DRN-4932135

The complaint

Miss B is unhappy with the way Bank of Scotland plc trading as Halifax dealt with her claim for recovery of money she paid towards the purchase of a caravan. The purchase was made together with her partner Mr F, who has assisted Miss B in bringing this complaint.

For ease of reading I've referred to all claim correspondence as being from Miss B, including that submitted by Mr F on her behalf.

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

> *"**What happened***
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> *Miss B and Mr F bought a caravan and motor mover from a trader "S", paying the total cost of £14,900 through a combination of bank transfer and Miss B's Halifax credit card. The caravan was described as a "damaged repaired model". Several months after purchase Miss B became aware that the caravan was classed as a 'Category N' insurance write-off.*
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> *She complained to S that the caravan had been mis-sold, believing S was legally obliged to provide this information. S said it was not obliged to describe the caravan as such, and that it was sufficient to have described the caravan as it did. S gave Miss B an assessor's report setting out the caravan's condition, though I understand she didn't get this before the sale.*
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> *Dissatisfied with S's response Miss B contacted Halifax to see if it could assist. The bank said it could look at a claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974. Miss B obtained a statement from an independent dealer that indicated the caravan would be of much lower value as a Category N write-off.*
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> *However, Halifax declined to consider Miss B's claim, saying that the way the transaction arrangements were structured took it outside the scope of section 75. Specifically, the bank said the contract with S wasn't in Miss B's name, and the amount paid on the credit card was for the motor mover rather than the caravan.*
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> *Miss B complained to Halifax, but the bank's position was unchanged. She referred her complaint to us. Our investigator didn't think Halifax was right in its interpretation of the contract arrangements, and that the purchase was a single contract that was more properly construed as including Miss B.*

The investigator further considered that S hadn't met its legal obligations in the way it had described the caravan. She didn't think that met the definition of misrepresentation, but expressed the view that there had been a breach of contract by S, on the basis that the contract included an implied term that the seller would act with due care and skill. To settle the dispute our investigator proposed that Halifax allow Miss B to reject the caravan and receive a full refund with interest. She also recommended compensation of £100 to reflect Miss B's distress and inconvenience due to the way Halifax dealt with the claim.

Halifax didn't agree with the investigator's conclusions. It accepted Miss B should be treated as a party to the arrangements. But the bank maintained its position that the payment made by credit card was for the motor mover and not the caravan, and that these were separate contracts. Halifax asked for this review, as it's entitled to do under our rules.

What I've provisionally 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.

Halifax isn't automatically obliged to reimburse Miss B simply because it acted as her card issuer. Instead, there are two ways in which Halifax might incur a liability to Miss B. Either directly, for breach of contract or misrepresentation under the provisions of section 75. Or indirectly because its actions – for example, if it failed to raise a valid chargeback claim – caused Miss B loss that it would be reasonable to expect the bank to reimburse.

Chargeback

Halifax didn't comment on whether it could pursue recovery from S by means of chargeback. However, I'm conscious that while the card scheme rules provide for a chargeback claim to be raised in circumstances where goods or services are not as described or were in some way defective, that isn't quite what is being asserted in this case. Further, the card scheme rules set a timescale in which a claim must be raised, and any potentially relevant timescale had long passed by the time Miss B raised her concerns with Halifax. So I don't propose to examine the bank's actions further in this respect.

Does section 75 apply to the arrangements between the parties?

Because Miss B used her credit card in the transaction, there is the possibility that section 75 applies to the purchase arrangements. One effect of section 75 is that, where an individual (the debtor) buys goods from a supplier using credit provided under pre-existing arrangements between the lender (creditor) and the supplier, that individual can bring a claim for breach of contract or misrepresentation against the lender in the same way he could against the supplier.

It appears to be accepted that Miss B participated in and intended to derive a benefit from the arrangements. Even if Mr F negotiated the purchase with S, there is sufficient evidence to support a conclusion that the arrangements were made under a debtor-creditor-supplier agreement whereby Miss B is the debtor, S the supplier, and Halifax the provider of credit.

This no longer appears to be disputed by Halifax. The issue it challenges is whether the purchase of the caravan and the motor mover were two separate contracts, with the

credit card being used only to fund the latter transaction. If Halifax is correct on this point, then any claim Miss B might look to make in relation to the caravan purchase can't be brought against the bank.

