

The complaint

Mr T is unhappy with how Zopa Bank Limited (Zopa) handled a claim he made to them.

What happened

Mr T complained about retailer R and said two perfume bottles and one aftershave bottle purchased from them weren't in the package delivered to him in June 2024. He therefore wanted either replacements or a refund for the £978.95 paid in total for these items.

As Mr T's complaint with R remained unresolved, he contacted Zopa to raise a chargeback claim against R and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against Zopa.

Zopa subsequently raised a chargeback for Mr T and contacted R who disputed the claim. After review of the available evidence they was concluded the claim wouldn't succeed and Zopa didn't progress it further.

Mr T didn't agree this was fair and complained to Zopa. Zopa issued their final response in August 2024 confirming their position and why they didn't think they'd done anything wrong.

Mr T was unhappy Zopa hadn't provided a refund and brought the complaint to this service.

Our investigator looked at the complaint but didn't uphold it. They concluded there was insufficient evidence that the package had been tampered with during transit and the purchased items removed. They therefore felt Zopa hadn't done anything wrong in declining to progress the chargeback claim further. They noted that Zopa had also failed to raise a S75 claim but felt that it wouldn't have succeeded for the same reasons.

Mr T didn't agree with the investigator and asked for an ombudsman to make a final decision.

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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Zopa aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr T paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for Zopa to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case VISA). I've considered the relevant chargeback rules in deciding whether Zopa acted fairly.

Mr T's chargeback claim would fall under 'merchandise / services not received' and I see Zopa did raise a chargeback claim once Mr T notified them of the issue. However the chargeback was defended by R and Zopa concluded there was insufficient evidence for a successful claim and chose not to pursue it further.

I've therefore considered the chargeback rules and the available evidence to determine if Zopa acted fairly here.

Mr T's package was delivered from R on 20 June 2024 and I note from his live chat with R the following day that the parcel was accepted by his brother who didn't inspect the box at the time. However Mr T noticed in the morning that the parcel had a tear on the side and creases at its base. Upon opening the parcel, he discovered that instead of his three ordered perfumes, he had a box containing a door handle and a vegetable chip cutter.

Following Zopa raising the chargeback, R issued a defence. Zopa then chose to not take the chargeback further. Although Zopa could've taken it further, looking at the circumstances here, I don't think they were unreasonable in not doing so. I say this because the supplier provided a defensive testimony including comments that they'd reviewed CCTV footage confirming the correct items were packaged to Mr T. While a copy of this footage was unfortunately not provided, R refused to issue a refund based on all of the information available. Considering the nature of the dispute and R's submissions in their defence, Zopa's decision to not proceed further with the chargeback isn't unreasonable.

While it could be argued that Zopa could've pushed the claim further, I don't think this is likely to have made a difference here. After reviewing the available evidence, I consider it very likely that R would've continued to defend the chargeback leaving the card scheme to arbitrate on the matter. And I don't think this is a case where it's clear that the card scheme is more likely than not to have upheld the claim.

I say this because:

- this is a complex dispute with R contesting what Mr T considers has happened here and vice versa;
- there is a lack of compelling evidence at this stage to conclude that the items Mr T ordered were removed from his package prior to delivery; and
- R has said they've viewed CCTV footage to determine that the correct items were initially dispatched to Mr T.

Due to the nature of the dispute, I think there are doubts as to how the card scheme would approach the matter and how it would be able to make a decision (considering it likely unable to compel evidence or cross examine witnesses in a similar way to a court). But in any event – I don't consider this a clear case of Mr T being more likely to succeed than R at arbitration. So even if I considered that Zopa should've pushed the chargeback to arbitration (which I don't), in any event, I don't think Zopa should refund Mr T as if he had won a chargeback.

So taking everything into account, I'm persuaded Zopa took the claim as far as they reasonably could've done, given R's defence and the available evidence. In view of this, and I appreciate this will be disappointing for Mr T, I can't conclude Zopa need do anything more regarding his chargeback claim.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to assess a valid claim, Zopa would've needed to consider all relevant evidence with regard to the alleged breach of contract. S75 has certain technical requirements for there to be a valid claim. I'm satisfied those are in place here.

However I note that Zopa didn't raise a S75 claim when the issue was brought to them by Mr T. I do think Zopa should've explored all of the avenues of redress available and therefore whether a breach of contract had occurred.

I've reviewed R's terms and conditions with regard to delivery and while I can't see a specific term relating to non-delivery of goods, under s15.3 it does state that all orders delivered should be of satisfactory quality. In those cases where this hasn't occurred, it states they can be contacted for a full refund within 30 days or for a repair or replacement. While this complaint isn't about quality but about the items not being delivered, I think it fair to consider here that R has a responsibility to ensure delivery of the ordered items to Mr T.

I do appreciate though that there's insufficient evidence of a breach of contract under S75 for similar reasons as the consideration of the chargeback claim. The package was delivered to Mr T and this isn't in dispute, so it's only a question of whether on balance it's likely that his purchased items weren't in the package as expected. I'm aware that Mr T has commented on the prospects of the tear on the side of the box allowing someone to determine the contents. And he believes in turn there was a possibility the base of the box could've been folded to then retrieve the contents without damaging the box further.

While I appreciate Mr T's comments, there's a few key aspects I must consider here. Firstly there appears to be no dispute that R sent a parcel to Mr T and this did arrive, although it was accepted by another party at the residence. And likewise the photograph of the delivery itself doesn't show any damage to the package.

Rather than definitively deciding if Mr T received his perfumes, my decision is about whether Zopa acted fairly in not refunding Mr T based on the evidence they had available to them. And had Zopa considered Mr T's S75 claim, I consider it unlikely they'd have been able to do so considering:

- the nature of the dispute, the value of the goods, and the defence made by R;
- the lack of compelling evidence to show Mr T didn't receive the items ordered; and
- Zopa's inability to compel witnesses or other evidence in a way a court might be able to.

It's important to note that I'm not saying definitively what happened here or indicating either party did something wrong. There are of course several possibilities including third party interference with the package. However, fundamentally I don't think Zopa was presented with evidence that would have reasonably meant it should have concluded a breach of contract had taken place and refunded Mr T in full here. I think there are too many questions and insufficient evidence to say the supplier has likely breached its contract with Mr T by not issuing a refund in these circumstances.

I know this will come to a disappointment to Mr T, however, as I've indicated, my role here is limited to informal dispute resolution looking at Zopa's handling of the claim only.

It's worth underlining that Zopa, nor this service has the investigative powers of other agencies. And my decision does not prevent Mr T from taking R to court or reporting the matter to other authorities if he wishes to do so.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 April 2025.

Viral Patel
Ombudsman