DRN-4960418

Financial Ombudsman Service

The complaint

Ms R complains about a claim she made to Lloyds Bank PLC.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Ms R bought a 6 month health training and coaching package online from a supplier. She says that it misled her about the package and when she went to cancel it wouldn't give her the refund she wanted.

Lloyds looked into things under Section 75 of the Consumer Credit Act 1974 ('Section 75') but said that there was no breach of contract or misrepresentation by the supplier of the service. And the supplier had partially refunded her in accordance with its contract.

Ms R was not happy with this and a complaint about the claim outcome came to this service. Our investigator did not uphold the complaint so the matter has come to me for a final decision.

I issued a provisional decision which said:

What I've provisionally 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In deciding if Lloyds has acted fairly I am looking at its role as a provider of financial services. In that respect I consider that Section 75 and the chargeback scheme are particularly relevant here as they provide ways the financial business can assist with the dispute. So it is these I have focused on in deciding if the business needs to do more here.

Because of my findings on Section 75 below I do not consider it necessary to go into chargeback in detail. In brief, a chargeback would not likely have put Ms R in a better position than that afforded by the protections of Section 75 which (unlike chargeback) allow consideration of implied terms from consumer law.

A Section 75 claim in certain circumstances can allow Ms R to hold Lloyds responsible for a 'like claim' for breach of contract or misrepresentation by a supplier of goods and services paid for using its credit card.

There are certain criteria for Section 75 to apply relating to matters like the cash price of the service or the parties to the contractual agreement. Here I am satisfied said criteria is in

place so I have moved on to consider if there is a breach of contract or misrepresentation by the supplier.

My understanding of this case is that Ms R says the supplier marketed the package without disclosing the additional fees for blood tests and inaccurately described the cost of the monthly supplements. Ms R says she found this out after signing up and so shortly after requested to cancel, but the supplier pointed to its terms which only allowed her to recover up to 50% of the cost of the package.

From the information Ms R has provided and that which was available to Lloyds it appears that Ms R entered into the contract for the package on 24 July 2023 and requested to cancel it on 31 July 2023.

I note the contract which the supplier says Ms R signed says that cancellation in the first 29 days of the contract results in a refund of up to 50% of the cost of the full price. According to that contractual term the supplier appears to not be in breach of contract as it did issue a refund in line with this. I know Ms R has claimed she didn't sign the contract but there is not persuasive evidence of that here. So I have proceeded on the basis that she did.

Ms R had 14 days to change her mind

However, I have also considered any relevant consumer protection legislation. I note the trader operates overseas however I note the contract does not set out a governing law clause. Furthermore, I note that the service was marketed and sold to Ms R who is based in the UK, which is also where she received the service.

Therefore, I consider the relevant regulations in this case are the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCRs"). It is worth noting that these implement EU Directive 2011/83/EU.

These only apply to "off-premises" sales, and "distance" sales. I will not set out the full definitions of these here, but to summarise briefly, an off-premises sale is a sale which takes place in person, but not at the supplier's business premises, whereas a distance sale is a sale which takes place via the exclusive use of distance communication. Further, in order to qualify as a distance sale, a sale must take place as part of an "organised…distance sales…scheme" operated by the supplier.

Ms R bought the course over the telephone/online, which will qualify as distance communication. And based on the information on its website it appears that the supplier uses the internet and the telephone as the usual method of selling its courses. So I am satisfied it is fair to conclude that Ms R's purchase was made via an organised distance sales scheme.

Distance sales as defined under the CCRs come with certain rights, set out in Regulations 29 and 30, in relation to cancellation which are relevant to Ms R's case: namely that if a contract is for services or the supply of digital content which is not supplied on a tangible medium, the consumer has the right to cancel the contract starting from the day it begins and ending 14 days after it is entered into. Under the CCRs, failure by the supplier to provide a consumer with specified information about their cancellation rights can cause this cancellation period to end at a later date. And (although not crucial to the outcome here) I don't see that the supplier provided the specified information so I consider that the cancellation period extends beyond 14 days in any event.

So, on the face of it I am satisfied that Ms R did have a cancellation period of 14 days or more as set out in law and that it ran from when Ms R agreed to the contract.

In order to benefit from the 14 day cancellation period in accordance with the CCRs Ms R would needed to have validly exercised her cancellation rights. She must have informed the supplier of her decision to cancel. Here I can see that via email Ms R first requests a refund from the supplier on 29 July 2023 and then reiterates this on 31 July 2023 where she explicitly says she no longer requires the services.

So on the face of it in accordance with the CCRs Ms R had validly exercised her right to cancel the contract within the cancellation period granted in law.

Was there a breach of contract here?

