

The complaint

Mr S has complained that Bank of Scotland plc trading as Halifax Building Society (“Halifax”) hasn’t properly dealt with his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr S was quoted for solar panels and a battery (the system) for his home in March 2022. The total cost of the system was £9,190. After agreeing to the purchase, the system was subsequently installed by the suppliers. The purchase was funded with a Halifax credit card, and that business is therefore liable for any breach of contract by the supplier under the relevant legislation. In this case, Mr S alleges that the supplier failed to correctly repair and commission the system after installation – so the system has not provided Mr S with any benefit.

Halifax offered to pay to cover the costs of a third-party supplier carrying out rectification works and commissioning the system as well as any consequential losses.

Mr S says he instructed a third party to prepare a report of the works necessary and paid a sum to cover the costs of this. This third party appears to have told Halifax that the sum paid (£876) was for the rectification of the system, not simply to prepare the report. Halifax therefore offered to pay this sum to cover the rectification works. However, the works were not completed, and I understand Mr S is now currently in dispute with this company (separate to this complaint).

Unhappy that a resolution had not been reached, Mr S referred the matter to our service. One of our investigator’s looked into matters and agreed with Mr S, that the supplier had not commissioned the system as agreed in the contract. He therefore felt Halifax (in accordance with its obligations under the relevant legislation) should carry out the rectification works and ensure the system was correctly commissioned.

Halifax maintained that it had upheld Mr S’s claim but its offer to cover the costs of any rectification works was fair, and that Mr S should instruct a third party to complete the works. Mr S felt Halifax ought to do this for him, as it was obligated to. Our investigator then issued another recommendation that if Halifax wasn’t prepared to carry out the repair works to the system, then it should instead unwind the contract. At this point Halifax agreed to find a third party to inspect, repair and commission the system – in line with our investigator’s initial recommendation. Our investigator felt this was a fair way to resolve the complaint.

Mr S remained unhappy now wanting to unwind the contract. He was dissatisfied with Halifax after this issue had remained unresolved for so long. He also felt the resolution wasn’t specific enough, not knowing any details about it. He added concerns that the system may require planning permission, and he didn’t know whether having the system affected his mortgage or home insurance.

As the complaint couldn’t be resolved, it was passed to me.

In my provisional decision of 3 August 2023, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Halifax agreed to the provisional decision, but Mr S made a number of additional submissions which I will address below.

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 my provisional decision I explained the following:

Having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, I uphold this complaint in part, and I'll explain why.

Initially, it may be helpful to set out that As Mr S paid for the system with a credit card, Halifax agrees that section 75 applies to this transaction. This means that Mr S could claim against Halifax, the creditor, for any breach of contract by the supplier in the same way he could have claimed against the supplier.

As Halifax agreed to cover the rectification works, it seems both parties agree that the supplier did breach the contract by not commissioning the system correctly. The only matter left in dispute is how to put things right for Mr S. So, I've thought about everything both parties have said to decide what is fair and reasonable in all the circumstances of this case.

Unwinding the contract

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels and a battery have been installed at a property. I've considered carefully if it's fair to unwind the credit agreement, remove the solar panels (at Halifax's expense) and give Mr S a refund of any payments he's made. I've thought about this specifically in this case given the system is not currently functioning as its meant to, wasn't installed correctly and in need of repair. I've also thought about Mr S's view that his relationship with Halifax has broken down to such a degree that he wants to terminate his relationship with it.

However, I don't think it is necessary to order a full unwind in this case. While I sympathise with Mr S's position, from what I can see, the system is repairable and can be commissioned – the cost of this doesn't appear to be significant. But the removal and disposal of a repairable system would not only be disproportionately costly, but also may lead to other problems such as damage to Mr S's roof that may lead to further costs. Mr S has also indicated he would then purchase a new system from a different supplier indicating he still wants a solar panel system. So, I don't intend to order an unwind of the contract as requested by Mr S.

Commissioning the system

Halifax has now agreed to instruct a third party to inspect the system, carry out any rectification works and commission the system. It's also offered to pay Mr S any consequential losses. I think this is a fair way to resolve this complaint, as it puts Mr S in the position he would be in had the breach of contract not occurred.

