

The complaint

Mr V complains that Bank of Scotland Plc, trading as Halifax, won't refund his money in relation to an installation.

What happened

Mr V's credit card account with Bank of Scotland plc, trading as Halifax ('BOS' for short) was used to pay a company (which I'll call 'Firm H') for the service of supplying installation materials

for another company (which I'll call 'HC') to install into Mr V's property for the refit of a boot room. Mr V paid over £8000 to Firm H for this supply of materials which HC installed. Within a few months Mr V noticed a number of issues with the installed materials including issues with moisture and that they appeared not to be solid timber but rather timber on the surface but to actually be chipboard and other materials underneath. Mr V complained to Firm H which

offered to replace some of the units. However this didn't go far enough for Mr V, and after reaching deadlock with Firm H, Mr V took his complaint to BOS. BOS looked into the matter and wouldn't do any more than Firm H had offered. Feeling that to be unfair, Mr V brought his complaint to this service.

Our investigator looked into the matter. Overall, he felt that Mr V hadn't satisfied the requirements to make a claim under Section 75 of the Consumer Credit Act 1974 ('S75' and 'CCA' for short). Accordingly he felt BOS hadn't acted unfairly. Mr V disagreed. So the complaint was passed to me to decide.

I issued a provisional decision dated 06 September 2024 which said I wasn't currently minded to uphold Mr V's complaint and invited both parties to comment. Both parties did comment.

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.

BOS agreed with my provisional decision. Mr V did not and provided further arguments. Unfortunately for Mr V I'm not persuaded by his arguments so his complaint is unsuccessful for the following reasons. I shall address Mr V's responses to my provisional decision towards the end of this decision under the title '*further arguments*'. I shall now set out my rationale as described in my provisional decision save for minor amendments to reflect the final nature of this decision.

I should make it very clear that this decision is not about Firm H. This is because it is not in the jurisdiction of this service for these types of complaints. This decision is solely about what BOS did or didn't do in relation to its obligations in relation to Mr V with regard to chargeback

and S75. And just because Mr V says he's lost out, it isn't necessarily the case that this means that BOS has treated him unfairly.

chargeback

Chargeback is a straightforward dispute resolution process run by the card network (not BOS)

that Mr V's card belongs to. It allows for consumer disputes to be raised with the relevant merchant and them to either accept the dispute or provide its evidence on the matter. If an amicable conclusion cannot be reached, ultimately it's the card network itself which decides the outcome of the chargeback. So it's possible for a card issuer to take the chargeback throughout the whole process and still not be successful having done everything fairly.

Here Mr V accepts he made the transaction on his BOS card. So that wouldn't be something to be disputed. Mr V didn't take this dispute to BOS for a considerable time after Firm H provided the materials to him for installation. The card network has a variety of time limit rules

for chargebacks to be raised within by card issuers. This includes a 120 day time limit from when goods are supplied. Mr V brought the issue of the materials to BOS' attention outside the 120 day time limit set by the network. Accordingly after BOS considered the matter it didn't

take a chargeback forward. Considering the relevant time limit I don't think Mr V has lost out because of this approach taken by BOS. I say this because any such chargeback couldn't have been successful in any event as it was 'out of time'. So I don't think Mr V has lost out due to BOS' approach to chargeback.

The CCA

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

So a business such as BOS can only be held responsible under S75 of the CCA if certain requirements are met and if there is breach of contract or misrepresentation of the contract and Mr V has lost out as a result. Here BOS has pointed to the fact that Mr V paid Firm H but Mr V hasn't been able to establish through evidence that he had a contract with Firm H. Our Investigator contacted Firm H and it confirmed that neither Mr V (or Mrs V) were the named contractor it had a written contract with. It provided copy invoices with the name of the contractor redacted.

I've considered Firm H's website both at the time of sale and now and throughout Firm H has made clear it only deals with 'trade professionals' who buy from it the items needed for installations that those trade professionals then perform. This service has seen other cases involving Firm H and seen that normally the documentation shows the contract is with the installer and the installer has a contract with the consumer wanting the installation they want done (often kitchens and similar installations). It seems clear that Mr V's situation fits the broad experience of this service on such cases with Firm H.

For a debtor to make a S75 claim against a creditor it must be a 'like claim' (as S75 says) to that which he or she could make against the supplier. But here it isn't a like claim. The claim Mr V can make here is only with an installer (such as HC) as he doesn't have a contract with Firm H. Just because Mr V funded the transaction with Firm H (through using credit supplied by BOS) this doesn't automatically make him a party to the contract between Firm H and the unnamed party shown on the redacted invoices which Firm H has confirmed isn't him. Simply funding a transaction doesn't necessarily make someone a contractor to a contract or entitled to represent other parties in a claim on that contract.

I note particularly the recent case of *Cooper v Freedom Travel Group Ltd and another* (t/a Halifax) [2022] EWCA Civ 1557 (25 November 2022) and particularly the comments of Davies LJ who concluded that "*the word 'debtor' in section 75 has a plain and unambiguous meaning, namely the contractual debtor*". I also have considered the High Court case of *Steiner v National Westminster Bank plc* [2022] EWHC 2519 which also considers DCS in detail. Having considered these cases and the other relevant case law carefully in this matter I'm not persuaded that Mr V can make a like claim due to the DCS arrangement not being in place.

