

The complaint

Mr C is unhappy because Lloyds Bank PLC declined his claim under Section 75 of the Consumer Credit Act 1974.

What happened

Mr C paid a deposit of £3,780 to a supplier for the supply and installation of a garden room using his Lloyds credit card. The deposit was paid on 4 February 2022.

Due to a change in circumstances, Mr C cancelled the order. The supplier told Mr C that it would allocate the materials for his job to another job and return his deposit within a couple of weeks.

Mr C chased the supplier for his refund but never received it. He raised a section 75 claim with Lloyds.

Lloyds declined the claim. It said that a breach of contract hadn't been proven.

Mr C remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. She said that the supplier had a 14 day cancellation policy and that Mr C had cancelled outside of this period so there had been no breach of contract by the supplier. The investigator said that Lloyds had acted reasonably in declining the claim.

Mr C didn't agree. He said he'd contacted the supplier to cancel within 14 days. He produced a transcript of a call which he said he'd had with the supplier on 14 February 2022.

This service asked Mr C to provide a call recording of the call dated 14 February 2022. Mr C said he didn't have a recording and that he had produced the transcript from memory.

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 certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr C's complaint, I would need to be satisfied that there's been a breach of contract and that Lloyds response to the claim wasn't fair or reasonable.

The issue here is whether the supplier breached the contract by failing to return the deposit.

I've reviewed the available documentation. The quote provided to Mr C is dated 10 January 2021 (I think this is a typing error and that it should be 2022). The quote sets out the description of works and the payment schedule.

I haven't seen any terms and conditions. Lloyds asked Mr C to provide these, but I can't see

that Mr C or the supplier has ever provided them. Mr C has said that he never received any terms and conditions.

I've reviewed the supplier's response to Mr C regarding the request for a refund. In a text message dated 24 May 2022 the supplier advised Mr C that "our usual term as per the contract is 2 weeks cancellation period". The supplier goes on to advise Mr C that it would like him to get his deposit back and that it will reallocate his materials to another job and get his deposit back to him within two weeks.

In order to be satisfied that there's been a breach of contract, I would need to be satisfied that the terms and conditions of the contract say that the deposit is refundable if the contract is cancelled within 14 days. Although I haven't seen any terms and conditions, it appears to be accepted by both Mr C and the supplier that a 14 day cancellation period applies. Even if there were no written terms and conditions, there's a standard 14 day cooling off period which applies here.

So, in order to find that there's been a breach of contract, I would need to be satisfied that Mr C cancelled the contract within 14 days of paying the deposit, so within 14 days of 4 February 2022.

There are two pieces of evidence which suggest that Mr C didn't cancel within 14 days. The first is the text from the supplier dated 24 May 2022, in which the supplier alludes to Mr C having cancelled after the 14 days period. The second is that when Mr C first made his section 75 claim, he advised Lloyds that he contacted the supplier in March 2022 to cancel the contract. Any date in March would've been outside of the 14 day period.

Mr C has since told this service that when he said March 2022 he was referring to the date when he first managed to speak to the director of the company, whom he'd been trying to speak to by phone for some time.

Mr C hasn't provided an explanation or response as to why the suppliers text refers to him having cancelled outside of the 14 day period.

Mr C has provided a call record dated 14 February 2022 which lasts for 1 minute 15 seconds in which he says he cancelled the contract. I don't think anything turns on the length of the call. Mr C has produced a transcript of the call but acknowledges that he doesn't hold a call recording and has produced the transcript from memory.

In the absence of a call recording, I can't be certain of what was discussed during the call. Specifically, I can't be sure that Mr C cancelled the contract. The text from the supplier dated 24 May is difficult to reconcile with Mr C's assertion that he cancelled the contract on 14 February 2022. If Mr C had cancelled on this date, there would have been no reason for the supplier to refer to the two week cancellation period or its intention to refund the deposit outside of this period.

On balance, there isn't enough evidence to persuade me that there has been a breach of contract. Based on the evidence, I don't think Lloyd's decision to decline the section 75 claim was unfair or unreasonable.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 October 2023.

Emma Davy
Ombudsman