I understand Mr S is unhappy that Halifax asked him to locate and instruct a third party to carry out the works. I understand this was particularly upsetting for him as his contract with a

third-party supplier has led to another complaint. So, I understand why he wasn't prepared to now enter into a third contract with another supplier.

While it's not unusual for credit card providers to request consumers to put matters right themselves, and simply charge the provider for the costs of this, Mr S wasn't obligated to do this, and Halifax was. Under the relevant rules, Halifax is responsible for the rectification works (as the supplier would be). When Halifax was informed that Mr S didn't want to locate and instruct the repair works himself, it should have made the offer to resolve matters itself rather than insist Mr S do this. I fully appreciate that this has led to further delays in the system being commissioned and caused Mr S unnecessary stress.

However, I would add that Halifax has consistently agreed with Mr S's claim, and offered to resolve matters, albeit not completely in line with what it ought to have done. So, while I do understand Mr S's perspective, I don't agree this warrants a termination of the relationship by now unwinding the contract. I still feel that remedy is disproportionate when the problems could be resolved in a much more cost effective and reasonable way.

Halifax cannot break down exactly what works will need to be carried out as the third party will have to inspect the system, confirm what needs doing and then complete the works necessary to ensure the system is fully functioning and commissioned correctly. This can't be done until the third party has had the opportunity to inspect the system. Any works carried out have to be carried out to a reasonable standard and if Mr S remains unhappy with any works – he can discuss this with Halifax if that happens. But as explained above, as part of this resolution, Halifax will be expected to ensure the system is fully operational.

Halifax will inform Mr S of any guarantees the third party provides. I understand the original supplier guaranteed its workmanship for 2 years. Halifax would be expected to honour any contractual terms made by the original supplier.

Consequential losses

As the system hasn't been operating for around a year, Mr S has not had the benefit of working solar panels and battery for that period, when he should have done. I can see in the quote provided by the supplier, it estimated Mr S would get around £815 in benefit in the first year.

	Combined Export & Electricity savings (A+B)	£511.8
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Savings from Additional Equipment

C	Savings from Extras/Battery	£303.41
	Estimated first year total system benefit (A+B+C)	£815.21

It is difficult to know how much a consumer will actually benefit from a system as it depends entirely on how much energy is produced, and how much of that energy a consumer uses. And the estimates aren't guaranteed. Once this complaint is resolved, it will also take some time for the issues to actually be resolved, and Mr S has highlighted his concerns that he will lose out on another summer where he will not benefit from the system.

Having considered all of the above, I think Halifax ought to pay Mr S £1,000 for the period Mr S hasn't had a functioning system. Within this sum, I've included the £815.21 for the year

Mr S has already lost out on, and an additional amount for the period it will likely take the system to be repaired.

As I've explained, working out Mr S's losses isn't an exact science, but I feel this amount broadly compensates him for the period that the system hasn't been functioning.

Other issues

Mr S has also mentioned that the system may require planning permission that wasn't obtained. He is also concerned whether the system affects his mortgage and home insurance.

I note the quote with the supplier says the following:

Planning Permission Confirmation:

By signing this Order Form, you are confirming that you have received Planning Permission or a Building Warrant for the proposed installation, or ascertained that these are not required. We cannot be held responsible for any installations where Planning Permission or a Building Warrant was required but not obtained, and no refunds will be offered.

From my experience of solar panel installations, it is not normally the responsibility of the supplier to obtain any relevant permission. As it says so in the quotation, the responsibility is on consumers to obtain the relevant permissions or confirm that it isn't required.

The supplier is also not a party to Mr S's mortgage or home insurance contract. Any rights, obligations or breaches are for Mr S to consider when purchasing items for his home.

Overall, I don't think the supplier has any obligation towards obtaining planning permission or checking whether the installation breaches any terms of his mortgage or home insurance contract. This is the responsibility of Mr S. So, I don't think Halifax, in its capacity as a credit card provider, needs to do anything about these issues.

Compensation for trouble and upset

I understand Halifax has already paid Mr S £150 compensation for the distress and inconvenience Mr S has suffered trying to resolve this complaint. I don't feel this is sufficient to fully account for the amount of time, effort and stress Mr S has had to go through to try to obtain a satisfactory resolution. So, I intend to ask Halifax to pay Mr S an additional £350 – taking his full compensation amount to £500 (including the amounts Halifax has already paid).

