

The complaint

Mr P complains that Bank of Scotland Plc, trading as Halifax, has treated him unfairly in relation to a transaction on his credit card which paid for jewellery.

What happened

In November 2022 Mr P used his Bank of Scotland Plc, trading as Halifax, (BOS for short) credit card to make part payment for jewellery. He paid a total of £10,450 for the jewellery which was made up of a payment of £7750 on his BOS credit card and the remainder was made up of exchanged jewellery. This purchase was made in his home with a business, who I'll call 'the Jewellers', with whom he'd met abroad earlier in 2022 and were apparently travelling locally and had arranged to visit him at his home.

It's clear that shortly after this purchase Mr P wanted to return the purchased jewellery and receive a refund. Mr P points towards cooling off period rules and says they tried to return the jewellery to the Jewellers within the cooling off period. However this was not able to be agreed with the Jewellers and the jewellery wasn't returned or refunded, so he took his complaint to BOS.

BOS provided a number of different reasons why it wouldn't refund Mr P and accepts it provided poor customer service to Mr P in a number of ways. BOS says it has awarded Mr P a total of £265 in relation to the customer service it has provided him over the course of this dispute. However it hasn't refunded Mr P for the jewellery transaction itself as it has considered its obligations under S75 of the Consumer Credit Act 1974 and said it's not persuaded that a breach of contract has been made out regarding the transaction for the jewellery. So Mr P brought his complaint to this service.

Our Investigator felt BOS didn't have to do anymore. So Mr P asked for an Ombudsman's decision. In March 2024 I issued a provisional decision upholding Mr P's complaint and saying BOS must refund Mr P £10,450 plus 8% interest from when it declined his claim to it until when it settles the matter and that Mr P must provide the jewellery to BOS. Both BOS and Mr P have acknowledged receipt of my decision and commented on it.

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.

Having considered the responses from BOS and Mr P I see no reason to deviate from the position set out in my provisional decision and below. I shall comment on those responses towards the end of this decision.

I should make very clear that this decision is not about the Jewellers, who aren't financial services providers and don't fall within my remit regarding Section 75 of the Consumer Credit Act 1974 ('s75' and 'CCA' for short). Whatever the issues there maybe with the Jewellers and just because Mr P says he has lost out here, it doesn't necessarily follow that

BOS has treated Mr P unfairly or that it should refund him. And this decision is solely about how BOS treated Mr P.

I'll also be referring to Mr P as the purchaser and this being his complaint as it was his credit card account which was used to fund the transaction. I do however appreciate that Mrs P was present at the purchase and has had plenty of involvement in this matter. Nevertheless she isn't the account holder here.

Section 75 says, in essence, that as long as certain qualifying criteria are met then BOS can be held to a 'like claim' as to that which Mr P has against the Jewellers. I am satisfied that the qualifying criteria are met here (financial limits and the DCS agreement) which then means BOS has to consider whether the Jewellers misrepresented the sale to him or whether it breached the sale with him (or both). And if the Jewellers did those things (breach or misrepresentation) whether there is anything to be done by BOS to remedy that.

It has been confirmed that the Jewellery purchased is genuine jewellery in line with what Mr P believed he was purchasing. So I'm satisfied that the jewellery are of satisfactory quality. And Mr P doesn't dispute that he made the transaction on his credit card or that it was improperly or incorrectly applied to his account.

Mr P's main argument here is that he had a fourteen day cooling off period in which he had the option of returning the jewellery for any reason and would thus receive a refund. And he argues he sought to exercise that option and wasn't allowed to, and accordingly he argues under S75 BOS should be responsible for the 'like claim' and thus should refund him in return for the jewellery. Mr P has made this argument in a number of forms over the period of this dispute but as I've articulated it here is the nub of the issue. And Mr P points to Mrs P's legal expertise to support this position and that the law isn't being fairly applied here by either BOS or indeed our Investigator.

Mr P doesn't specifically quote 'chapter and verse' (as it were) of the legislation he seeks to rely upon. Clearly he's referring to the 14-day right to cancel as set out in the Consumer Contracts (Information, Cancellation and Additional Charges Regulations 2013 (the "CCR's"). Where the CCR's apply they afford consumers extra protections to any that may be in the actual sales contract. And for the 14-day cancellation right to apply under the Consumer Contracts Regulations certain conditions must be met.