While the above discussion has been in respect of cancellation 'rights' these are not in themselves contractual terms. However, regulation 33 of the CCRs ("Effect of withdrawal or cancellation") says the following:

"(1) If a contract is cancelled under regulation 29(1)—
(a)the cancellation ends the obligations of the parties to perform the contract, and
(b)regulations 34 to 38 apply.
…"

Regulation 34 ("Reimbursement by trader in the event of withdrawal or cancellation") then goes on to say:

(1) The trader must reimburse all payments, other than payments for delivery, received from the consumer…

(13) Where the provisions of this regulation apply to cancellation of a contract, the contract is to be treated as including those provisions as terms.

Subsection 13 is especially relevant to Ms R's case because its effect is to make it a term of his contract with the supplier that if she validly exercises her cancellation rights, the supplier must give her a refund (subject to deductions which can be made in specific circumstances). Therefore by refusing to refund Ms R when she cancelled the contract in this instance, the supplier was in breach of contract.

I note that Ms R has said that the supplier had advertised a 14 day cooling off period and has provided a screen grab of this which looks credible. So it is arguable Ms R had an express 14 day cooling off period contractually here in any event as the Consumer Rights Act 2015 includes as terms representations made by or on behalf of the supplier that are taken into account by a consumer when deciding to enter a contract. However, due to the CCRs legislation I have already referred to I don't consider it necessary to dwell on this.

Furthermore, I am aware Ms R raised issues with Lloyds about what she says was misleading information the supplier gave her pre-contract about the costs of package extras like supplements. However, due to my findings above in relation to the cooling off rights I don't consider it necessary to dwell on this at this stage.

Putting things right

My starting point is that Ms R is contractually entitled to reimbursement from the supplier as she has validly exercised her cancellation rights. Therefore, I don't consider, in refusing reimbursement Lloyds has acted fairly in handling her Section 75 claim.

When deciding what is a fair refund I note that the CCRs makes provision for deductions where services begin before the cooling off period has ended. In respect of whether the supplier would be able to make any deductions here for the use Ms R had of the service before she cancelled I consider part of Regulation 36 relevant which makes the consumer responsible to pay for those services supplied to date as long as they made an express request for those services to start before the end of the cancellation period. Since signing the agreement for services Ms R appears to have agreed to receiving some services. So it seems fair that she pays something to reflect this.

The supplier says that since agreeing to the package via the signed contract Ms R received one extended consultation of around 90 (usually 50) minutes which is the equivalent of 2 months of sessions. However, I am not persuaded Ms R has effectively had 2 months of benefit from the package particularly as the agreement was for a monthly consultation and 30 day plans. Nor is it clear exactly how useful advice and resources received to date will be without the ongoing support from the portal which Ms R no longer has access to. Ms R says she never received her customised 30 day plan after the first consultation although the supplier said she did. Working out a fair deduction from the refund is not a clear science here but I think it fair to broadly consider Ms R as having had just under a month of benefit from the first consult and the resources she had access to at the time. So broadly a 15% deduction from her payments to date would be fair.

Therefore, Lloyds should re-work Ms R's credit card as if it had refunded 85% of her payments to the supplier to date which I believe is £2,505.42 (I understand the total paid is £2,947.55) less the refund already paid by the supplier to date (which I understand is £865.97). So by my calculation Ms R is due back from Lloyds a further £1,639.45. For the purposes of the re-working it should consider the refund applied from when it first declined her Section 75 claim (which I consider is 13 November 2023). If the re-working results in a credit balance it should refund this to Ms R plus 8% yearly simple interest from date of said credit balance to the date of settlement.

Customer service

I note Ms R was not happy with how Lloyds handled her claim more generally. Indicating she thought its communication was poor and she did not get a call back from its agent as promised. Ms R also appears to have had issues submitting evidence to Lloyds and says it didn't return her copies as requested which she spent £25 on. I note that Lloyds has offered £125 for its general handling of matters and does not appear to dispute that Ms R had a poor experience here.

I have thought about this compensation in the circumstances here in light of the guidance on our website for awards for distress and inconvenience. Deciding compensation isn't a science but I can see that although the overall the claim did not take a long time to handle there were some customer service elements that meant Ms R was caused more than the level of distress and inconvenience you would expect from everyday life. I can see she is clearly frustrated at times with Lloyds particularly where she felt she was being ignored by it and not getting responses. I have taken into account that a level of distress would naturally stem from the dispute with the supplier rather than Lloyds handling of the matter – which Lloyds isn't responsible for. And I wouldn't simply award compensation for Lloyds failure to uphold the claim itself. But with all this said broadly I think the £125 is a fair way to put right Lloyds customer service issues. So if it has not paid this it should do so in line with my decision here.

My provisional decision

I uphold this complaint and direct Lloyds Bank PLC to:

- *Refund Ms R £1,639.45 by re-working her credit card account as I have set out above, refunding any credit balance to her and adding yearly simple interest at 8% to the credit balance from the date of said credit balance to the date of settlement; and*
- *pay her £125 compensation if it has not already done so.*

If Lloyds considers it needs to deduct tax from any interest award it should provide Ms R with a certificate of tax deduction.