Putting things right

I intend to ask Halifax to:

- *Instruct a third-party supplier to inspect and carry out any repair works necessary to ensure the system is fully functioning and commissioned correctly.*
- *Pay Mr S £1,000 for the benefit he hasn't received for the period the system hasn't been functioning.*
- *Pay Mr S £350 for the distress and inconvenience he has suffered.*

In response to my provisional decision, Mr S made a number of additional comments which I'll address below. I would like to re-assure Mr S that I have considered everything that he has said but I will only address the most salient points below.

Mr S has explained:

- The original supplier never agreed to rectify the works and they did not make any contact with Mr S.
- Halifax originally refuted and disputed the claim – and referred him to citizens advice and then electricity suppliers. It repeatedly closed his claim and asked for reports that weren't necessary. It refused to offer an appropriate remedy even after it was recommended by our investigator, only agreeing when the investigator suggested a full unwind of the contract. Mr S felt Halifax used such tactics to cause him stress and anxiety before it actually offered any sort of remedy.
- Mr S adds that Halifax asked him for a report to prove his claim and then didn't refund him the cost of its request. However, I understand a complaint with this supplier is being dealt with separately so I will not address it in this complaint.
- Mr S felt Halifax made derogatory comments to him that he was only making a claim because he couldn't afford the payments.

Mr S therefore feels all the above problems he has experienced with Halifax, justifies why he no longer wants to deal with the bank and instead wishes to unwind the contract.

- Mr S also asked for details of when the £150 compensation was paid. He feels the compensation recommended doesn't adequately compensate him for years of stress and anxiety. Mr S wants his call costs and hourly wage compensated as he has spent a considerable amount of time trying to bring this matter to a resolution.
- Mr S is also concerned that the credit card interest he has paid has not been taken into consideration.
- The loss of benefit does not take into account energy price increase and Mr S feels we ought to have queried Mr S's use and energy cost per unit before deciding how much Halifax should compensate him for the loss of benefit.
- Mr S is happy that Halifax would honour any guarantees in the contract but would like to have more details of how this would work.
- Mr S is dissatisfied that I have focused on the system being commissioned only. The report with the second supplier pointed out other repair works necessary and not just with commissioning the system. He has also complained about finding fixing brackets on the floor and loose roof tiles.
- Mr S wanted the battery and equipment to be installed in the adjacent garage – not in the loft where he cannot access it.
- He adds that his mortgage is with Halifax and therefore any concerns with possible breaches of his mortgage terms should be addressed.
- Mr S said he'd never complained about planning permission but simply commented that systems over a certain wattage required the Grid Supplier's permission.
- Mr S would like to choose his own supplier who is suitably qualified for his own repair works.

We sent Mr S a further email explaining the following:

- Credit card interest. We explained that, in response to a s.75 claim, a credit card provider is only expected to remedy the breach of contract. The payments on the credit card, including the interest will always have been due, even if the breach of contract hadn't occurred, so these would remain payable.
- Additional cost from grid suppliers: we explained that while Mr S's system did require

permission from grid suppliers and incurred an additional cost, this is set out in the contract.

- We also explained that we understood Mr S was unhappy with the location of the battery as he wanted it installed elsewhere. But this does not appear to be a contractual obligation that's been breached so we wouldn't expect Halifax to rectify this issue now.

Mr S then responded with the following additional comments:

- He verbally agreed where the battery and internal equipment should have been installed, and this was part of his verbal contract with the supplier.
- He also reiterated that the cost of commissioning the system was included in the original contract.
- Mr S also said he'd now instructed his own third-party supplier to carry out the works necessary to get the system working.
- Mr S also now believes he wasn't given the correct size battery.

We informed Halifax that Mr S had instructed his own supplier and Halifax agreed to allow Mr S to choose his preferred supplier, highlighting this is the original remedy offered by Halifax – for Mr S to choose a supplier of his own and it would cover the cost of any rectification works. Halifax did, however, reserve the right to only cover the costs of the rectification works necessary to repair and commission the system, and to have sight of any quotes/invoices to enable it to make the payments necessary to resolve the complaint.

