

The complaint

Mrs L complains Bank of Scotland plc (“BOS”) hasn’t treated her fairly in connection with a dispute over work to a van which was paid for with a card on her BOS credit card account.

Mrs L has been represented in her complaint by her husband, Mr L. When I refer to things said or done by Mrs L this should be taken to include things said or done by her husband as well, unless stated otherwise.

What happened

Mrs L’s son (“Mr K”) had a van which broke down in June 2022. It was taken to a garage – “AM” – for repairs. £350 cash was paid up front.

It’s not necessary to go into all the details of what happened, but Mrs L says the repairs took months longer than had originally been agreed, and there were concerns over AM’s competence and dedication to the job. AM said they were finished around 22 November 2022 and £2,400 was paid on a credit card linked to Mrs L’s BOS credit card account to settle their invoice. However, Mrs L says it turned out that AM had not completed the repairs properly and had in fact caused more damage to the van. The van was then taken to another garage, “V”, a few days later, and further money and time had to be spent to repair it.

It appears Mrs L contacted BOS very early in 2023 to try to claim back the money that had been paid. There was internal discussion at the bank about whether it should try to use the dispute resolution system operated by Mastercard (“chargeback”) to try to help Mrs L, or if it should consider honouring a claim under section 75 of the Consumer Credit Act 1974 (“CCA”).

BOS attempted a chargeback on the £2,400 payment to AM on 2 March 2023. The chargeback was successful because AM did not try to challenge it within the timeframes allowed under Mastercard’s rules. This resulted in Mrs L receiving a refund of £2,400. But Mrs L also wanted to claim for all the other payments made in connection with the repairs to the van – this included payments made to V and to other suppliers for parts.

BOS considered whether it should reimburse these amounts to Mrs L and it decided that it was not liable to do so. This was because it considered the van belonged to Mr K and the invoices were in his name, not Mrs L’s. It didn’t think section 75 protection applied to the situation because of this.

Mrs L complained about BOS’s decision and its handling of the matter. The bank stood by its decision, but sent a cheque for £80 compensation for providing incorrect information on occasions, and not attempting the chargeback sooner.

Dissatisfied with this response, Mrs L referred her complaint to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into the complaint. She came to conclusions which I could summarise as follows:

- It wasn't possible for BOS to reclaim any consequential losses for Mrs L via chargebacks, as no "codes" existed under which such a claim could have been raised.
- There was no debtor-creditor-supplier ("DCS") agreement in place for Mrs L to be able to raise a section 75 claim against BOS. This was because the relevant invoices were in her son's name.
- Overall the £80 BOS had already paid was sufficient compensation to reflect the customer service issues during the claim.
- Other concerns Mrs L had about a Subject Access Request (SAR) did not form a part of the complaint we were looking at for her, and so we were unable to comment on these.

Mrs L was unhappy with our investigator's assessment and no agreement could be reached, so the case has now been passed to me to decide.

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.

When someone pays for goods or services using a credit card, and something goes wrong with their purchase, their credit card provider may be able to help them obtain a refund via the dispute resolution scheme commonly known as "chargeback", or they may have an obligation to honour a claim brought under section 75 of the CCA. In Mrs L's case, both of these avenues were considered by BOS so I will analyse each. However, before I do so I think it's important to outline an important point of principle.

Mr K's van broke down with what appears to have been engine trouble. So the van always needed repairs, and repairs do come at a cost in parts and labour. Mrs L is looking to claim back all the money paid for the repairs, including money paid to AM and to other suppliers such as V. If Mrs L were to get the money back then this would mean that the van would effectively have been repaired for free¹ and Mrs L/Mr L/Mr K would have been put in a better position than they started in. That wouldn't be reasonable.

Chargeback

A chargeback is a way of claiming a full or partial refund of a specific payment which has been made on a card. The rules governing chargebacks – such as the situations in which they can be attempted, the evidence required, and any relevant time limits – are set by the card scheme whose logo appears on the card. In Mrs L's case, that was Mastercard.

If a chargeback is successful, the money is taken back from the company or person who received it, and put back in the payer's account. An important limitation of chargebacks is that they can only be used to claim the amount paid on the card and no more than that. So if someone paid for an item partially by card and partially by cash for example, then they couldn't try to claim the cash element as part of the chargeback.

Chargebacks can be challenged or defended by the company or person who originally received the payment, so they are not always successful. While a consumer cannot demand

¹ Or for £350 – as it's unclear from the paperwork if the cash payment to AM is included in the amounts Mrs L is seeking to claim back.

that their credit card provider attempts a chargeback, I would normally expect it to do so, as a matter of good practice, if this would be compliant with the card scheme's rules and have a reasonable chance of succeeding.

