

## **The complaint**

Mr Z complains about the way Bank of Scotland plc trading as Lloyds Bank handled a claim he made to it.

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr Z says his car is fitted with ‘run flat’ tyres so he doesn’t have a spare. He says he purchased an emergency tyre replacement for £200 from a mobile tyre fitter (‘the supplier’) when his car got a puncture on the way to work in early 2021. However, he said that when he took the car in for a check-up some months later the garage told him the tyre was not a ‘run flat’ tyre like the other tyres he has.

Mr Z says that the supplier fitted the wrong tyre and raised a claim to Lloyds about it. However, it did not uphold his claim.

Mr Z brought a complaint to this service about the outcome of the claim and the customer service he received from Lloyds in respect of the claim handling.

Our investigator did not think Lloyds were wrong to decline the claim. But she thought it should pay Mr Z £100 for its customer service failings.

Mr Z has asked for an ombudsman to look at matters for a final decision. I issued a provisional decision which said:

### ***What I’ve provisionally 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.*

*For clarity I note that initially Lloyds disputed the jurisdiction of this service to look into this matter – however, it has accepted that this service can now. For clarity my role here is not to make a decision on the jurisdiction issue – I will be focusing on the merits of the complaint about the handling of the claim and the associated escalation of concerns about the outcome.*

*I have asked Mr Z for some further information to help me understand his dispute and considered the information already on the file. While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.*

*I am sorry to hear about Mr Z’s issue with the tyre fitting he paid for. However, it is worth noting here that Lloyds is not the supplier of the goods and services. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done with the information that was reasonably available to it at the time. As Mr Z*

*used his credit card to pay for the service in dispute I consider the protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant here.*

### *Chargeback*

*Chargeback is a way Lloyds could have assisted Mr Z by raising a dispute with the supplier through the relevant card scheme.*

*Chargeback is limited by the relevant scheme rules. In this case they appear to be the MasterCard rules.*

*It appears that Mr Z contacted Lloyds about the dispute in August 2021 and said the goods were not as described. Based on what Mr Z said the most appropriate chargeback reason would appear to be something like 'goods or services were either not as described or defective'. However, the chargeback scheme is time limited. And in this case Lloyds had 120 days to raise the claim from when the goods were delivered to Mr Z (in this case when they were fitted).*

*My understanding is that Mr Z had the tyre fitted in January 2021 – so by the time he got in touch with Lloyds it was well outside the time to raise a chargeback – so I don't consider Lloyds was mistaken or acting unfairly in not raising one.*

### *Section 75*

*Section 75 in certain circumstances allows Mr Z to hold Lloyds liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.*

*There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mr Z to have a valid Section 75 claim against Lloyds. So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to Lloyds at the time it considered the claim. And if so, what Lloyds should fairly do now to put things right.*

*When Mr Z approached Lloyds in August 2021 he didn't have any documentation for the tyre fitting service to show what he purchased. Mr Z has explained to this service why he didn't get an invoice at the time. He has explained he was going through some very traumatic circumstances after the loss of a close family member. I am very sorry to hear about this and firstly wish to pass on my condolences to Mr Z.*

*Because of what Mr Z went through it is fully understandable why he didn't get full documentation from the supplier at the time of fitting. However, I am not entirely clear if Lloyds were aware of this when he initially raised his claim. Mr Z recalls mentioning it but the call notes don't support that, although I can see Lloyds did learn of this later on when Mr Z wrote to it unhappy about the initial claim outcome. However, and in any event, under Section 75 Lloyds sits in the 'shoes' of the supplier via the like claim against it. So I consider it would have been fair and reasonable for it to have contacted the supplier to get a copy of any sales documentation and/or confirmation of purchase it needed to consider the claim.*

*Mr Z has explained that his initial call to the supplier (when the car broke down) was to ask to get his run flat tyre repaired and it told him they don't repair these but replace. He has also said that when he called the supplier after the fitting (apparently as part of his dispute with it)*

*it confirmed (according to its order) that it fitted a 'run flat' type of tyre (although it apparently didn't get back to him with the documentation showing this).*

*So, based on what Mr Z has told us and the overall circumstances here – it appears that had Lloyds contacted the supplier when Mr Z raised his Section 75 claim it would likely have confirmed that he had agreed and paid for a 'run flat' type of tyre.*

*I note that Lloyds appear to have requested a copy of the 'warranty' documents from Mr Z when he raised the claim. I don't think these are particularly relevant. I say this because Mr Z was not claiming for breach of contract in respect of the quality of the tyre. He was essentially claiming that there had been a breach of contract via misdescription, or a misrepresentation of the goods he agreed to purchase.*

*While I think Lloyds could have contacted the supplier to confirm the details of the purchase, and probably didn't need to focus on the need for warranty documentation I still don't consider it acted unfairly in declining the claim. I will explain why.*

*I note that in order to show a misrepresentation or breach of contract has taken place by the supplier there needs to be some persuasive evidence that the supplier did not fit the tyre it agreed to. I note that Lloyds did ask for evidence of this in the form of a report from the garage whom Mr Z says pointed out the tyre was not correct ('Garage A'). Considering it was Garage A which pointed out the problem – and the time that had elapsed since the purchase (around 8 months) I don't consider it was unreasonable for Lloyds to ask Mr Z to provide this information so it could consider the claim for breach or misrepresentation.*