Firstly, I'd like to thank Mr S for taking the time to respond to my provisional decision, clarifying and providing more details of his experience to date as well as highlighting his concerns. I fully appreciate that he has spent a considerable amount of time and effort in making his claim and I'd like to reiterate that I have thought carefully about his concerns. I also accept that Halifax has caused unnecessary delays and stress which is why I recommended it pay further compensation.

It may be helpful to clarify that although I have no doubt Mr S has spent a considerable amount of time trying to sort this claim out, and incurred call costs, he has done so in his capacity as a consumer. So, we wouldn't expect financial businesses to pay consumers the hourly rate they may charge for their work. The compensation I have recommended compensates him for what I think is reasonable for the trouble and costs he has experienced and in line with what we would usually award in these types of cases. I can see Halifax said it had already paid him £100 compensation and would pay an additional £50 within 48 hours in its letter of 26 January 2023. If these amounts haven't been paid, then I would expect Halifax to pay these, on top of the additional £350 I have recommended.

I do appreciate that Halifax only agreed to the remedy once the investigator suggested a full unwind – but it has now agreed to the remedy, so I still don't think a full unwind is necessary. I think the compensation I have recommended adequately compensates Mr S for the problems he has experienced.

Regarding Mr S's concerns over the comments made by Halifax that he feels were derogatory. It may be helpful to explain, that when consumers raise disputes of this nature and have made use of credit facilities, if consumers are experiencing financial difficulty, businesses are under an obligation to treat them positively and sympathetically. I can see Halifax's records notes that a caller asked Mr S if he was experiencing any difficulty. This is usually done so if a consumer confirms they are finding it difficult to maintain payments, they can be referred to another department for further help with any debts while the claims

department deals with the claim. I haven't seen anything to suggest that comments were derogatory.

As explained in my provisional decision, Halifax will have to honour any contractual terms in the original sales contract including any guarantees provided by the supplier. This means should Mr S have any further difficulties, he can raise that with Halifax as and when it happens. But I cannot comment on hypothetical scenarios of what might happen if Halifax refused to honour such agreements. I can only deal with the complaint currently brought to this service. Like any s.75 claim, if Mr S feels he has a valid claim for any further breaches of contract, he will have to claim through the usual channels, and if he isn't satisfied with the response he receives, he can refer the matter to this service as and when needed.

Regarding the credit card interest Mr S has paid, as we've explained, this would not be something we would consider in response to a s.75 claim. Halifax must remedy the breach of contract only – the payments due (including interest), would have been charged and due even if the breach of contract had not happened and remain payable.

I reiterate that Halifax is obligated to remedy any contractual breaches made by the supplier. If consumers have a specific wish of where the battery and other items should be installed, this is usually agreed before the installation, and dealt with at the time of installation.

I can see Mr S did subsequently raise this with the installer, but he simply said he wasn't happy with the location – rather than explaining that any former verbal agreements had been breached. If there had been an explicit agreement with the supplier, I'm not sure why Mr S didn't highlight this and deal with it during the installation – which I would have expected – rather than raise his preference after the installation had already taken place. Based on what I've seen, I don't think Halifax is duty bound to now pay for such fixtures to be moved. If, however, Mr S wants to arrange this separately with the new supplier, he is free to do so but I wouldn't expect Halifax to cover any costs associated with this

I would clarify that Mr S's concerns over his mortgage terms need to be discussed with his mortgage provider separately (even if that is Halifax). Halifax (in its capacity as a credit card provider) is not expected to consider any mortgage related queries in response to Mr S's s.75 claim. As explained previously, any permission issues are normally for the consumer to discuss with their mortgage and insurance provider – not the suppliers (and by extension the credit card provider) as part of a s.75 claim.

Regarding Mr S's comments about planning permission – in his email of 12 April 2023, Mr S said:

"... I did highlight that the system required planning permission, it does affect my [mortgage] terms & conditions, my house hold insurance and my right to sell my property."

So, in my provisional decision, I addressed the point about planning permission, but I accept if this is something Mr S isn't concerned about, it no longer needs to be addressed. I reiterate that I understand certain systems require permission from grid suppliers and the possibility of additional charges is set out in the contract with the supplier. So, I don't think Halifax needs to do anything in relation to this issue.