Mr V has argued (in essence) that Firm H has done this to reduce its liability to indemnity claims under s75 by banks who provided credit to fund purchases from Firm H. I have no knowledge as to the commercial decisions made by Firm H, other than to say it is entitled to operate commercially as it sees fit (within the law and any relevant regulatory framework applicable). Nevertheless the fact remains BOS wouldn't have any potential liability in this case were it not for the existence of S75. And BOS' only obligation in regard to S75 claims is to treat them fairly in the consideration of the application of S75 and if it applies to consider any breach and misrepresentation fairly. And for this service to uphold a complaint about BOS'

handling of Mr V's S75 claim I have to be persuaded on balance it has acted unfairly. The evidence clearly shows here that Mr V isn't the contractor that Firm H supplied. And for that simple fact alongside the evidence that Firm H clearly contracts with trade professionals as its

normal commercial offering I'm not on balance persuaded that BOS has treated Mr V unfairly.

Mr V points to a decision issued by this service some years ago, which he says is similar to his situation. Firstly this service considers each case on its individual merit and isn't bound by

earlier decisions by this service in any event. I should also add that the case law has moved on significantly in relation to DCS issues since that decision was issued (as I've described). And in any event, having considered BOS' position in this dispute I'm satisfied its approach here hasn't led to Mr V losing out. I should also remind Mr V that to show BOS has treated him unfairly in this regard he has to be able to show that despite not being a party to the contract at the centre of this matter that a court would allow and hear a civil claim made by him against Firm H. He would also have to show not only that but in addition that BOS has somehow erred in its application of the law in this matter. I'm not persuaded he has.

Mr V has also argued that although the contracts may be as I've described that in practice the

reality of the situation was different and he did in real terms have a contract with Firm H. He points to direct interactions with Firm H, his paying Firm H and the goods being supplied and transported to his house by Firm H. Whether or not a court would decide he was actually a party to this contract is only for a court to decide. The important nuance here is he has to show

BOS treated him unfairly (and thus to be successful in this complaint) in its consideration of

the matter, in particular it was wrong to construe the relevant contractors as being those in the invoice that Firm H has provided in evidence (and is also shown through how it says it operates on a commercial basis). As he is bringing this claim to BOS there is an onus for him to make out the claim including making the relevant arguments and evidence to show his position is correct. Similarly BOS is obliged to consider the claim it has received fairly. But Mr V's claim and his subsequent arguments fall substantially short of showing BOS' position on DCS is erroneous at this stage to my mind.

Similarly Mr V says Firm H has set up its commercial offering so as to avoid Consumer Rights (to which I assume he means the Consumer Rights Act 2015 and similar legislation). However Firm H isn't within my remit. This is a complaint about BOS and it is important to note that Mr V has made few persuasive arguments about how BOS has treated him unfairly in this matter. His saying he has lost out and showing BOS has treated him unfairly are not one and the same.

Mr V has supplied comment from HC here on the matter which largely says it's not responsible here and points to Firm H. I appreciate that Mr V feels let down by all parties here, but this evidence doesn't demonstrate BOS' position to be wrong or unfair based on the application of S75.

Further arguments

Mr V has, in essence, repeated arguments he's previously made, and in some cases repackaged the arguments therein. Ultimately he's not raised anything persuasive to my mind. Nevertheless I shall address his comments on my provisional decision for completeness here.

Mr V has provided a letter from an Insurance Brokers which says this matter "should" fall under S75 but doesn't consider my reasoning why DCS is not intact here. It doesn't address the case law I've pointed to and provides no persuasive arguments on the matter. It points to old decisions of this service which is an issue I've already dealt with. It finishes by offering further services to Mr V. This letter falls substantially short of being useful or persuasive on the key issues in this case to my mind.

Mr V points to document from Firm H showing his property to be the delivery address of the goods here. This isn't in contention but along with other evidence he's pointed to previously (and which I addressed in my provisional thinking) this still doesn't demonstrate BOS has treated him unfairly in its consideration of his claim. Mr V has provided some 'cut and paste' basics of contract law but with no persuasive arguments regarding his case to go with this about how BOS has treated him unfairly.

Lastly I should remind Mr V that in my provisional decision and repeated above I made overtly clear that to be successful here he'd have to show how BOS has treated him unfairly. Mr V has failed to really address this key point let alone be persuasive on the matter. There is no dispute that Mr V feels he's lost out but it does not follow that this means BOS has treated him unfairly. I am sorry Mr V finds himself in this position and I appreciate that he feels he's lost out. Nevertheless BOS hasn't acted unfairly and is not to be held liable for the losses Mr V says he's suffered. So in summary it is my decision that this complaint does not succeed for the reasons given.

My final decision

It is my final decision that Mr V's complaint about Bank of Scotland Plc, trading as Halifax is not upheld. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 29 October 2024.

Rod Glyn-Thomas
Ombudsman