

The complaint

Mr W, who is represented by Ms L, complains that Bank of Scotland plc ('BoS') failed to uphold his claim under Section 75 of the Consumer Credit Act 1994 in respect of a holiday.

What happened

Mr W booked a holiday some years ago at a cost of £500 which was affected by the Covid lockdown. He says the supplier went into liquidation and so he raised a claim on 22 April 2020. BoS issued a final response on 9 November 2020 explaining that it needed more information. Mr W brought a complaint to this service, but it was made after six months from the date of the final response letter and so we could not consider it.

A second complaint was made on 18 July 2023 and BoS issued another final response letter on 14 August 2023 and agreed to arrange to re-open the s. 75 claim. They requested further information from Mr W on 14 August and again on 31 August 2023. However, as nothing was received the matter was closed.

Mr W complained to BoS on 11 June 2024 and it issued another final response letter on 1 July 2024. This confirmed that it had not received enough documentation to properly consider the s.75 claim, but it would be willing to do so if Mr W sent in the required documents etc.

In the meantime Mr W had brought a complaint to this service. Our investigator reviewed the matter after the second final response letter dated 1 July. She noted that the original complaint concerned a chargeback claim and this service had concluded that the complaint had been brought out of time. As for the s.75 claim she considered the complaint had been brought in time, but concluded that BoS had not done anything materially wrong in its handling of the matter. It had sought further information and without this it had no basis to uphold the claim.

Ms L said Mr W wished the matter to be considered by an ombudsman.

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.

Having considered all the evidence I do not consider I can uphold Mr W's complaint. I will explain why.

The CCA introduced a regime of connected lender liability under s. 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under s. 75 of the CCA essentially mirrors the claim Mr W could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. BoS does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that s. 75 applies, if I find that the supplier is liable for having misrepresented something to Mr W at the time of sale, or breached the contract BoS is also liable.

However, the issue that BoS faces is that it has not been given sufficient information or documents in support of Mr W's claim. In its letter of 31 August 2023 it set out what was needed as follows:

- Written confirmation of the full nature of your claim detailing the circumstances surrounding your claim (including if you have attempted to resolve the matter with the merchant.
- Copy of any written and email correspondence with the merchant.
- Proof of payment for the total loss you have incurred, including any consequential losses (e.g. bank statements, receipts, copy cheque, confirmation of bank transfer.
- Copy of the invoice or contract together with relevant terms and conditions.
- Copy of the Liquidators/Administrators letter. If the company is no longer trading (information may be found online at www.companieshouse.gov.uk).
- Evidence that your insurance company has not made a claim.

BoS has said it has not received a substantive response to this request and so it was unable to uphold the claim. I note that this service has not seen the supporting evidence BoS has sought. Mr W is asking BoS to make a payment to him and it is only reasonable that he provides evidence in support of his claim.

I have noted Mr W's circumstances including his health and age and I have every sympathy with him. But that does not allow me to uphold his complaint without the evidence to show either misrepresentation or breach of contract. I have not seen that evidence and neither has BoS.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 March 2025.

Ivor Graham
Ombudsman