*I know Mr Z has made the argument that he provided Garage A's contact details to Lloyds and it should have made the enquiries itself. He has also suggested it should have made arrangements for its own employee to physically check the tyre. However, I don't consider either of these things to be reasonable. Lloyds has no relationship with Garage A via the Section 75 claim and it would have been fairer (and presumably easier) for Mr Z to have obtained this confirmation in writing from it. I also note that Mr Z has suggested to Lloyds that Garage A might not even remember him – which adds further challenges to the expectation that Lloyds would contact it and obtain the information it needed. Furthermore, Lloyds own employees would not be qualified or reasonably expected to physically check goods to see if they match the description.*

*For completeness, Mr Z has mentioned that Lloyds could have asked him for a photo of his tyre to show it wasn't a 'run flat'. He says it would be very clear it wasn't a run flat as it doesn't have the relevant markings on the sidewall. Considering Mr Z did not notice the tyre wasn't a run flat after using it for around 8 months I am not persuaded how useful a photo would have been here. It appears that an expert eye (Garage A) was required to notice an issue according to Mr Z's testimony. But in any event – I also think it fair for Mr Z to have taken a photo and sent it in (if he considered it useful to Lloyds investigation) without being specifically asked by Lloyds for it.*

*I note Mr Z has told this service that he got the tyre replaced in January 2022. I note he has provided an invoice for a run flat tyre from this time for £110. Lloyds didn't have this information when it originally considered the claim in August 2021 and I am not sure if Mr Z sent it on subsequently. Although I don't think it changes things in any event here. Firstly, it isn't clear from the paperwork if the position of this tyre is the same as the one supplied in January 2021. And could feasibly have been a replacement for another tyre, such as the one that was noted as an advisory (OSR close to legal limit) in the MOT record for the car on 9 August 2021. Furthermore, and in any event, in the circumstances there was insufficient evidence of a breach of contract or misrepresentation by the supplier available to Lloyds for the reasons I have already given above.*

*In the circumstances I don't consider it unfair for Lloyds not to have accepted liability for the a breach of contract or misrepresentation here. However, it is worth noting that a fair remedy would not likely be the full refund of the £200 paid for the tyre installation in any event – noting that based on his testimony Mr Z didn't pay this much to remedy the issue and had about a year of use from the original tyre.*

#### *Customer service*

*I can see Mr Z has complained about delays in Lloyds handling his claim. From what I can see Lloyds sent Mr Z several requests for information before providing him with an outcome on his claim in October 2021. So on the face of it Lloyds didn't take an unreasonable amount of time to consider the claim or communicate poorly during this time.*

*Where things appear to have gone wrong is when Mr Z expressed his dissatisfaction with the outcome of his claim and Lloyds failed to promptly raise a complaint about it. I can see that Mr Z was writing to Lloyds and not getting a response until it finally responded in April 2022. Here it explained by letter and phone call that it stood by its outcome on the Section 75 claim. However, it accepted that it had taken too long to raise and respond to his complaint and offered £50 compensation.*

*I note that Mr Z has pointed out that there were further delays in Lloyds writing back to him when he continued to correspond with it about his dissatisfaction with the claim outcome. I note that this appears to have culminated in another letter from Lloyds in January 2023 referring Mr Z back to the final response it issued in April 2022 (and stating that it had not changed its position on his claim).*

*While I can see the whole timeline was lengthy and frustrating for Mr Z – I think it is fair to consider that by April 2022 he knew what Lloyds position was on his claim and that the next step was to refer it to our service. However, there is evidence to suggest that Lloyds had not been clear enough that he could refer it to our service at the time (because he had not received the final response letter and he had been led to believe he was going to need this letter so he could escalate the matter to this service).*

*What followed are periods where Mr Z didn't appear to get timely responses to his correspondence and Mr Z has described his frustration at this. I can see the frustration from his correspondence to Lloyds at the time. Lloyds did not appear to promptly clarify that it had issued a letter to him in April 2022 with referral rights or offer to re-send it. I think Mr Z was under the impression that Lloyds were intentionally trying to prevent him from referring the matter to this service. I don't think there is persuasive evidence that was the case - Lloyds says that during this period it looked at the claim again– but I think ultimately it seems to have not communicated well and led to Mr Z feeling like he had his time wasted. I think Lloyds could have clarified things sooner.*

*Mr Z has also said that Lloyds failure appeared to be deliberate discrimination. Mr Z has not elaborated on this or provided further evidence in support of this statement as far as I can see – but I know he feels he has been treated unfairly by Lloyds failure to respond to him promptly at times. And I have taken that onboard here.*

*I am aware the focus of this complaint is Mr Z's dissatisfaction with the claim outcome in October 2021 and the way he asked for a complaint to be raised during said claim handling that didn't happen until much later. However, subject to any comments from the parties I think it makes sense here for me to look at the customer service journey Mr Z had right up until Lloyds sent him its correspondence in January 2023 (in which it referred back to the*

final response letter in April 2022 Mr Z indicates he never received). After this Mr Z referred the matter to this service.