BOS appears to have separate teams that deal with chargebacks and claims brought under section 75 of the CCA. There was some discussion between these internal teams which resulted in the bank attempting a chargeback for the £2,400 payment to AM. This, I understand, was successful because AM failed to challenge the chargeback within the time limits allowed by Mastercard. This means the £2,400 has been taken away from AM and given back to Mrs L.

It would not have been possible for BOS to attempt chargebacks on the other card payments and have any prospect of succeeding. The payments to V, for example, were for services V had provided, and it's not been claimed that V failed to provide those services. As our investigator indicated, there would be no reason under the rules of the Mastercard card scheme that the bank could use to try to take that money back off V, or other suppliers, via chargebacks.

Ultimately, BOS was able to reclaim as much money as it could reasonably have been expected to for Mrs L, via the chargeback process.

Section 75 of the CCA

Section 75 of the CCA allows a person who has paid for goods or services with a credit card, so long as certain technical conditions are met, to claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services.

Both BOS and our investigator concluded that one of the technical conditions had not been met, meaning Mrs L was unable to make a claim for the amounts she was seeking. This condition was the need for there to be what is called a debtor-creditor-supplier ("DCS") agreement.

The DCS agreement can be a complex area but, in essence, it means that to be able to make a valid section 75 claim against their credit card company, the person who owns the credit card account (the debtor) needs to have used the account to pay a supplier for goods or services, and they need to have a claim against that supplier for breach of contract or misrepresentation.

Mrs L is the debtor because it was her credit card account which was used. It's not clear if she physically made the payments herself or if it was (for example) Mr L with an additional card, but it doesn't matter either way in this case. Her credit card account was used to pay for goods and services from AM (the van repairs), but did she have a claim against AM for breach of contract or misrepresentation?

As mentioned above – the van was Mr K's van. Mrs L has later said that the van is registered in her name, and has also said that Mr K takes her out in it twice a week. Whether or not that is the case, I think the evidence as presented when Mrs L first contacted BOS indicates that the van was considered to be Mr K's.

Mr K was the person who originally entered a contract with AM for the repairs to the van. I can see that when AM issued an invoice after it had said it had completed the repairs, Mr L's name appears on the invoice alongside Mr K's. On various other invoices either for parts from suppliers or services from V, it is always either Mr K's name or Mr L's name. Mrs L never features on these invoices, and I think that is because (other than her account being

used to make payment) she was not involved in the dealings with AM, V or other suppliers.

Put simply, I don't think Mrs L had any contractual relationship with AM in relation to which she could have a claim against them for breach of contract or misrepresentation. And because of that, she's not able to bring any claim against BOS under section 75 either. I therefore think the bank did not act unfairly or unreasonably in declining her claim.

Customer service provided by BOS

BOS sent Mrs L a cheque for £80 compensation. Based on the bank's explanation, this appears to have been for providing incorrect information and being slow to attempt the chargeback. Mr L described this on the phone to our investigator as a "gesture", "nothing", and "an insult" when taking into account how the bank had handled things.

Looking at the service BOS provided, it's apparent the claims process did take a while. I can see some inconsistent information was given by the bank as well, which is unfortunate.

I know that £80 doesn't sound like a lot of money. But it's important for me to say here that I can only award compensation for the impact of the bank's acts or omissions on an "eligible complainant". What this means is that I can award compensation for the impact on Mrs L as she is the owner of the credit card account and therefore BOS's customer. I'm unable to consider the impact on Mr L or Mr K. I think this is particularly important in this case because it's apparent that Mrs L's involvement has been limited to, most of the time, giving permission for her husband to speak to BOS on the phone. While I suspect the lengthy claims process has been stressful for Mrs L, especially as I understand she has been quite unwell, I think the vast majority of the inconvenience, distress, annoyance and frustration at the process has been borne by Mr L. And that isn't something I can require BOS to provide compensation for.

Looking at things in the round, I think the £80 paid by the bank falls within a range of figures which I would consider fair compensation to Mrs L to reflect the impact on her of its customer service failings. It is perhaps on the lower end of that range, but it is not so low that I can say it's unreasonable.

As our investigator said, the concerns Mrs L has expressed about the way BOS has handled a SAR do not form a part of the complaint we have considered, and so I make no comment about those.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 30 April 2024.

Will Culley
Ombudsman