

The complaint

Mr G complains that Lloyds Bank PLC won't meet his claim under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

On 24 March 2024 Mr G bought a mobile phone from a private seller, through eBay. The phone's description included "unlocked". Mr G paid £616.90, using his Lloyds credit card. The phone was safely delivered, and Mr G was able to use it for around five weeks. It then stopped working.

Mr G investigated why the phone was no longer working and identified through an IMEI check that it had been blacklisted. That was an indication that it had been reported as lost or stolen, or that there were unpaid charges linked to it.

Mr G sought a refund from the seller, but they said the phone had been working when it was sold. They noted as well that Mr G had been able to use the phone for several weeks, and so they were not responsible for the blacklisting.

Mr G tried to obtain a refund through eBay's own dispute resolution service, but was unsuccessful – largely it appears because he had not raised his complaint in time. He therefore contacted Lloyds to make a section 75 claim.

Lloyds raised a chargeback request with eBay, which was defended – for largely the same reasons as the seller had given for refusing a refund. It did not initially consider a claim under section 75. When it did, it said that section 75 did not apply, because the card payment had been made to eBay, not to the seller of the phone.

In the meantime, Mr G had referred the matter to this service. One of our investigators considered what had happened and issued an initial assessment of the case. That assessment said, in summary:

- Lloyds had dealt with the chargeback fairly. Chargeback rules expect customers to try to resolve matters with the payee first. Mr G had done that (through eBay's dispute resolution service) but had not been successful. It was reasonable therefore of Lloyds to take the view that it should not pursue that any further.
- Lloyds was wrong to reject the section 75 claim for the reasons it did. The necessary relationships involving the bank, the seller and Mr G were in place.
- The investigator was not persuaded however that Mr G had shown he had a claim for breach of contract or misrepresentation against the seller.
- She could not therefore uphold the complaint.

Mr G did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

I'll discuss first of all the way in which Mr G bought the phone. Lloyds' banking app includes cashback offers, where account holders can activate offers from a range of businesses. If the customer uses their card to buy goods or services from that business within the lifetime of the activated offer, the bank will pay the customer cashback of a percentage of the purchase price. Some offers apply however the purchase is made (as long as a Lloyds card is used), but some require the purchase to be made through a link in the app. The eBay offer which Mr G used gave him 1% cashback and required him to make any purchases through such a link.

Mr G expressed some concern about this arrangement. He believes that, by making his purchase in that way, he had less protection than if he had, for example, done so direct through eBay's website. I note however that the payment was still taken from Mr G's credit card and was processed in the same way as if he had made the purchase directly. He therefore had the same protections. The only difference was that, by buying through the app, he was entitled to 1% cashback. I will therefore consider those protections in more detail.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is sometimes possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Lloyds) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

Mr G's dispute with the seller in this case is not straightforward. He received the phone and payment was taken as agreed. And, as the investigator noted, he was not able to obtain a refund through eBay's own dispute resolution process. In the circumstances, I think it was reasonable for Lloyds to take the view that pursuing chargeback further was unlikely to succeed.

Section 75

Section 75 says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

Section 75 refers to section 12(b), which says:

12 Debtor-creditor-supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being —

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or ...

And section 12(b) refers in turn to section 11(1)(b), which says:

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement —

...

(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor, ...

and “restricted-use credit ” shall be construed accordingly.

Lloyds says that, because the card payment was made to eBay, not the seller, the purchase of the phone was not a debtor-creditor-supplier (or D-C-S) agreement. I'll deal with that point first.

eBay operates as an online marketplace, recruiting sellers and accepting and passing on credit card payments for them. The seller was a seller on eBay.

For there to be a valid D-C-S agreement there needed to be arrangements between Lloyds and the seller for it to finance Mr G's purchase. The card scheme is there to put such arrangements in place between those participating in it. In this case, the credit card payment went to the seller via eBay but I think that was under arrangements of the required kind. This is because processing credit card payments to suppliers in this way is a widespread and accepted commercial practice which has developed over time and is either accommodated by, or specifically permitted by, the major card schemes. I think the Mastercard scheme has developed in a way which brings transactions to suppliers via online marketplaces into its arrangements.