*In looking at this total journey I consider there were periods of avoidable delay and uncertainty from Lloyds that caused Mr Z frustration and stress (particularly the period from October 2021 to April 2022). Although I do recognise a lot of Mr Z's frustration is naturally about the issues with the supplier and Lloyds not upholding his claim. And as I have already said – I don't think it acted unfairly in that regard.*

*I have considered the circumstances here carefully with all this in mind and note that Lloyds offered Mr Z £50 for failings in its customer service in handling this matter. Considering the initial delay (before it spoke to Mr Z to clarify its position on the claim in April 2022) went on for months I don't think this is enough. And considering the entirety of what occurred in the customer service journey here I think it fair that Lloyds pay Mr Z £150 compensation in total. If it has paid Mr Z the £50 it has already offered then it can deduct this from the total due.*

*I remind Mr Z that my role is to look at things informally – he does not have to agree with my decision and may choose to reject it and pursue action through alternative means, such as court if he wishes.*

### **My provisional decision**

*I uphold this complaint in part and direct Bank of Scotland plc trading as Lloyds Bank to pay Mr Z a total of £150 compensation for distress and inconvenience in respect of this matter. However, if it has already paid Mr Z the £50 it initially offered then it should reduce this payment to £100.*

Lloyds accepted my decision. Mr Z did not accept it, and said, in summary that Lloyds should have done more for him, and had appropriately trained staff to do so. He thinks Lloyds were deliberately ignoring him and discriminating. He has also explained more about his personal circumstances at the time he was making the claim and clarified some evidential points (for example, that he never received the October 2021 claim outcome email from Lloyds).

### **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.

Mr Z has made extensive submissions in response to my provisional decision – I will only comment on what I consider to be relevant. This isn't intended as a discourtesy – but reflects my informal remit. I also acknowledge that Mr Z has provided wider information he considers relevant - but my decision is based on the individual circumstances of his case.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I am sorry to hear more about Mr Z's health difficulties and his experiences during 2021. I am sympathetic to this but my role here is to decide if Lloyds has acted fairly based on the information reasonably available to it at the time. In order for a Section 75 claim to fairly succeed – there needs to be sufficient evidence of a breach of contract or misrepresentation presented. In this case, I have already explained why I don't think there was sufficient evidence for Lloyds to fairly accept liability.

As I have explained in my provisional findings, I accept that Lloyds could have done better by contacting the supplier in the first instance. However, I have also explained why I don't

consider Lloyds needed to fairly do more to gather evidence. Ultimately, there was insufficient evidence of a breach of contract or misrepresentation for Lloyds to fairly uphold the claim. And for the avoidance of doubt my comments about the January 2022 replacement tyre invoice are only in respect of the overall clarity of evidence available to Lloyds to support a successful Section 75 claim.

I note Mr Z has inferred Lloyds should have raised a chargeback for him due to certain Covid-19 allowances. I am not aware of the specific allowance that would have enabled Lloyds to raise a chargeback in this instance when it was out of time under the usual timeframes. However, it is worth noting that a chargeback would have been presented with similar evidential difficulties to those already discussed in respect of the Section 75 claim – so I am not persuaded it would have changed matters here in any event.

Mr Z has clarified he didn't get the email from Lloyds with the outcome of his claim in October 2021 and at the time was actually complaining about the delays in getting an outcome rather than the outcome email itself. I can see that Lloyds and Mr Z were emailing back and forth up to this point (and Mr Z recognised some things were going into his spam mail) – so I am not sure why he wouldn't have received this outcome at the time as Lloyds sent it to the same email address. On the face of it Lloyds appeared to be engaging with Mr Z regarding his claim up to this point and things hadn't taken a very long time. Nevertheless, even if I accept that Mr Z didn't get that outcome email in October 2021 and was complaining about delays, it still stands that Lloyds took too long to raise and address this complaint. It admitted this in April 2022 when it contacted Mr Z about it on the phone and in writing (unfortunately it appeared the final response letter did not arrive with Mr Z at the time and he then had to chase it up).

Once again, I do agree Lloyds didn't communicate well with Mr Z after the initial investigation into his claim and have provided more detailed reasoning in my provisional findings. I have awarded compensation for this which I think is fair. I can see Mr Z feels he been treated unfairly, and he has once again suggested that Lloyds deliberately discriminated against him. I can see that Lloyds did handle some things poorly, but nothing persuasive to suggest more than that.

I recognise the strength of feeling from Mr Z on this issue – and accept he won't necessarily agree with me here. It is up to him to decide if he wants to accept or reject my decision.

### **Putting things right**

I direct Lloyds to put things right as set out below.

### **My final decision**

I uphold this complaint in part and direct Bank of Scotland plc trading as Lloyds Bank to pay Mr Z a total of £150 compensation for distress and inconvenience in respect of this matter. However, if it has already paid Mr Z the £50 it initially offered then it should reduce this payment to £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 2 October 2024.

Mark Lancod  
**Ombudsman**