

The complaint

Mr W complains about Bank of Scotland plc trading as Halifax's refusal to meet his claim under Section 75 of the Consumer Credit Act 1974 ("Section 75").

What happened

In December 2015 Mr W says he purchased an oven from an online retailer. I'll call the retailer "D". In February 2021 the oven developed faults. Mr W spent his own money on getting an expert's report. That report concluded that the faults were manufacturing faults.

When a consumer, like Mr W, purchases goods from a business the law says, amongst other things, that those goods have to meet a certain quality standard. Specifically, the goods have to be of satisfactory quality. If they are not this is a breach of contract and Mr W is entitled to claim against the retailer for this breach. Mr W's position is that the manufacturing faults, identified by the expert, mean that the oven was not of satisfactory quality, Mr W wants redress for this. Mr W tried to contact the retailer, but he was unable to get a response from it. It seems that the retailer was no longer trading.

Mr W's stance is also that he used his Halifax credit card to purchase the oven. Where a consumer uses a credit card to make a purchase they potentially have the protection of Section 75. The general effect of Section 75 is that if Mr W has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Halifax provided certain conditions are met. Therefore because he got nowhere with the retailer, Mr W complained to Halifax about what he says is the manufacturing fault with his oven. Mr W wanted Halifax to take responsibility for what had gone wrong.

Halifax looked to see if it could get a refund for Mr W under a process known as chargeback. This is a way in which payment settlement disputes are resolved between card issuers and merchants. Mr W would not therefore have been a party to the chargeback as such, as he is neither the card issuer nor the merchant. But Halifax as the card issuer could have raised a chargeback on his behalf, and, in principle, this might have got him a refund. However, chargebacks are dealt with under the relevant rules these are the card scheme rules. There are strict deadlines under those rules and Halifax was out of time to raise a chargeback by the time Mr W complained to it. Halifax therefore was unable to progress the chargeback.

Halifax considered Mr W's claim against it under Section 75. It concluded that there was not sufficient evidence to show that there has been a breach of contract in relation to the oven. Therefore it declined to uphold his claim against it under Section 75.

Dissatisfied, Mr W complained to this service.

Once Mr W's complaint was with us Halifax told us that from its perspective, Mr W hadn't shown that he purchased the oven from D in December 2015. It suggested this because Mr W had not provided an invoice showing the purchase of the oven from D. It accepted that Mr W's credit card statement did show he had purchased something from D in December 2015. But without the invoice it could not tell what it was that Mr W had purchased. Moreover, when Mr W got in touch with the manufacturer, who I will call "B", he told it that he bought the oven in July 2015. Halifax suggested that this discrepancy about the date was significant. Specifically it undermined Mr W's position that the credit card purchase in December 2015 related to the purchase of the oven.

We asked Mr W about these new points that Halifax raised. Mr W explained why he had not been able to provide a copy of the invoice. When he bought the oven he had had a different email address. He no longer had access to that email account so could no longer retrieve the original invoice. Moreover, he could not ask D for a duplicate invoice as it appears it is no longer in business. Mr W clarified why he had told B, that he'd bought the oven in July 2015 rather than December 2015. The fact of the matter was he had simply misremembered the date. He told us he had not had all the relevant information to hand when B had asked him the question. Therefore he had taken a "*wild guess*".

One of our investigators looked into Mr W's complaint. Our investigator recommended that Halifax ought to pay Mr W £99 for the expert's report he'd had done. She concluded it ought to pay for this as she thought Halifax had given Mr W the impression that he needed this in order for his complaint to be upheld. When in fact this was not the clinching piece of information that Mr W had been led to believe it was because Halifax's stance was that it did not agree Mr W had demonstrated he'd made the purchase from D. Therefore it was never going to uphold Mr W's complaint in these circumstances in any event.

Halifax did not agree that it had given Mr W a misleading impression about the need for the expert's report. That said it agreed to pay the £99 in any event.

Mr W however rejected our investigator's recommendation. In summary, he suggested that his credit card statement was sufficient proof of purchase in the circumstances. Further, he referred to guidance which in his estimation supported his position that the credit card statement was enough to establish whether he'd bought the oven from D as he said he had. He noted that the credit card statement did not show what had been purchased. That said, Mr W did not see why this was held against him as he had no control over what information was recorded. Rather it was up to Halifax to note on the statement exactly what purchase he had made.

