

The complaint

Mr H is unhappy with how Bank of Scotland plc (Bank of Scotland) handled his claim.

What happened

Mr H purchased gym equipment from a supplier I shall call L in May 2024 using his credit card to the sum of £505.99. As this didn't arrive Mr H subsequently purchased the same equipment from a second supplier I shall call R at a higher cost of £603.49 with a delivery date for July 2024.

As the matter remained unresolved with L, Mr H contacted Bank of Scotland to raise a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against them.

Bank of Scotland notified Mr H in June 2024 that they had raised his claim under S75. However they also said the S75 claim was on hold while a chargeback claim was progressed against L and that Mr H would receive a temporary refund in the meantime. They also said they wouldn't be able to process a claim for the second transaction.

Mr H was unhappy with this and told Bank of Scotland that he'd specifically requested a S75 claim be raised rather than a chargeback claim. Bank of Scotland reviewed Mr H's complaint and sent a final response letter (FRL) on 16 August 2024 stating that a chargeback claim is always raised before a S75 claim as any evidence presented by the merchant may impact a subsequent S75 claim.

The FRL also confirmed the chargeback hadn't been challenged by L and so his temporary refund had become permanent. Bank of Scotland also said his S75 claim was being reviewed.

Mr H was then notified on 19 August 2024 that Bank of Scotland had upheld his S75 claim and were willing to pay £106.49 for the additional costs in full and final settlement.

Mr H had remained dissatisfied and referred the complaint to our service prior to the S75 outcome on 14 August 2024 as he was unhappy with the way the claim had been handled. He cited his repeat correspondence to Bank of Scotland asking for a chargeback not to be raised and for the S75 claim to be progressed earlier. As the outcome to his S75 claim hadn't been conveyed at the time, he'd asked for his consequential losses to be covered and additional compensation for the delays in progressing his claim.

Mr H also said Bank of Scotland should've known the merchant wasn't going to send the goods from various reports and reviews online and so not unduly delayed the claim.

Our investigator looked at Mr H's complaint and concluded Bank of Scotland hadn't done anything wrong. They said Bank of Scotland were entitled to raise a chargeback first as it'd be the merchant that'd be responsible for the refund there as opposed to the Bank of Scotland in the case of the subsequent S75 claim.

They also confirmed Bank of Scotland needed to allow L 45 days to respond to the chargeback claim and this was in line with the card issuer rules. They noted however Mr H was refunded for the original purchase in June 2024 which wasn't later re-debited. While they appreciated the later offer for the consequential losses was delayed as a result, they felt Bank of Scotland hadn't done anything wrong in looking at the claims in this way.

Our investigator therefore didn't think any compensation was due and there was insufficient evidence his claim had been unreasonably delayed by Bank of Scotland.

Mr H responded to our investigator on 1 November 2024 confirming he understood the reasoning and may even have agreed to large parts of his view. However he did raise a point from Bank of Scotland's correspondence of 11 June 2024 where they said:

"As we are raising the chargeback for the transaction above, We regret to inform you we will not be able to process the claim for £603.49".

Mr H has said that he could only interpret this as a reference to the S75 claim and this caused unnecessary stress and inconvenience as he thought his consequential losses wouldn't be paid.

Our investigator didn't agree with this and felt that Bank of Scotland were saying they couldn't look at the £603.49 in reference to the chargeback claim (as it was already being raised for the original transaction of £505.99).

Mr H didn't agree with our investigator. He also said the S75 claim remained unresolved as he hadn't accepted the outcome. As Mr H remained dissatisfied, he asked for an ombudsman to issue a final decision on the matter.

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 Bank of Scotland aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their role as a provider of financial services. In doing so I note that because Mr H 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. While Mr H has been refunded under these, as he has complained about the claim administration, I've considered these further to determine if Bank of Scotland need do anything more.

Chargeback

There is no requirement for Bank of Scotland to raise a chargeback, but it is 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 Mastercard). I've considered the relevant chargeback rules in deciding whether Bank of Scotland acted fairly.

