DRN-3986141

The complaint

Mr C complains that Lloyds Bank PLC declined his claim under section 75 of the Consumer Credit Act 1974 for a refund of his payment for a repair of his son's car.

Background

In June 2022 Mr C paid a garage to repair his son's car. The issue was that the timing chain was no longer fitting properly. The repair necessitated removing the engine from the car to reach the timing chain, and then putting the engine back in again. Mr C paid about £2,055 on his Lloyds credit card.

When the car was returned, Mr C's son drove it for about 20 minutes, covering around ten miles, when it broke down. After a two hour wait, a roadside recovery service attended and identified the cause as the water pipe not being correctly attached, resulting in the engine over-heating. The pipe was re-attached, the water was topped up, and Mr C's son was advised to add coolant as soon as possible.

Mr C inferred that the reason the pipe was not attached was because the garage had negligently failed to attach it properly, or at all, when replacing the engine. He complained to the garage, which apologised and offered to pay for the cost of the coolant, which was £3. Mr C rejected that offer (understandably, I think), and raised a section 75 claim with Lloyds. He asked for a refund of the entire amount he had paid to repair the timing chain, on the ground that the repair had not been carried out properly.

(Subsequently, the car broke down a second time due to the clutch failing, but Mr C has not complained about that. While he feels that it must also be the result of the garage's negligence, he accepts he cannot prove that.)

Lloyds investigated what had happened, but declined Mr C's claim. In its final response letter, it told him that as the garage had fixed the timing chain, there had been no breach of contract. (Earlier, in a phone call, Lloyds had offered to reimburse Mr C for the cost of the roadside repair, but he said he had incurred no cost because he has an annual subscription.)

Mr C brought this complaint to our service, but our investigator did not uphold it. He also said that as the timing chain had been fixed, the garage had fulfilled its contract.

Mr C disagreed with that opinion. He argued that the garage had been obliged not only to fix the timing chain, but also to carry out all necessary and incidental work to restore the car to good order after completing that repair. That meant replacing the engine in the car and reconnecting everything to it, including the water pipe. Since that had not been done properly, there had been a breach of contract. He asked for an ombudsman to review this case.

I wrote a provisional decision which read as follows.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I completely agree with Mr C's logic. It simply must have been a term of Mr C's contract with the garage, if not express then certainly implied, that the garage would not only repair the timing chain but would also put the engine back in the car and do whatever was necessary to achieve that. That undoubtedly meant that the garage was supposed to reattach the water pipe, not just as a matter of good practice but as a contractual obligation. There are ample grounds for inferring that it failed to do that, so I am satisfied that there was a breach of contract.

However, I do not agree that it follows that Mr C is entitled to a refund of the entire price he paid for the repair. It still remains the case that the timing chain has been fixed. I think that getting that done for free would be a disproportionate remedy for what went wrong.

I think that Lloyds understood that too, and just failed to explain it properly in its final response letter. I have seen (in confidence) an internal document in which its claim handlers discussed Mr C's claim, and reached the conclusion that the garage was liable for the breakdown, but that as the timing chain had been fixed there was no need to refund the entire price Mr C had paid to the garage. Instead, it considered the smaller remedy of compensating Mr C for the cost of the roadside repair, until it learned that he had incurred no additional cost for that. Unfortunately, in the final response letter this was reduced to a sentence to the effect that the garage had not breached its contract, which was not an accurate summary of the bank's reason for declining the claim (and nor was it an accurate statement of the facts).

If Lloyds had explained that properly in its letter to Mr C, then he might have accepted that answer and not been put to the trouble of bringing this complaint to our service. I consider that to be an error by Lloyds, in that its response to his claim was poorly communicated. I think that £100 is fair compensation for that.

I have considered whether I can also require Lloyds to compensate Mr C or his son for the inconvenience caused to either of them for the breakdown. However, I do not think that I can. I have no doubt at all that Mr C's son was inconvenienced, because he had to wait by the side of the road for two hours, and there was also the distress caused by the breakdown happening in the first place, especially so soon after leaving the garage. But Mr C's son was not a party to the contract, and so I do not think the garage was liable for that (at least not for a breach of contract; I have not considered the tort of negligence because section 75 does not cover that). I am sure that Mr C himself must have been annoyed to learn about what happened to his son, but I am not persuaded that this would rise to the level where a court would consider it to be an actionable loss.

I have considered Mr C's argument that it could have been much worse – that the car might have had an accident, causing injury or death to his son. However, I won't award compensation for hypothetical damages which did not in fact occur. And I don't think that failing to re-attach a water pipe is so deplorable that a court would award exemplary or aggravated damages for it.

If in his response to this provisional decision Mr C does manage to change my mind about compensation for the garage's breach of contract, I will need to avoid the risk of double recovery – that is, Mr C being compensated twice for the same thing. I have noted that in August he sent an email in which he said he had issued proceedings against the garage in court. So I won't award compensation in respect of anything the garage did, unless I see

written confirmation that the court proceedings have been discontinued. But I am not advising him to end the court case, because Mr C may feel that he has better prospects in court. (He should seek independent legal advice about that, if he has not done so already.)

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties… I intend to order Lloyds Bank PLC to pay Mr C £100.

Responses to my provisional findings

Following my provisional decision, Mr C told me that he had already discontinued his court case against the garage (not for lack of merit but because the costs would be disproportionate to the damages). However, he made no further submissions.

Lloyds accepted my provisional decision and agreed to pay Mr C £100.

There is therefore no reason for me to depart from my provisional findings, and I confirm them here. In summary, Mr C's son was not a party to the contract and so Lloyds is not liable for what happened to him, and Mr C himself was not personally inconvenienced by the breakdown (see paragraph six of the previous section).

My final decision

My decision is that I uphold this complaint. I order Lloyds Bank PLC to pay Mr C £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 March 2023.

Richard Wood
Ombudsman