Lloyds agreed with my decision.

Ms R did not agree. In summary, she says:

- She was mis-led and mis-sold a service by a fraudulent scammer who is not qualified.
- She didn't sign the contract with the supplier (her signature was doctored) and had no choice but to continue with the service for fear of losing more money.
- She should never have gone through a Section 75 claim and chargeback would have put her in a better position.
- She told Lloyds what she wanted the credit card for and they never asked about her health or vulnerability – as a responsible lender they should have checked in to explore any vulnerabilities or disabilities- they have not done so and victimised her.
- Lloyds has doctored and removed transactions from her bank statements so that it shows she was in credit when she wasn't – and it didn't notify her until afterwards that the supplier took her over her credit limit of £3,000.
- Lloyds took out credit cards in her name without her knowledge or permission which is fraud.
- There are issues with her Lloyds internet banking (such as where downloads appear and how screenshots operate on her phone).

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 R has made extensive submissions in response to my provisional decision. I want to clarify that I have considered these, however:

- I won't be responding here to her complaints about the way our service has acted as it isn't my role to do so.
- My role here is to determine a fair outcome in respect of her complaint about the claim she made to Lloyds for a refund for the health coaching package. But, I won't be addressing her new complaint points, including those about irresponsible lending (and Lloyds failure to explore her vulnerabilities and health at the time), allegations it doctored her statements and did not inform her about going over her credit limit, issues with internet banking, and allegations of fraudulent credit cards issued in her name. These fall outside of the subject matter here, however, this does not prevent Ms R from raising new complaints about these other things.
- I won't be commenting on everything that Ms R has said about the claim she made – only what I consider material to resolving matters fairly, this isn't intended as a

discourtesy but reflects my informal remit.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

Ms R has further emphasised the point about her signature being doctored by the supplier. I don't think there was persuasive evidence of this presented to Lloyds when it handled the claim. And I note that Ms R's actions (at least at first) were consistent with someone who had agreed to a service. So I don't think Lloyds should fairly have concluded this was a case of fraud and treated it as such at the time.

Ms R has also emphasised how she felt misled by the supplier. I know she feels strongly about this – but I don't think there was clear evidence available to Lloyds at the time it considered the claim that the supplier was not qualified to run the course (and because this was marketed as an alternative health product that would appear to be difficult to show). And I know that Ms R says she was misled about things like supplement costs (which she said were about £300 but the supplier said would be up to $280). But I see information from the supplier in writing about the product showing an estimate of up to $350 for monthly costs – so I don't think there was clear evidence available to Lloyds there was a misrepresentation here regarding supplements. And the situation regarding blood tests is unclear, the contractual documents don't appear to promise free blood tests or say these are necessary to benefit from the course.

It is also worth noting, that my findings (taking into account the partial refund to date) have the effect of Ms R receiving almost a full refund for the cost of the course. And even if it were evident that there were some aspects the supplier did incorrectly, it would not necessarily mean that Lloyds fairly should have refunded Ms R in full in any event. I say this considering Ms R has participated in and received some of the services to date. I recognise Ms R says she felt she had to do it due to the money spent, however, without compelling evidence that the initial services she received were a scam / of no value (and I don't think it would have been clear to Lloyds that this were the case based on the information reasonably available to it at the time, including the submissions of the supplier) I think that a relatively small deduction from any refund to reflect the initial service received is fair and reasonable here.

Furthermore, in the interests of completeness, as I have said previously, I don't consider a chargeback would have been more beneficial to Ms R here than Section 75. Particularly noting the limitations of the chargeback scheme in that it won't take into account implied terms in consumer law. And noting that Ms R had already received some services already and would unlikely have been entitled to a full refund via chargeback in any event.

I appreciate Ms R feels very strongly about the case and won't necessarily agree with me. My role here is an informal one, and she is free to reject this decision. In which case it will not be legally binding on Lloyds. Ms R can pursue her case by alternative means, and is free to seek legal advice as she sees fit on the most appropriate next steps.

Putting things right

I uphold this complaint and direct Lloyds to put things right as set out below. Note that I am aware Ms R says she received a cheque from Lloyds for £125 but that was some time ago and Ms R says she didn't cash it - so I am still directing Lloyds to facilitate this payment if Ms R accepts my decision (which might involve issuing a new check if Ms R is no longer able to cash the old one).

My final decision

I uphold this complaint and direct Lloyds Bank PLC to:

- Refund Ms R £1,639.45 by re-working her credit card account as I have set out above, refunding any credit balance to her and adding yearly simple interest at 8% to the credit balance from the date of said credit balance to the date of settlement; and
- pay her £125 compensation if it has not already done so.

If Lloyds considers it needs to deduct tax from any interest award it should provide Ms R with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 9 October 2024.

Mark Lancod
Ombudsman