The purchaser must have made the purchase in the capacity of a 'consumer.' I'm satisfied this is met in this case. The CCR's also only apply to "off-premises" sales, and "distance" sales. I will not set out the full definitions of these here, but to summarise briefly, an off-premises sale is a sale which takes place in person, but not at the supplier's business premises, which is also relevant here.

Regulation 29 of the CCR's says in essence that the consumer may cancel a distance or off-premises contract at any time in the cancellation period without giving any reason. It is clear from the text messages Mr P has provided he sought to exercise this right with the jewellers. Regulation 33 says the cancellation ends the obligations of the parties to perform the contract, and Regulation 34 says that the trader must reimburse all payments, other than payments for delivery, received from the consumer. And clearly Mr P sought to return the goods in return for a refund and there are no delivery charges applicable in what happened here.

BOS should note that the CCRs do not say that a consumer can waive their cancellation rights for a sales contract, which is what Mr P's contract was. Additionally, guidance issued by what was then the Department of Business, Innovation and Skills in 2013 confirms Mr P could not waive his right to cancel by agreeing something else with a Jewellers, so I think it's

immaterial whether he did or didn't acknowledge he couldn't return the jewellery during either conversations or messages with the Jewellers. The evidence shows that Mr P did try to cancel before the 14 days allowed under the CCRs expired, so in my view he validly exercised his right to cancel.

The Jewellers refused to accept Mr P's valid exercise of his cancellation rights. From what I can see these rights weren't written into his specific sales contract with the Jewellers, so it wasn't a breach of the sales contract here when the Jewellers refused Mr P's cancellation. However regulation 33 of the CCRs ("Effect of withdrawal or cancellation") says the following:

*"(1) If a contract is cancelled under regulation 29(1)—
(a) the cancellation ends the obligations of the parties to perform the contract, and
(b) regulations 34 to 38 apply.
..."*

Regulation 34 ("Reimbursement by trader in the event of withdrawal or cancellation") then goes on to say:

"(13) Where the provisions of this regulation apply to cancellation of a contract, the contract is to be treated as including those provisions as terms."

Subsection 13 is especially relevant to Mr P's case because its effect is to make it a term of his contract with the Jewellers that if he validly exercises his cancellation rights, the Jewellers must give him a refund (subject to deductions which can be made in specific circumstances). Therefore by refusing to refund Mr P when he cancelled the contract, the Jewellers were in breach of contract. And under S75 BOS is thus liable to a 'like claim' as the Jewellers. This decision considers whether BOS fairly handled Mr P's 'like claim' to it. And it is my current thinking that, for the above reasons, it hasn't.

Mr P paid a total of £10,450 for the jewellery which was made up of a payment of £7750 on his BOS credit card the remainder was made up of exchanged jewellery. It seems unlikely that the Jewellers over-paid for the exchanged jewellery and we've established that the purchased jewellery was genuine. So to remedy the matter Mr P sought a refund in return for returning the jewellery. Accordingly Mr P must provide BOS with the Jewellery purchased and in return BOS must refund Mr £10,450 plus 8% interest from when it declined his claim to it until when it settles the matter. (As BOS knows it is liable for the contract amount not just that amount it funded through the card).

BOS says it has awarded Mr P a total of £265 in relation to the customer service it has provided him over the course of this dispute. Considering what happened I think that is fair. Mr P may seek more here but he should note that I've applied our standard interest here, so he is recompensed for his loss of use of the money he should have received had BOS got this claim correct when it should have done.

Responses to my provisional decision

There has not been any persuasive arguments from either party around my reasoning for my decision to uphold this complaint. There has been comment from both BOS and Mr P around the practicalities of the sale and or return of the jewellery. The upshot of this is that Mr P has indicated he can sell the jewellery. BOS has agreed to refund the difference between the sale value and the £10,450 plus 8% interest from when it declined his claim to it until when it settles the matter once it receives the sale receipt from Mr P.

Putting things right

So BOS must refund the difference between the sale value of the jewellery and £10,450 plus 8% interest from when it declined his claim to it until when it settles the matter, once it receives the Jewellery sale receipt from Mr P.

My final decision

I uphold this complaint about Bank of Scotland plc trading as Halifax and direct it to remedy the matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 31 May 2024.

Rod Glyn-Thomas
Ombudsman