

The complaint

Mr P has complained about the way Bank of Scotland plc trading as Halifax ("Halifax") responded to claims he'd made under section 75 ("s.75") of the Consumer Credit Act 1974 ("the CCA").

What happened

Mr P paid money by credit card to pay for a heat pump installation to a supplier I'll call "S". Mr P was obliged to complete some preparatory work before the installation could be done. Mr P thought he'd done that and S thought he hadn't. S withdrew from the installation and repaid Mr P the money he'd paid for the installation. Mr P is seeking to reclaim from Halifax the money he paid to do the preparatory work and other consequential losses.

Halifax sent a final response letter and noted Mr P had been reimbursed the sum he had paid for the heat pump to be installed by S for the failed installation. And they said they didn't accept liability for the consequential loss since the preparation work could be used if Mr P chose to go ahead at a later date with another business. Mr P disagreed and had already brought his complaint to this service.

Mr P's complaint was considered by an Investigator. In summary they thought that S had already made a full refund to Mr P and that Halifax had not been unfair in not offering to pay redress for any consequential losses. Our investigator didn't recommend that complaint be upheld.

Mr P was disappointed with that assessment and as things weren't resolved, the complaint 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr P and Halifax that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Having considered all the submissions in this case, I have reached the same view of the case as our Investigator and for largely the same reasons. I'll explain why I say that.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Section 75 of the CCA says that in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Section 56 of the CCA is also relevant because it says that any negotiations between the borrower and the supplier are deemed to have been conducted by the supplier as an agent of the credit provider.

We can consider complaints about how credit providers have responded to section 75 claims. So, that's what I'm looking at in this decision.

There is no dispute that the heat pump was not installed by S or that they refunded the money Mr P had paid for that. So, I have nothing more to say about that part of the claim.

But Mr P is entitled to seek redress for consequential losses as a result of the contract not being completed. So, I must make a finding on whether there was a breach of contract or a problem with the negotiations that S can be held liable for. And if there was, is Halifax liable to pay Mr P for any losses or compensation.

I have noted that S and Mr P have conflicting accounts of what happened to cause S to withdraw from the contract. I have been presented with a lot of evidence from both parties in this case. I have read it all. But I have seen insufficient evidence to show that it was exclusively S's fault that the installation didn't go ahead. And because of that, I am unable to uphold Mr P's complaint and to award him a refund for any consequential losses. I'll explain why I say so.

The initial design appears to have been agreed to by both parties and then changed. Both parties blame the other for the need for a change. It is also possible that blame is not appropriate if an agreement for the plan to change was agreed to by both parties, as seems to be the case here.

But both designs placed an onus on Mr P to get pre installation work completed before the installation could go ahead. It is clear that S thought this work had not been carried out to the agreed standard and called off the installation and refunded the cost of the heat pump and the installation cost to Mr P.

The heat pump was to be located outside the property and Mr P was to prepare some pipework between the heat pump's position and into the home. I've noted that S claimed that the pipework and duct were not properly run to the boiler area and finished in a space under the kitchen. The design I have seen suggests that should have been the case. Although the wording of the contract is less specific. Which is unhelpful as this is the only evidence I have about what was supposed to happen, apart from the testimony of Mr P and S, who disagree.

I've also considered that the pipework was run into a void space under the kitchen floor. S have claimed this meant that Mr P had failed to ensure that all work areas were accessible for the installers, as the space was too cramped. And this was a stipulation of pre installation work in the contract.

Mr P claims that the two designs were at fault for this. S claim Mr P changed his mind about where the heat pump was to be installed and then failed to do the preparatory work to a suitable standard. Both claim the other party was responsible for the breach of contract.

I'm not pretending this is easy to decide. And I have only the accounts of the two parties to consider. I have no evidence such as an independent, expert opinion that sets out the situation as things were at the time the installation was cancelled. So, it's hard to know if the pre installation work arranged by Mr P was done correctly.

Having read all of the evidence provided to me, I've not seen enough evidence that Mr P completed the work to the required pre-installation agreed standard. Or that S refused (unreasonably) to complete the contract given Mr P had held up his end of the bargain. And for that reason, I cannot find S at fault for a breach of contract such as to make Halifax liable under s.75 for payment of Mr P's consequential losses claim. And so, I do not think Halifax were unfair in the way they handled Mr P's claim.

In passing, I note that Mr P chose to pay for some of the installation through the boiler upgrade scheme. That scheme had criteria that needed to be met before the £5,000 grant would be paid. One of things that Mr P wanted refunded was the cost of improving insulation to his home to qualify for that grant. By choosing to partly fund the installation through that grant, Mr P was accepting ultimately that this home improvement would need to be met for him to meet that grant's criteria. That cost was not strictly part of his contract with S. And so even had I upheld Mr P's complaint, I would not have ordered a refund for that work.

Mr P also replaced his radiators. Although it was mentioned as desirable, it was not one of the criteria of the contract with S. As such, I would not have looked to award payment for the insulation or the radiators had I reached a different outcome. But hopefully Mr P has had some benefits from better home insulation and better performance from his radiators.

I've read the whole file, so I know there were other items that Mr P wanted to be remunerated for. But as I've found that I can't hold S responsible for the breach of contract, I am not making an award for them. And I don't feel the need to name each of them.

Summary

Overall, I do not think I have seen sufficient evidence to think S were at fault for a breach of contract such as to make Halifax liable under s.75 for payment of Mr P's consequential losses claim. And so, I do not think Halifax were unfair in the way they handled Mr P's claim.

I know this will be a disappointment to Mr P who has put time and energy into his complaint. But our consideration is not a barrier to him pursuing this through the courts should he want to do so.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 May 2025.

Douglas Sayers
Ombudsman