

The complaint

Mrs G complains that Bank of Scotland plc trading as Halifax (“Halifax”) unfairly declined her claim under the Consumer Credit Act 1974 (“CCA”) in relation to a purchase deposit she paid using her Halifax credit card.

What happened

On 14 March 2017, Mrs G (together with her husband – Mr G) met with a representative of a business (the “Supplier”). During that meeting it was agreed that a “*Lodge Partnership*” would be purchased from the Supplier for an agreed price of £27,410. The “*Lodge Partnership*” was purchased in Mr G’s sole name and Mrs G paid a deposit of £2,000 using a Halifax credit card in her sole name.

On 27 March 2023, Mr and Mrs G submitted a claim to Halifax under Section 75 of the CCA (“S75”). They explained in detail the circumstances that led to the purchase of the “*Lodge Partnership*” alleging that the Supplier had misrepresented it to them. Mr and Mrs G say it was the Supplier’s misrepresentations that persuaded them to agree to the purchase. And because the deposit was paid using a credit card provided by Halifax, they held Halifax jointly liable for those misrepresentations under S75.

I don’t propose to detail all of the alleged misrepresentations as the parties to this complaint are already familiar with them. But I will refer to the allegations if I feel it’s helpful to do so.

Mr and Mrs G also alleged that the Supplier failed to provide the benefits associated with the purchase. And since then, the Supplier “*has ceased trading and/or their website has now been shut down*”. Mr and Mrs G allege that the Supplier is not able to fulfil the contract and is in breach of it. They believe Halifax are jointly liable for that breach under S75.

Halifax responded to Mrs G declining the claim under S75. They said they weren’t satisfied that a breach of contract and/or misrepresentation had taken place, and Mrs G’s claim exceeded the timescales in which to bring such a claim. So, Mrs G submitted further evidence for consideration in support of her claim whereupon Halifax agreed to reconsider their response subject to sight of various other documents.

Having not received any further response to her claim, Mrs G wrote to Halifax again on at least two further occasions. Having reconsidered Mrs G’s S75 claim, Halifax found that the purchase had been made in Mr G’s name only. And because Mrs G wasn’t a beneficiary of the purchase, they didn’t think S75 applied. However, Halifax did agree that their lack of response to communications constituted poor service. So, they apologised and paid £60 for any inconvenience caused.

Mrs G didn’t agree with Halifax’s findings and referred her complaint to this service. One of our investigators considered all the information and evidence available. Having done so, our investigator didn’t think Mrs G’s complaint should be upheld. In particular our investigator thought that under the provisions of the Limitation Act 1980, Mrs G had brought her misrepresentation claim to Halifax too late. Further, our investigator couldn’t find any evidence to support Mrs G’s claim for breach of contract.

Mrs G disagreed with our investigator’s findings and provided further evidence to support her breach of contract claim. But our investigator’s wasn’t persuaded to change their view of Mrs

G's complaint. Mrs G asked that her complaint be passed to an ombudsman, so it was passed to me to look into.

Having done that, I was inclined to reach the same outcome as our investigator but for different reasons. So, I issued a provisional decision ("PD") on 20 August 2024 giving Mrs G and Halifax the opportunity to respond to my findings before I reach a final decision.

Halifax responded to my PD confirming their agreement to my findings. Mrs G didn't agree with the findings in my PD and provided further comments and evidence to support why she thought her complaint should be upheld. So, her complaint was passed back to me to consider further in light of the additional information provided.

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.

For completeness, I repeat my findings from my PD as follows:

Relevant Considerations

When considering what's fair and reasonable, DISP 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means 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 was good industry practice at the relevant time.

S75 provides protection for consumers for goods or services bought using credit. Mrs G paid, in part, for the purchase with a credit card issued by Halifax. So, it's therefore possible that S75 applies here. This means that Mrs G could be afforded the protection offered to borrowers like her under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe Halifax's treatment of Mrs G's claim was fair and reasonable given all the evidence and information available. This service is not afforded powers to decide a legal claim. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

The deposit payment of £2,000 was paid using a credit card in Mrs G's sole name. So, Mrs G is the only eligible claimant under S75 and, as a consequence, the only eligible complainant.

