

The complaint

Mr A complains that Bank of Scotland plc will not pay his claim after he bought counterfeit goods through an online marketplace. The bank operates in this case under its Halifax brand.

What happened

In October 2023 Mr A bought a pair of designer trainers through an online marketplace, which I'll call "E". He paid £468 using his Halifax credit card.

Mr A says that, when he received the trainers, he noticed that they were counterfeit. He returned them to the seller and asked for a refund. The seller said however that they had supplied genuine goods and sent the trainers back to Mr A.

E's own dispute resolution service did not support Mr A's claim for a refund, so he referred the matter to Halifax.

Halifax made a chargeback claim, but E defended it. It said that the trainers that Mr A had bought had been inspected by its independent verification team, and that team was satisfied they were genuine. The shoes which Mr A had sent back had also been inspected. The verification team had concluded that they were not the same shoes which Mr A had bought.

Halifax therefore sought further evidence from Mr A to show that he had received counterfeit goods. He did not provide any further evidence, and so Halifax decided it could not pursue a chargeback claim any further.

Halifax also declined to consider a claim under section 75 of the Consumer Credit Act 1975 ("section 75"). It said that, in the absence of further evidence, it was unable to do so.

Mr A referred the matter to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld, so Mr A asked that an ombudsman review the case.

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

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Halifax) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if

necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback can be an appropriate method of resolving disputes where goods are not delivered, where they do not meet their description, or where counterfeit goods are supplied.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

Since Mr A said that the trainers he bought were counterfeit, I believe it was appropriate to pursue a chargeback claim in this case. However, that claim was defended by the seller. It therefore fell to Halifax to provide further evidence if it wanted to pursue the matter further. Mr A was unable to provide evidence which might have assisted his case – for example, evidence of him opening the package he received or an independent report on the shoes which were originally delivered to him.

In the circumstances, I think that Halifax was entitled to take the view that it should not pursue the chargeback claim any further than it already had. That was a reasonable conclusion to reach.

Section 75

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

In this case, because the sale was made through E, Mr A did not pay the seller directly. Halifax has not suggested that the necessary links between it, Mr A and the seller were not present. I have therefore approached this case on the basis that they were and that there is potential for a section 75 claim to be made. I have therefore considered Mr A's claim that he was supplied with counterfeit goods by the seller.

In support of his claim, Mr A has provided photographs of the shoes he says he received and pointed out the indications that they were not genuine. They include poor workmanship, the wrong sizing, logos which do not match, and a QR code which guaranteed authenticity (and which is designed so that it can't be removed, showing he returned the shoes he received).

I should clarify that I don't believe it was enough that Mr A was provided with a pair of trainers which looked like the genuine article and which were of satisfactory quality. His contract was for the supply of genuine trainers, not a good copy or a convincing counterfeit. So the issue is whether that is what he received.

The best evidence of what Mr A received from the seller (and indeed what he sent back) is, in my view, the evidence of E's independent authenticators. E's Authenticity Guarantee facilitates a physical inspection by experts of certain types of goods before they are sent to the buyer or returned to the seller. Those experts are clearly better placed than Halifax is (or than I am) to assess the items sent to Mr A. They are both experts and are able to inspect the actual goods, not just photographs.

Mr A has said that E's authenticators are not genuinely independent, because they are engaged by E. Their role is not, however, to authenticate goods sold by E; it's to inspect and,

where appropriate, to authenticate goods sold on E's platform by the sellers who use it. Mr A's underlying dispute here is, in reality, with the seller, not with E.

I cannot of course rule out the possibility that the authenticators in this case made an error, but I reiterate that theirs is the best evidence available. Given their conclusion that the goods sent to Mr A were genuine and that the goods returned by him were (i) not genuine and (ii) not the goods they had inspected when sold, I think it was reasonable of Halifax not to meet the section 75 claim.

It is not for me to say whether Mr A does in fact have a claim against the seller – or indeed, E. Nor is it for me to decide whether he has a claim against Halifax under section 75. What I must do is decide what I consider to be a fair resolution of Mr A's complaint about Halifax's decision not to meet his claim. In the circumstances, however, I think it was reasonable of Halifax to decline Mr A's claim under section 75.

Other matters

Mr A says too that Halifax did not explain the process as well as it should have done. Having reviewed what it told Mr A, I can see that the bank did indicate that he only had a very limited period in which to submit further evidence. That was true of the chargeback claim, but not of a claim under section 75. I think Halifax could have explained that better than it did, but I do not believe that Mr A's overall position has suffered as a result, or that Halifax's handling of matters warrants an award of compensation.

My final decision

For these reasons, my final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 February 2025.

Mike Ingram
Ombudsman