persuaded, which I am not that Mr V did supply all necessary information in time, as I've already mentioned, to find this point in Mr V's favour I'd also need to be persuaded that the chargeback would have been successful. I'm not, I say this for several reasons. As far as I can see the drawers were functioning they just were getting stuck on Mr V's carpet. That by itself, does not mean the chargeback reason was demonstrated. I realise that Mr V sees this point differently. But I think on balance given E would most likely have defended this point Mr V would have needed expert evidence to show that this bespoke bed was made for and designed to be installed in the particular location where it was installed. And that the bed could be considered defective and or not as described because of how it worked in that location. On balance I don't think he did show that.

I realise that Mr V considers that the warranty position is clear-cut but I am not persuaded Visa would have seen it that way. I accept Mr V had the emails from E of July 2020 and September 2020, but he has nothing further to show what warranty he got and what it related to. I don't say this to upset Mr V, far from it, I am well aware that he has told us, more than once that the reason he does not have the warranty is because E has not sent it to him. But I think that would have been a stumbling block too as far as a successful chargeback was concerned the Visa chargeback process is very prescriptive.

Moreover, I have no reason to doubt what Lloyds Bank has told us about Visa's stance on this issue. I take Mr V's point that from where he is standing the warranty point goes to the whole of the transaction, but it appears that in applying the chargeback rules Visa would not have seen it like Mr V sees it.

I am satisfied Mr V did try to return the bed and that E would not accept the return. But that does not mean by itself that the chargeback would have been successful.

### **SARS**

Lloyds Bank should have dealt with Mr V's applications better than it did. It seems it took the ICO getting involved for Lloyds Bank to realise its mistake. I am persuaded its failure to act was due to an administrative mistake as it tells us. I recognise this likely caused Mr V to experience distress and inconvenience and I think the £150 Lloyds Bank has offered goes far enough in the circumstances.

### *Third party's data*

Lloyds Bank should not have added a third party's data to Mr V's file. It is the role of the ICO not this service to regulate compliance to data protection laws in the UK. I note though it was the third party's data rights that appear to have breached here not Mr V's, there is no suggestion the third party saw his data for instance. That said, I realise that it is likely that Mr V was distressed at the thought that his file was not entirely accurate. It seems that once it realised the error it told Mr V about it and sorted it out. I think the £100 that Lloyds Bank has offered is fair, in the circumstances.

For all of these reasons, I have no proper basis for asking Lloyds Bank to take any further action in addition to the offer it has already made.

### **My final decision**

Lloyds Bank PLC has already made an offer to pay £250 to settle the complaint and I think this offer is fair and reasonable in all the circumstances.

So my decision is that Lloyds Bank PLC should pay Mr V £250 as it has already offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 3 February 2023.

Joyce Gordon  
**Ombudsman**