DRN-4722386

The complaint

Mr M complains Bank of Scotland Plc trading as Halifax ("Halifax") unfairly declined a claim he brought under Section 75 ("Section 75") of the Consumer Credit Act 1974 ("CCA").

What happened

Both parties are familiar with the facts of the case, so I'll summarise these here.

On 12 December 2022 Mr M paid a contractor, who I'll call "SD", to apply a ceramic coat to his car. The transaction was for around £470 ($858 AUD). Unhappy with the results of the ceramic coating he tried to resolve the issue with SD but was unable to and so contacted Halifax on 27 February 2023 to dispute the payment.

Halifax asked Mr M to provide some further information, and Mr M responded on 11 April 2023. Halifax said it needed more information and so asked Mr M for this and referred the complaint on internally for consideration under Section 75. The claim was then declined. Mr M explained the claim had been misunderstood and so the claim was reopened, and Halifax asked Mr M for further information. Mr M believed he had already provided all the relevant information and so his claim was closed.

Following a conversation between Mr M and Halifax the claim was reopened and Mr M sent in a full copy of the service agreement between him and SD. However, Halifax declined the claim saying there wasn't enough evidence available to establish a breach of contract or misrepresentation.

Unhappy with this outcome Mr M referred his complaint to this service.

One of our investigators looked into the complaint and initially said that Halifax had declined the claim fairly because of a lack of evidence. Following this she issued a second view setting out that there wasn't the necessary debtor-creditor-supplier ("DCS") agreement for a claim to succeed and maintained that Halifax had acted fairly in declining the claim. Mr M didn't accept the investigator's opinion and so the case has been passed to me to decide.

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.

Chargeback

Chargeback isn't a legal right and isn't guaranteed to get a customer a refund. That said it's good practice for a bank to attempt a chargeback where the circumstances are appropriate and there is a reasonable prospect of success. Strict rules apply to chargebacks, and these are set out by the card scheme operator rather than the bank. These rules include timeframes for chargebacks to be raised and details of what evidence is needed for the claim.

Halifax have said that by the time Mr M provided it with the information needed for the claim to be made, he was out of time for a chargeback to be raised. I've thought carefully about this and given the nature of the claim, Mr M likely only had 120 days for the claim to be raised from the date of payment. So, for a chargeback to be raised Halifax would have needed to receive the necessary evidence by 10 April 2023.

As Mr M didn't provide any further details on the claim until 11 April 2023 a chargeback claim wouldn't have been the appropriate way to dispute the payment. So, I don't think Halifax acted unreasonably in not raising a chargeback.

Section 75

Section 75 is a law which – where it applies – makes the provider of credit (in this case, Halifax) jointly liable for any misrepresentation or breach of contract by a supplier where the supplier's services are paid for (in whole or in part) with the credit being provided.

However, Section 75 doesn't apply to every kind of transaction. Mr M can only have a valid claim under Section 75 if his payment was made under a DCS agreement (as defined under Section 12 of the CCA). Here, Mr M is the debtor, Halifax is the creditor, and the supplier is the company Mr M had a contract with, SD. His payment would have been made under a DCS agreement if it had been made to SD (the supplier) directly. But the money was paid to another company, that I will call "SA", which in turn passed the payment on to SD (the supplier). That usually means that Section 75 doesn't apply.

There is one exception to this rule. Put as simply as possible, under Section 184 of the CCA two companies are said to be associated with each other if the same people control both companies. And under Section 187 of the CCA, two associated companies can be treated as if they were one and the same company for the purposes of Section 75. So, if the two companies Mr M dealt with were controlled by the same people, then Section 75 would apply as if he had paid SD (the supplier) directly.

However, having checked the Australian Securities & Investments Commission website, I can't find any qualifying associations between SD and SA. Therefore, I'm satisfied that SD and SA weren't associates of each other.

Mr M may feel – quite understandably – that it's unfair that he should be left without the protection of Section 75 just because the money was paid to SD via SA. But I don't think it would be fair or reasonable of me to hold Halifax liable for what SD might have done wrong in circumstances where the CCA doesn't apply. So, it follows that I don't think Halifax acted unfairly or unreasonably in declining Mr M's Section 75 claim.

However, legal remedies remain open to Mr M and were new information to come to light about any association between SD and SA and any potential breach of contract or misrepresentation, Mr M can refer this to Halifax.

My final decision

My final decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 March 2025.

Charlotte Roberts
Ombudsman