Was there the correct debtor-creditor-supplier agreement?

In order for S75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement ("DCS") between the parties. There's a formal explanation of this in section 12 of the Consumer Credit Act 1974 ('CCA') which is available to view online.

In simple terms, this means there needs to be:

- A debtor (Mrs G) – the person who has an obligation to make repayments to the creditor under the credit agreement;
- A creditor (Halifax) – the credit provider who pays the supplier for the goods or service purchased on behalf of the debtor;
- A supplier (Supplier) – the party who provides the goods or services and receives payment from the credit provider.

A debtor-creditor-supplier agreement isn't a separate written contract. A credit agreement becomes a debtor-creditor-supplier agreement because of the way the arrangements between the parties are structured.

The documentation from the time of the purchase is in Mr G's sole name rather than Mrs G's, albeit the deposit was paid by her. So, I've also considered the credit agreement between Mrs G and Halifax. This is in Mrs G's sole name and doesn't include Mr G as a party. So, whilst Mrs G appears to have used her Halifax credit card, I haven't seen any evidence to show that she had any contractual agreement with the Supplier such that Halifax could be held liable for a breach of that agreement. Furthermore, as the evidence shows that Mrs G wasn't a party to the contract, I can't reasonably conclude that she suffered any loss as a result of any alleged misrepresentations such that Halifax could be held liable for it.

In a letter to Halifax, Mr and Mrs G said they believe the purchase (in Mr G's name) and payment (using Mrs G's credit card) should be considered as "*funds from a socioeconomic unit*", thus satisfying the requirements of Section 12 of the CCA ("S12"). There are circumstances where that may be the case. Usually where it's clear that both parties (whilst not necessarily named) are the ultimate beneficiaries of what was purchased. In this case, what was purchased appears to be a defined share under a Limited Partnership Agreement. But that share is in Mr G's name only with no suggestion that Mrs B was a beneficiary. I've thought very carefully about what Mr and Mrs G have said. Having done so, I don't think the evidence provided supports their argument here.

Mrs G's response to my PD

Mrs G says that when she and her husband met with the Supplier, they both signed a document which confirmed they would both be shown products at a meeting on 15 March 2017, including those associated with the Lodge Partnership that was purchased. Mrs G has provided a copy of that document which was indeed signed by both of them. It appears to be a form of non-disclosure agreement in relation to the discussions during that meeting.

Based upon this document, I'm persuaded that they both attended that meeting. However, the document only makes reference to the product and services discussed during that meeting and an agreement not to disclose any of those details to any other party. Given Mrs G attended that meeting, I would expect her to have been asked to sign such a document (if required), whether or not she was to be a party to any subsequent contractual relationship. And I can't see that the document creates a contractual relationship outside of that non-disclosure agreement. And certainly not one created as a consequence of a payment for any service or a product.

Mrs G has also provided a copy of a further document which appears to provide details of a product discussed at that meeting. She stresses that the document only had space for one name – that of her husband – which is why her name wasn't included. I agree there only appears to be space for one name. But equally, I'm not persuaded that this provides sufficient evidence to show that Mrs G was a party to any purchase contract.

Mrs G has provided further evidence to support the payment she made using her Halifax credit card. She has provided details showing how a balancing payment of £22,017 was calculated and a bank statement which demonstrates that a payment for that amount was paid from a separate bank account on 10 August 2017. However, the bank statement doesn't show any details of the account holder. But as I said in my PD, I'm already persuaded that the payment made related to the purchase in her husband's name.

The question here is whether there's sufficient evidence to demonstrate that Mrs G had a contractual relationship with the supplier as a consequence of the payment she made using her Halifax credit card. I do appreciate Mrs G's point of view here. But based upon the evidence available, I can't reasonably conclude that a contractual relationship existed which would give Mrs G a valid claim under S75.. I do understand that Mrs G will be very disappointed, but I'm not persuaded to vary from my provisional findings above.

My final decision

For the reasons set out above, I don't uphold Mrs G's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 3 October 2024.

Dave Morgan
Ombudsman