I explained in my provisional decision that Halifax would have to ensure the system is repaired and commissioned – not commissioned only. As explained above, I reiterate Halifax must ensure the system is fully functioning and commissioned as part of the repair (which I accept was part of the original contract and haven't asked for or expected Mr S to pay any amounts towards this).

While the second supplier has broken down the works it considers necessary to repair the system, Mr S is in dispute with this supplier, so I have not specifically ordered only these elements to be fixed. As explained earlier, once the supplier who actually carries out the repair works inspects the system, they can confirm what needs to be done (which may include more than what has already been discovered).

But as part of the remedy ordered, Halifax is expected to cover the costs of any works necessary to ensure the entire system and battery is fully repaired, and functioning (and of course safe) and commissioned correctly. To re-assure Mr S, as part of this order, if it's discovered for example that the panels need to be secured to ensure the panels are safe to use, this must be done. As I have said, I haven't broken down specific tasks as the system will have to be inspected and appropriate repair works carried out as needed.

I have also thought about Mr S's concerns regarding how I have estimated his loss of benefit. I understand Mr S is unhappy because he feels I haven't taken into account the increased cost of electricity, nor his specific usage and costs incurred – relying solely on the original suppliers estimated first year benefit.

However, as I have already explained, working out what Mr S has lost isn't an exact science. It does depend on a number of factors and assumptions about how much energy might have been produced, how much energy Mr S would have used and how much he might need to have purchased from his providers.

In Mr S's contract, the supplier estimated Mr S may benefit between £562 and £815 during his first year after assessing his system, home and needs. These are only estimates, not guarantees and, it's quite possible depending on a number of factors, that Mr S wouldn't have even achieved the lower of the estimates. I chose the higher figure and included an additional amount in order to ensure Mr S does not lose out. Halifax has agreed to pay this.

Estimated first-year total if 50% of electricity generated is used.	£815.21
Estimated first-year total if 25% of electricity generated is used.	£562.37

While I understand Mr S's concerns, I still think using the supplier's estimates as a basis for working out his losses is reasonable, and broadly a fair amount of compensation.

As explained above, I understand Mr S has now instructed his own supplier to carry out the works necessary to get the system in working order. This is exactly what Halifax had requested and has now again agreed to. I'm satisfied this is a reasonable way to put matters right. So, Halifax is to cover the cost of a third-party installer to inspect the system, carry out any repair works to ensure the system is fully functioning, safe to use and commissioned correctly.

I would add Mr S's concerns over the size of the battery installed wasn't raised as part of his original complaint. We cannot look into new issues that weren't raised as part of his original complaint. So, if Mr S would like this investigated, he will have to raise that with Halifax separately. If he isn't happy with its response, he can refer the matter to this service as part of a separate complaint.

I understand Mr S is disappointed that I haven't ordered the remedy he wishes. And while I do sympathise with his position, despite everything he has said, I still think a full unwind is disproportionate when everything indicates the system is repairable, can function as it was intended and Halifax has agreed to cover the cost of a third-party supplier carrying out the necessary works. Under the Consumer Rights Act 2015, where a supplier hasn't exercised

reasonable care and skill in the provision of a service, an appropriate remedy is for the service to be provided. While I'm sorry Mr S is so disappointed with the outcome, I still think the remedy ordered is a fair way to put things right.

Putting things right

Halifax must:

- Cover the cost of the third-party supplier inspecting and carrying out any repair works necessary to ensure the entire system (including the battery and solar panels installed on the roof) is fully functioning, safe to use and commissioned correctly.
- Pay Mr S £1,000 for the benefit he hasn't received for the period the system hasn't been functioning.
- Pay Mr S £350 for the distress and inconvenience he has suffered. If Halifax hasn't already done so, it must also pay the £150 compensation it offered for the way it handled Mr S's claim. In total, Mr S should receive £500 compensation for the inconvenience and costs he has suffered trying to bring this matter to a resolution.

My final decision

For the reasons explained, I uphold this complaint. Bank of Scotland plc trading as Halifax Building Society should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2023.

Asma Begum
Ombudsman