Lloyds would have contemplated, when agreeing to give Mr G a credit card, that the way in which credit card payments were made would develop over time, and that the card would be used to pay suppliers in any way accommodated by the relevant card scheme. This is one such method, and, due to the mutual participation of all parties within the card scheme, I think there was a valid debtor-creditor-supplier agreement.

I have therefore considered the relationship between Mr G and the seller of the phone.

Because this was a private sale, Mr G does not have the same protections he would have if he had bought the phone from a commercial retailer – for example, protections under the Consumer Rights Act 2015. That does not mean however that he has no rights at all.

Under section 12 of the Sale of Goods Act 1979, there is an implied term on the part of the seller that he has the right to sell the goods. Under section 13 of the same Act, there is an implied term that, where goods are sold by description, they will meet that description.

As I have noted in the background to Mr G's complaint, the phone was blacklisted a few weeks after Mr G bought it. One reason for backlisting is that a phone has been reported lost or stolen. It is possible therefore that the seller did not have the right to sell the phone. Even if they obtained it in good faith, they would not acquire good title to it if it were stolen (although there are some limited exceptions). However, the exact reason for the backlisting is not known, and I do not believe that I can fairly assume – at least on the basis of the evidence currently available – that theft is the reason here.

As is the case with most online sales, the phone was sold by description. So, it had to meet its description. Mr G received the make and model phone he agreed to buy, so to that extent it met its description. It is not clear from the partial screenshot I've seen of the listing whether the phone was described as "new", although I note the seller suggested in correspondence after the sale that it was. That said, there are apparent contradictions in some of what the seller said in post-sale exchanges.

It is clear however that the phone was described as "unlocked". In my view, that is not consistent with it being blacklisted. If it had been delivered in a blacklisted condition, I think that Mr G would have a persuasive argument that it did not meet its description as "unlocked". However, the phone was not blacklisted at the time of delivery; if it had been, Mr G would not have been able to use it for several weeks.

As I have indicated, the currently available evidence does not show why the phone was blacklisted. In the circumstances, I don't believe I can fairly conclude that it was because of any breach of contract on the part of the seller – although I can't rule out the possibility that they did not have the right to sell it or that it was not, in truth, unlocked. I will of course consider any further evidence on that – and indeed any other relevant – issue before issuing a final decision.

Lloyds accepted my provisional findings, but Mr G did not. He said that where a phone is blacklisted, it typically means it is lost or stolen or involved in fraud. That means it is not of satisfactory quality, not fit for purpose and not as described. Lloyds, as the credit card provider, is liable for those matters.

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.

In his response to my provisional decision, Mr G cited various provisions of the Consumer Rights Act 2015. However, that statute does not apply here, because Mr G bought the phone from a private seller, not a trader. There was, therefore, no implied term that, for example, the phone would be of satisfactory quality.

Mr G did have some protection under the Sale of Goods Act 1979, but that was much more limited. The seller had to have the right to sell the phone, and the phone had to meet any description given to it.

If the phone was stolen, it's very likely that the seller did not have the right to sell it, even if they did not know it was stolen. It's possible this was the reason the phone was later blacklisted.

The phone was described as "unlocked". As I said in my provisional decision, I do not believe that a blacklisted phone can be said to be unlocked.

However, the reasons for the blacklisting are not fully known. In addition, the phone operated satisfactorily for several weeks, indicating it was not blacklisted at the time of sale.

Mr G has not provided any further information about the reasons for the blacklisting of the phone. I do not mean that as any criticism of him, and it is entirely possible that he has not been able to obtain any further or more specific information.

In the circumstances, however, I don't believe I can fairly conclude that the blacklisting – some weeks after Mr G acquired the phone – is sufficiently clear evidence that the phone was stolen or was not unlocked at the time of sale.

I have not therefore changed my conclusions from those I reached in my provisional decision. In my view, Lloyds' decision to decline Mr G's claim was fair and reasonable.

My final decision

For these reasons my final decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 July 2025.

Mike Ingram

Ombudsman