The relevant chargeback code in this case would be 'Merchandise / Services Not Received' and I see from Bank of Scotland's notes that this was raised on 11 June 2024. They then provided a further explanation by email to Mr H on 19 June 2024 and a temporary refund was processed on the same day.

I understand Mr H was told by Bank of Scotland that they needed to allow L 45 days to respond before they could progress the chargeback claim. This is correct under Mastercard rules and so Bank of Scotland needed to follow these in terms of how they administered the claim. I appreciate Mr H wasn't happy with the delay to the subsequent S75 claim being progressed and I shall deal with this separately.

In terms of the chargeback itself however, I understand L didn't dispute the claim and so the refund wasn't re-debited. The purpose of a chargeback claim is to determine if a refund of the original payment is appropriate considering what'd happened under the relevant chargeback code. As the dispute wasn't challenged here the refund was an appropriate outcome for Mr H's complaint that the goods purchased weren't delivered to him.

I think it's important to also note that Bank of Scotland would've needed to contact L in any event to attain more information about the complaint and establish the key facts. Therefore I'm not persuaded that the chargeback claim would've unduly delayed the investigations into the complaint, especially as many of these findings would be pertinent to the S75 claim as well. In addition chargeback claims are subject to specific time limits and therefore it seems reasonable for this avenue to be explored first.

I note Mr H also questioned why Bank of Scotland needed to allow the merchant the full 45 days as he felt they weren't legitimate. While I appreciate Mr H felt certain information online indicated there were concerns about L's service, I can't agree that Bank of Scotland could've relied on this to then not wait for submissions from L.

In summary I can't agree Bank of Scotland administered the chargeback claim incorrectly. In any event a chargeback wouldn't cover consequential losses and that would be more appropriate for consideration under a S75 claim which Bank of Scotland also raised.

S75

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.

S75 has certain technical requirements for there to be a valid claim. I am satisfied those are in place here. So, in considering how Bank of Scotland responded to Mr H's claim, I've gone on to consider if there is a likely breach of contract or misrepresentation by the supplier which Bank of Scotland is responsible for putting right.

.

In order to assess a valid claim, Bank of Scotland would've then needed to consider all relevant evidence with regard to the alleged breach of contract.

I've reviewed the purchase invoices for completeness and am satisfied these transactions were made. I also see L's website is no longer visible and I'm not able to find an archived version of their website online. This means I haven't seen a copy of their terms and conditions but under s28 of the Consumer Rights Act 2015 (CRA) it would be expected that goods purchased be delivered without undue delay and in any event no more than 30 days from the date the contract was entered into.

In this case Bank of Scotland raised a successful chargeback claim for the initial purchase amount so the additional consideration here under S75 would be for the consequential losses suffered by Mr H following the breach of contract.

He says he had to purchase the same item from a second supplier R at a higher cost and wanted this difference to be refunded. I note that while Bank of Scotland hadn't provided the claim outcome at the time the complaint was referred to this service, they did offer this a few days later. The additional amount paid was £97.50 however the S75 claim amount offered was £106.49. While I don't have an explanation for why the S75 refund was higher than the difference, I note this means the additional amount paid was covered in full – and it was credited to Mr H's account on 5 September 2024. I do think this is an appropriate outcome to cover the additional costs incurred.

Regardless Mr H has told us he didn't accept the S75 claim amount here as he didn't think it was administered appropriately.

Looking at the chronology of the S75 claim, Bank of Scotland's notes confirm it was initially raised on 28 May 2024 and Mr H was contacted for more information on 31 May 2024. This was then provided on 3 June 2024 by Mr H. It was then on 11 June 2024 that Mr H was notified that a chargeback claim had also been raised and this was followed up by an explanation for why on 19 June 2024.

I see the final S75 claim outcome was on 19 August 2024 confirming the additional costs covered. I don't think the time taken is unreasonable for consideration of the S75 claim. I think the main issue here is the fact a chargeback claim was raised before a S75 claim and delays that occurred as a result – I'll address this below.

Administration of the chargeback and S75 claim

Mr H has said he notified Bank of Scotland from the start he wished to have a S75 claim raised rather than a chargeback and so he was dissatisfied this didn't occur. Our investigator explained why Bank of Scotland was entitled to raise a chargeback first as the redress would then be due from the merchant via a refund and then a S75 claim would be appropriate separately depending on the outcome to the chargeback claim.