Further, Mr W pointed out that the name on the credit card statement is D's name. Mr W sent in information that according to him, showed that D did sell ovens made by B.

Mr W underlined that from his perspective he has been unfairly caused inconvenience by Halifax, who he suggested had provided him with confusing information. Mr W told us he would like a refund of 50% of the original purchase price, to be reimbursed for the expert's report and £200 "*compensation*".

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.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Halifax had two potential routes for dealing with Mr W's complaint. It could have looked at if there were any grounds for carrying out a chargeback and it could have looked at Mr W's claim under Section 75. It appears it took both routes.

There are specific deadlines under the chargeback rules, as I have already mentioned. Halifax had to observe these deadlines. There seems to be no dispute that any chargeback attempt would have been out of time. It follows that I can't fairly and reasonably find that Halifax did anything wrong in respect of the chargeback attempt.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Mr W's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for

example, a court might reach if Mr W pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts and operates differently from them.

Mr W relies on the rights he suggests he has under Section 75 in relation to his purchase of the oven. The general effect of Section 75 is that if Mr W has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Halifax provided certain conditions are met. One of those conditions is that Mr W has to show he used relevant credit provided by Halifax to buy the oven.

The difficulty for Mr W here is that there is nothing that on balance shows what he bought from D. He has no invoice from D. I recognise Mr W has explained why he has not got an original invoice and whilst his circumstances are unfortunate and understandable the fact remains he has nothing to show exactly what he purchased from D.

Mr W suggests we can infer what he purchased from the information we've got to hand. In particular, he suggests the entry for D on his credit card statement ought to be enough to settle the proof of purchase issue. I don't agree. I say this because the information from his credit card statement proves he bought something from D but not what.

Moreover, the guidance Mr W refers to that suggests an entry on a credit card statement should be enough to demonstrate proof of purchase does not seem to relate to Halifax the finance provider, rather it seems to relate to the retailer. A retailer would most likely be able to cross-reference its records to check what was purchased if it had the entry on the credit card statement. Halifax is not in the position to do this. In any event, I don't know what the guidance is, I've not got the full guidance just an extract so I can't fairly say it is guidance that needs to be applied. I accept Mr W has no control over what information Halifax chose to put on his statement. But Mr W has not put forward any argument that satisfies me that Halifax was obliged to note on his credit card statement not just how much he paid and to whom but also what he bought or even that it was able to do this.

D may well have sold ovens made by B. Although the information Mr W sent does not demonstrate this it merely shows D sold appliances that B had manufactured. So this does not persuade me by itself and or in conjunction with the rest of the information that I have that Mr W purchased the oven from D.

For all of these individual reasons I am not satisfied that Mr W has shown that he used his Halifax credit card to purchase the oven from D. It follows then I have no proper basis for saying Halifax needs to take responsibility for anything that has gone wrong with the oven. That being so the remainder of the arguments about whether the date mix-up is significant and if there was a breach of contract because the oven was not of satisfactory quality fall away.

When a consumer complains to it I would expect a business to marshal all of its arguments upfront and give its customer its reasons for rejecting a complaint at the earliest opportunity. I note Halifax did not tell Mr W from the get-go that the main stumbling block for his complaint was the lack of proof of purchase. Even in its final response it does not rely on this reason for rejecting the complaint. That said, from the information I have Mr W had a very strong view about his complaint and sometimes did not appear to take Halifax's stance on board even when Halifax gave its stance clearly. However, Halifax has agreed to pay the £99 for the expert's report so I don't need to make a finding about whether it caused Mr W to incur this expense. I would not have asked it to reimburse this money if it had not already agreed to do this, but this was its choice to make. However, I will not ask Halifax to pay interest on the £99 that it refunds to Mr W as I made no finding about whether Mr W incurred the fee only because of something Halifax did wrong.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must pay Mr W £99 for the expert's report as it has already agreed it will do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 November 2022.

Joyce Gordon
Ombudsman