The invoices S provided seek to distinguish between the purchase of the caravan and the motor mover. While I note Miss B's concern, I don't consider that was done by S to give a false impression that the credit card payment was made specifically for the motor mover. There would be no material purpose to S in doing so.

But equally, I don't consider it to be conclusive evidence that the payment Miss B made was intended to be treated as separate and distinct from the rest of the money transferred on the same day to complete the purchase of both items. I note that in the initial exchange with S on 22 June 2022, S ventured that it could fit the motor mover at an additional cost of £400. That suggests to me that this aspect was incorporated into a contract to supply the caravan with a fitted motor mover, rather than being two separate contracts.

In my view then, a reasonable interpretation of the arrangements is that Miss B was party to a transaction with S under which S agreed to supply a caravan and motor mower for the total sum of £14,900, some of which was funded by the use of her credit card. I intend to find that the necessary arrangements were in place and the transaction was within the specified financial limits such that Halifax erred in saying that section 75 didn't apply to it.

But that isn't the end of the matter. It doesn't necessarily follow that Halifax is liable to Miss B. Section 75 also requires that Miss B has a claim against S for misrepresentation or breach of contract.

Misrepresentation

As our investigator explained, in law misrepresentation is a false statement of fact or law made by one party to the other that induces the latter to enter into a contract and incur loss. From my reading of the evidence, Miss B didn't have any direct contact with S prior to the contract being formed. Further, it hasn't been suggested here that S made a false statement about the caravan.

For example, S didn't say that the caravan hadn't been subject to an insurance claim or write-off. The fact that S didn't say something is unlikely to be viewed as a false statement of fact. Had Miss B asked S about the damage and repair and been assured that there had never been any, the position might be different. However, Miss B hasn't at any point suggested this is what happened, and so I can't see a situation in which Halifax might be liable to her in misrepresentation.

Breach of contract

The investigator mentioned in her assessment that there are certain matters that can become contractual terms due to relevant legislation, and that the non-disclosure of the category N status suggests a breach of an implied term that S act with reasonable care and skill. I'm also conscious that Miss B's submissions include the assertion that there is a legal obligation to disclose category N status.

I'm not sure the investigator's reasoning is entirely correct in the context of this complaint. The contract in this case was for goods, but it is to contracts for services that the Consumer Rights Act 2015 ("CRA") incorporates a term requiring exercise of

reasonable care and skill applies. I can't infer from the CRA that such a term applies to a contract for goods.

The Consumer Protection from Unfair Trading Regulations 2008 ("CPR") prohibit certain practices that have the effect of misleading consumers, including misleading omissions[1]. Government guidance issued at the time the CPR came into effect[2] says a misleading omission can occur when – depending on context – a trader's practices omit or hide material information, or provide it in an unclear, unintelligible, ambiguous or untimely manner and the average consumer takes, or is likely to take, a different decision as a result.

While not directly applicable to the sale of caravans, it's worth noting that the Chartered Trading Standards Institute ("CTSI") published its own guidance[3] to car traders on compliance with the CPR. Within the examples that guidance gives about information to be provided to the consumer before the sale is:

- *"Any problems or issues [the trader is], or ought to be, aware of, after taking all reasonable steps – for example:*
    - *if the vehicle has been written off as an insurance loss or has suffered [more than minor and rectified] accident damage…"*

For the purposes of meeting the requirements of the CPR, I don't think it's of key importance that a caravan isn't classed as a vehicle. I consider the key point to be that an insurance write off is likely to be important or material information that might affect an average consumer's decision about whether to buy. I see no reason to think that this should not apply to an insurance write off on a caravan.

If so, then omitting to mention this material information in the course of selling the caravan to Miss B might mean S falls foul of the CPR requirements. But a failure to meet the CPR requirements doesn't equate to a breach of contract. There's nothing in the CPR that incorporates its requirements as contractual terms as there is in, for example, the CRA. Because section 75 only enables a claim in misrepresentation or breach of contract, Miss B wouldn't have a claim against Halifax on the basis that S failed to meet the CPR requirements.