Mr H seemed to indicate in his response that he may agree with these findings. I do agree with the investigator's explanation here too. But I do want to address Mr H's further submissions regarding the correspondence from Bank of Scotland on 11 June 2024 and the confusion that has arisen from it.

They started by saying:

“Thank you for your recent contact about the above transaction, we are currently reviewing your claim under Section 75 of the Consumer Credit Act”

I therefore think this is an acknowledgement that a S75 claim had been logged as Mr H had required. They went on to say:

“Please be informed we have pended your case until 15th of June to refer your case in dispute for a chargeback, you will receive a Temporary credit of £505.99 while they are contacting the merchant to resolve the issue with them first. If the merchant has not responded within 45days, the amount will be permanent in your account. We will contact you for the next step if the merchant response within 45 days”.

In terms of this section I know Mr H expressed dissatisfaction with the delay while awaiting L's response. However as mentioned above, Bank of Scotland were entitled to raise this in the first instance and comply with the card issuer Mastercard's rules to allow the supplier the opportunity to defend the claim and provide evidence as necessary.

The final paragraph of the response from Mastercard says (I've replaced the supplier's name with the corresponding identifying letter used in this decision):

“Your claim consists with the new purchase of a replacement order of the treadmill for £603.49 from 'R' Treadmill Order. As we are raising the chargeback for the transaction above, We regret to inform you, we will not be able to process the claim for £603.49”.

As the prior paragraph was referring to the chargeback claim and this one also talks about chargeback, I can't see how the final sentence could be considered as not referring to a chargeback claim as well. To clarify further, the intention of that sentence is to confirm a further chargeback claim won't be considered for the second purchase of £603.49.

I know Mr H thinks it referred to the S75 claim and so caused him considerable worry. I see prior in that same correspondence that the S75 claim was 'pended'. I think Bank of Scotland were therefore clear in saying the S75 claim would be paused while the chargeback was considered for the original purchase. This transaction would be refunded during the 45 day period awaiting the merchant response and in turn the consequential loss for the second payment wouldn't be processed at this time.

I appreciate Mr H wasn't clear on this but he did say in his complaint form to this service that he did speak to Bank of Scotland on the phone and they apologised for the misunderstanding. I do think that their actions were reasonable under the circumstances.

Mr H has also expressed his dissatisfaction with the time taken by Bank of Scotland to reach their S75 outcome. As the chargeback claim wasn't defended here only the consequential losses from the second purchase awaited consideration. 45 days would've then elapsed on 26 July 2024 and the S75 outcome was on 19 August 2024 so just over three weeks after – I don't consider this an unreasonable time to have considered the S75 claim.

I know Mr H has said he didn't accept the S75 offer but I can't say the outcome reached was unfair. The purpose of the S75 claim in this case was to consider if a breach of contract had occurred and since L didn't dispute the item wasn't delivered, there has been one here. As the amount paid to L was already refunded under the chargeback claim, the only matter remaining was whether Mr H was due the additional amount paid to R for the second transaction.

Bank of Scotland has accepted that a refund of the difference would be appropriate, and I also don't think this is unreasonable. Therefore I can't say Bank of Scotland need do anything more here.

Resultant delay in receiving his orders

Mr H has also stated that the delays with the first order and subsequently having to order elsewhere caused him distress and inconvenience. While I do appreciate this, S75 allows consumers to bring a "like claim" against the credit provider to what they would have in court against the merchant. However this also means that there must be consideration of what would be reasonably claimable in court, and this wouldn't usually extend to compensation for distress and inconvenience in situations such as these.

In summary

Mr H has had his original purchase from L refunded and Bank of Scotland refunded the difference for his follow-up gym equipment purchase from R which I think is an appropriate outcome to both claims.

In terms of his complaint regarding the administration of his chargeback and S75 claims. I can't agree Bank of Scotland has done anything wrong for the reasons explained.

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 H to accept or reject my decision before 1 July 2025.

Viral Patel
Ombudsman