

The complaint

Mr S complains that Lloyds Bank PLC declined his claim under Section 75 of the Consumer Credit Act in regard to damages and consequential losses arising from a faulty hot tub.

What happened

Mr S raised a claim under Section 75 for the consequential losses caused by a faulty hot tub and the services provided by the supplier not being carried out with a satisfactory level of care. He said the issue resulted in damage to his property which the supplier had refused to rectify. He also said he needed to take four days off work to provide access for the delivery and repair teams and had to pay utility bills to run the faulty hot tub for an extended period when it wasn't able to be used. Mr S also says he has lost out on warranties due to the loss of trust in the supplier to carry out the work to a reasonable standard.

Lloyds Bank declined Mr S's Section 75 claim saying that the faulty hot tub had been replaced and the terms of his agreement with the supplier said that '*We will not be liable to you in respect of any special, indirect or consequential loss or damage*'. Mr S didn't accept this response and raised a complaint. Lloyds Bank issued a final response letter dated 28 September 2022 endorsing its previous decision. It acknowledged that there were issues with the hot tub but said these had been resolved by the supplier.

Mr S didn't agree that his claim should be declined stating that consequential losses and service were covered by Section 75. He referred his complaint to this service.

Our investigator upheld this complaint. He recommended that Lloyds Bank pay Mr S £210 (partial refund of the delivery costs) due to the damage caused to Mr S's property as well as covering the increased energy cost of £84.75 along with interest calculated from 28 September 2022.

Mr S didn't agree with our investigator's view. He accepted the refund of the energy costs but said his quote for the damage repair should be accepted.

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.

Lloyds Bank declined Mr S's claim under Section 75 as it said that the hot tub had been replaced and the contract said there was no liability for consequential losses and that Section 75 didn't cover compensation. While I agree a large part of any potential claim had been resolved by the supplier providing a replacement hot tub, as consequential losses are covered by Section 75, I think Lloyds Bank should have considered this claim further.

For a claim under Section 75 to be valid there needs to be the correct debtor-supplier-creditor relationship in place, the cost of the goods and services acquired needs to be between £100 and £30,000, the payment for the goods or services needs to be at least in part paid for using credit. In this case Mr S paid the supplier for a new hot tub, including

delivery installation and connection. He paid the deposit using his Lloyds Bank credit card and the total paid was £5,149. Therefore, while I understand that the supplier used other parties to undertake the installation and repair works, I find there was the right relationship in place for a valid claim.

For a claim to be upheld, there needs to have been a breach of contract or misrepresentation. In this case the original hot tub had a leak, there were issues with the cover, and it appears damage was caused through the installation process which suggests both the goods weren't of satisfactory quality and the installation wasn't undertaken with reasonable care. Therefore, I accept that a breach of contract occurred.

As the hot tub and cover have been replaced by the supplier, this remedies any issues regarding the goods (I note further issues arose but understand these have been repaired). Based on the sales invoice, the cost of the hot tub (including VAT) was £4,599 and the cost of the cover including fitting was £200 (including VAT). The remaining £350 was for the sited delivery by a professional team.

Based on the evidence provided it doesn't appear that the installation happened with reasonable care. The initial delivery and installation resulted in damage to the hot tub and issues arising shortly after installation such that a replacement hot tub needed to be installed. As the hot tub has now been installed and is working, I do not think a full refund for this amount is required but agree with our investigator that a partial refund is reasonable. Our investigator suggested a 50% refund and recorded this as £210. This was agreed by Lloyds Bank. Having looked at the invoice the cost of £350 was inclusive of VAT and so 50% would result in a £175 refund. However, as the £210 partial refund has been accepted, I find this reasonable.

Mr S has explained that he had to spend a period of time heating the faulty hot tub but not being able to use this due to safety concerns. This resulted in consequential losses for the energy costs. Mr S has provided evidence to support these costs being £84.75. I think it reasonable this amount is refunded to Mr S and Lloyds Bank has agreed to this.

Mr S has said that during the process of the hot tub being installed, repairs being undertaken and new installation, his property was damaged. I have looked at the photographs Mr S has provided and can see some scratches on the slabs and possible staining and also some damage to some timber. Mr S has provided an invoice for repairs totalling £1,150. The invoice is limited in detail, and it is hard to say for certain that all damage was caused by the installers. That said, the photographs do show some damage but, in this case, I think the refund provided for the installation cost is a reasonable remedy.

I note that Mr S was caused stress and inconvenience by the issues with the hot tub and had to take extra days off work for the repairs to be undertaken and the replacement hot tub installed. My decision is in regard to the actions taken by Lloyds Bank in response to Mr S's Section 75 claim. And in this case, I do not find that there were any unnecessary delays and while the claim wasn't upheld, and I think further consideration should have been given, I do not find Lloyds Bank is required to pay additional compensation for this. Therefore, in this case I think a fair outcome is the partial refund of the installation cost of £210 and the refund of the energy costs of £84.75 as recommended by our investigator.

Putting things right

Lloyds Bank Plc should pay Mr S:

- £210 as a partial refund of the installation cost; and
- £84.75 for the increased energy cost along with 8% simple interest calculated from 28 September 2022.

My final decision

My final decision is that Lloyds Bank PLC should take the actions set out above, as it has agreed, in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 August 2023.

Jane Archer
Ombudsman