

The complaint

Ms J complains about the way Bank of Scotland trading as Halifax dealt with a claim she sought to bring against it under section 75 of the Consumer Credit Act 1974 ("section 75")

What happened

In May 2022 Ms J purchased a king size bed from an online retailer (who I'll call "M") at a cost of £1,151.50. The bed had an ottoman function and self-assembly was required. Soon after purchase, Ms J contacted M to let it know she had an issue with the bed. Ms J says she didn't receive assistance from M before it ceased trading in November 2022. So, she took her dispute to Halifax in January 2023 as the purchase had been made on her Halifax credit card.

Halifax first reviewed the dispute under the chargeback scheme but did not progress this as the time in which to raise a chargeback dispute had passed. There were some delays with then considering the dispute under section 75, for which Halifax has offered Ms J £60. Once the dispute was considered under section 75, Halifax said it couldn't consider the claim further as section 75 only applies if you're the beneficiary of the goods in question, and in this case, the goods were for another party.

Ms J, unhappy with this response, brought her complaint to our service. Ms J has told us that she has two main concerns with the bed. The first is that the ottoman function is difficult to operate as it was making a noise and required significant force to open. The second is that the bed slats and more specifically, the spacing between them, caused damage to a mattress.

Our investigator reviewed the complaint and determined that Ms J could bring a claim under section 75 as the correct relationship was in place. Ms J was the one who ordered, paid for and made use of the bed. She had it delivered and used it at her sister's house, but that did not affect her being a party to the contract. However, the investigator didn't think Ms J had lost out by Halifax deciding not to progress her claim, as the investigator didn't think Ms J had provided enough to show there was a breach of contract. Ms J provided numerous pieces of further information; however, our investigators opinion remained the same.

Ms J was unhappy with our investigator's outcomes. She states she reported a fault to M soon after receipt of the bed and so there must've been an issue with it. Ms J asserts that the bed required over-exertion to open and needed to be examined by a technician for the fault with the bed to be made clear. Ms J has said she is certain there have been no issues with her maintenance of the bed, and finally, that the mattress she had was very light compared to reasonable alternatives and could not have caused any damage to the frame. Ms J has now asked for an ombudsman to consider the complaint, so 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.

Ms J and her sister have both been in contact with us and provided information about this complaint, as the bed is at Ms J's sister's house. For ease, I will only refer to Ms J in this decision - this includes when referencing any information supplied by Ms J's sister.

Chargeback

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

In this particular case, Halifax has said that by the time the dispute was brought to it, in accordance with the chargeback scheme rules, the time in which to raise the dispute had passed. As the rules require a dispute to be raised within 120 days of the delivery date of the item (as this was later than the transaction date), I agree that the time in which to raise the dispute had passed. So, I find Halifax treated Ms J fairly in relation to the chargeback.

Section 75

Section 75 of the CCA allows – in certain circumstances – for a creditor (Halifax) to be jointly and severally liable for any claim by the debtor (Ms J) of breach of contract or misrepresentation made by a supplier of goods and/or services (M).

Ms J bought an ottoman bed from M and very soon afterwards she let it know that she was having problems with it. Ms J has been unable to supply a copy of the complaint she raised with M so I cannot see what issue she reported. All we have is an acknowledgement from M in which it asks for some photos so it can see the issues complained of clearly.

The closest indication I have of what might have been complained of is the information first provided to Halifax when Ms J approached it in February 2023 after M ceased trading. Ms J, at this time, said she purchased a bed frame and then ordered a mattress for it, but as the size did not match, she contacted the merchant to return it straight away but was not successful. She was therefore asking for a review by Halifax under section 75 as M had ceased trading.

In and of itself, the information available to me from this time does not indicate that there was an issue with the bed. Rather, it indicates that there was a problem in matching up the size of mattress ordered with the bed and so Ms J wanted to send it back. This does not imply that the good were faulty and therefore that M had breached its contract with Ms J in any way. However, the acknowledgement from M indicates Ms J may've reported more than just this to M. I cannot however confirm what this might've been without the relevant information, and so I cannot expect that Halifax would've been able to either.

Halifax said it didn't think a section 75 claim could be raised as it thought the goods ordered by Ms J were for another party. I agree with the investigator that we can consider this dispute under section 75 as Ms J had purchased the bed and had it delivered to her sister's house for her use there. She was therefore party to the contract (having purchased it) and the goods were for her use (despite its location). So, a claim under section 75 can indeed be made. The result of this is that Halifax only gathered limited information from Ms J about the condition of the bed before declining the claim, and the majority of the evidence has been supplied by Ms J directly to us.

Having reviewed the evidence supplied to date, I am not satisfied that there is sufficient information to successfully establish that the bed was faulty on delivery, and that this means there was a breach of contract that Halifax is responsible for under section 75. So, despite Halifax not having responded correctly to the claim, I don't think it makes a difference to the outcome overall as I don't think the claim would have been successful had Halifax gone on to consider it. I will comment on the evidence supplied in more detail below.

Initially Ms J provided a video in which she was attempting to show us the sounds the bed was making on opening. Ms J also complains of how difficult the ottoman bed was to open and she felt it was dangerous to do so. However, the video is of the bed already open and without any visible movement of the bed itself, two sounds can be heard. But it is not clear where they are coming from, or even that they are coming from the bed. This is therefore not sufficient to show that there is anything wrong with the bed or that a fault is present.

Ms J has also supplied us with a report from an engineer who came to look at the mattress which Ms J says became lumpy and started dipping due to the bed slats. The report does mention that the mattress was placed on a base with slats spaced incorrectly (which would cause the mattress warranty to become void) but also that there were no faults (including no dipping, no signs of lumps or rolling present) in the mattress. This is also not sufficient therefore to show us that there is a fault with the bed. The spacing of slats in this instance is a requirement placed on different mattresses to prolong their life rather than different beds.

Lastly, following views from our investigator, Ms J supplied a further video in which we can see the bed being opened. This video clearly shows an issue with the bed having broken off on one side, leaving the bed base at an angle. It is in a considerably worse condition than the first video which means it has happened a long time after the bed was delivered. This is the first time we have seen any significant issue with the bed. I also note Ms J's sister was to move house and this video potentially may have been sent to us after the bed was dismantled and put together again after the move.

I appreciate Ms J has provided us with testimony about the condition of the bed, and she was asking for it to be looked at by a technician in order to ascertain whether the issues she was describing of the bed being too heavy to open, making sounds, ruining a mattress and eventually breaking due to the significant weight of the bed base were valid. However, the bed was self-assembly and there is nothing to indicate the initial faults experienced (which in any event, have not been evidenced) were not due to a problem with the assembly rather than a fault with the bed itself. There is also inadequate information to support the claim that the condition of the bed in the latter video was due to the bed base being too heavy rather than a problem with how the bed has been put together and cared for.

I appreciate this will be disappointing for Ms J as the bed itself in its current condition cannot be used, and I can see that in the video supplied. However, I do not find that there is sufficient information to show that there was a problem with the bed on supply, which Halifax should take responsibility for.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 28 February 2025.

Vanisha Patel
Ombudsman