

The complaint

Mr L complains about a decision by Lloyds Bank PLC (who I'll call Lloyds) to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 (section 75).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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 know it will disappoint Mr L, but I don't think Lloyds have been unreasonable here.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.

When something goes wrong and some or all of the payment was made with a credit card, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It's not for me to decide the outcome of any legal claim Mr L may have under sections 75 but I'm required to take the provisions into account when deciding whether Lloyds were reasonable to reject his claim.

The Consumer Rights Act (2015) is the relevant legislation. It says that the goods should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances, and that the goods should be durable.

Mr L had the earphones for about 18 months before they failed. I think, given the length of time that had passed, that the onus was on him to demonstrate the goods hadn't been supplied in a satisfactory condition. The goods worked for many months, so I don't think there's evidence of a fault being present when they were supplied to Mr L. I've, therefore, gone on to consider whether they could be considered not to have been durable. The report Mr L commissioned says that one of the earphones isn't switching on and that it is suspected that there is an internal fault relating to either the battery or the board. The report doesn't comment on whether the goods would therefore be deemed durable. While I can understand that Mr L would have wanted the earphones to have lasted longer, I don't think there's sufficient evidence to suggest they have failed prematurely, and I don't think Lloyds were therefore unreasonable to reject his section 75 claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 January 2024.

Phillip McMahon
Ombudsman