S did consider it important to inform Miss B that the caravan was damaged but repaired, and it was open to Miss B to make further enquiry as to the extent of the original damage. The assessor's report, however belatedly it arrived, indicates the caravan had been repaired to a good standard and was not defective. Taking into account factors such as the price, condition, and fitness for purpose as set out in the CRA, I'm not persuaded that the caravan failed to meet the test of satisfactory quality. While I don't doubt that Miss B is aggrieved by what she believes to be unfair sales practices on the part of S, I'm not currently minded to conclude that this makes Halifax liable to her.

As such, I'm not currently persuaded that there is a basis for Miss B to have a breach of contract claim against S (and, by extension, against Halifax). It's possible that she could formulate such a claim, and that the issue might yet fall to be decided by a court of law.

Summary and proposed resolution

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[1] Regulation 6 of the Consumer Protection from Unfair Trading Regulations 2008
[2] See OFT and BERR Guidance on the UK Regulations (May 2008) implementing the Unfair Commercial Practices Directive
[3] https://www.businesscompanion.info/focus/car-traders-and-consumer-law/part-1-consumer-protection-from-unfair-trading-regulations

My role here is to take a view on the way that Halifax dealt with Miss B's claim. I'm not minded to find that the bank's response to Miss B shows that it had sufficient regard for its potential liability towards her. I consider that dealing with the matter appropriately would have meant Halifax would have given her a different answer in terms of the application of section 75. That it did not has caused her some degree of unnecessary inconvenience, and I propose to award her £200 in recognition of this. But in light of my above findings, I can't fairly require Halifax to accept liability for the caravan sale, and so I don't intend to make any award for loss being claimed as a result of that sale.

Of course, that doesn't mean Halifax could take as long as it liked to respond to the claim. I'd expect it to receive and respond to a claim in a timely way, without unnecessary delay. From the records I've seen, Halifax received Miss B's claim at the end of July, issuing its response to the claim in early November – an overall timescale of 14 weeks. Although I appreciate Miss B wanted a quicker response, I don't consider that timescale indicative of undue delay on the part of Halifax in replying to a legal claim."

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Responses to my provisional decision

Halifax said it had no further comments to make. Miss B made some further submissions that she felt went further in demonstrating a lack of due care and breach of contract on the part of S over a failure to record information about the repair on the Central Registration and Identification Scheme ("CRiS") database, which could have affected an insurance claim if she'd needed to make one. Miss B also provided extracts from the legislation referenced in my provisional decision that she believes demonstrate that S's actions failed to meet appropriate standards and consumer law requirements.

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.

As I said in my provisional decision, I've no doubt that Miss B feels very strongly about what she perceives to be significant shortcomings on S's part. Some of the points she makes might enable her to take action against S. If she intends to do so, she can take independent legal advice.

But I'm not dealing here with the dispute between Miss B and S. I'm looking at how Halifax responded to Miss B and her potential section 75 claim against it. S isn't subject to my jurisdiction. Further, having grounds for dissatisfaction with S doesn't automatically enable Miss B to bring a claim against Halifax. I can only reiterate what I've previously noted on this point, which is that section 75 only provides that Miss B can bring a like claim against Halifax that she might have against S on the basis of misrepresentation or breach of contract. Although I appreciate the consideration Miss B's given to certain provisions of the CRA, she hasn't demonstrated that anything S told her amounts to a misrepresentation or a statement about the characteristics of the caravan that could be shown to have been incorrect or misleading, such that it would amount to a breach of contract. It told her the caravan had been damaged and repaired, and she acquired it with this knowledge.

In addition, while I can see the point that Miss B is making about recording information on the CRiS database, I've not seen anything that suggests that doing so forms part of S's contractual obligations towards her. Even if S had a duty to do this because of some

professional standard or other obligation, and could be shown to have been negligent by failing in that duty, it hasn't been demonstrated how that makes Halifax liable to Miss B.

I've carefully considered all of the evidence in this case and Miss B's response to my provisional decision. Having done so, I don't find that her submissions persuade me to reach a different conclusion from the findings and redress proposal I set out in my provisional decision, and so I adopt them in full into this final decision. But for the avoidance of any doubt, nothing I've said here is intended to prevent Miss B from pursuing any action she might wish to take against S.

My final decision

For the reasons set out here and in my provisional decision, my final decision is that to settle this complaint, Bank of Scotland plc trading as Halifax must pay Miss B £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 23 August 2024.

Niall Taylor
Ombudsman