

The complaint

Mrs C complains that Bank of Scotland plc (BOS) didn't meet her claim under section 75 Consumer Credit Act 1974 (s.75) in respect of spray foam insulation she paid for using a credit card with it.

What happened

Mrs C purchased spray foam insulation for her loft in March 2022 from a supplier I'll call S at a cost of around £4,176. She paid for this using her BOS credit card.

Mrs C had the spray foam removed in August 2022 at a cost of £4,608. She said she did this as there were stories in the national press, local press and on television, which were discussing some of the issues people were having trying to get equity release or when selling their houses.

Mrs C sent a letter before claim to BOS via a representative (PR) on 22 November 2022 detailing a claim under s.75. This can be summarised as follows:

- The salesman that cold called her falsely represented himself as a 'surveyor' such that from that point she was more inclined to trust what he was telling her.
- The representative failed to tell Mrs C that S was not approved by the manufacturer to sell its products.
- The representative failed to tell Mrs C that she would have a problem getting equity release or selling her property after the installation.
- The representative failed to tell Mrs C that the product would give off a 'foul and repulsive' smell or that it was a flammable product that would give off poisonous and noxious gases if burnt.
- The product was not installed correctly and not in compliance with the British Board of Agrément (BBA) certificate.
- S said it was going to install one product but then installed another, this was both a breach of contract and misrepresentation.
- No terms and conditions were provided.

Mrs C asked for a full refund of all payments made to the supplier, a full refund of all payments made to the company that removed the spray foam and interest on both of these sums.

BOS considered Mrs C's claim but declined to meet it. BOS said there was insufficient evidence to support Mrs C's claim owing to a lack of expert testimony and because the spray foam had now been removed and could not be analysed.

Mrs C complained to BOS about its decision, but BOS re-iterated its position that the evidence did not support a valid s.75 claim. Dissatisfied, Mrs C referred her complaint to this service.

An investigator looked at Mrs C's complaint but didn't think BOS had unfairly declined to meet her claim.

Mrs C disagreed and asked an ombudsman to review her complaint.

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 would like to point out that I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it. It's because I don't think I need to comment on it to reach what I think is a fair outcome.

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 time. I think relevant law in this case includes s.75.

S.75 affords consumers (debtors) a right of recourse against lenders (creditors) that provide the finance for the acquisition of goods or services from third-party merchants (suppliers) if there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against BOS under Section 75 essentially mirrors the claim Mrs C could make against S.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. BOS does not dispute that the relevant conditions are met in this complaint.

I consider that The Consumer Rights Act 2015 (CRA) is also relevant here. This implied terms into Mrs C's contract with S that, amongst other things, the service being provided would be done so with reasonable care and skill and any goods provided would be of satisfactory quality.

I will address the key complaint points set out in the background of this decision.

The salesman that cold called her falsely represented himself as a 'surveyor' such that from that point she was more inclined to trust what he was telling her.

It wouldn't be acceptable for someone to represent themselves as a qualified surveyor when they are not one. However, while I'm certainly not concluding the salesperson was a qualified surveyor, no evidence has been provided showing they were not. The name of the salesman is not clear from the sales paperwork that has been provided so I've no way of verifying who they were or importantly whether they were a qualified surveyor or not.

There is a box on the order that reads 'surveyor' presumably for someone from S to sign. However, this box is not signed. And in any event, I don't think this shows the person that visited Mrs C made out they were a qualified surveyor when that was not true.

The available evidence does not suggest to me that S made a false statement of fact as to his qualifications.

However, even if the sales representative had falsely said he was a qualified surveyor, I'd need to think this was the reason why Mrs C entered into the contract with S – keeping in mind that BOS is only liable under s.75 for breach of contract or misrepresentation. I've not seen anything in Mrs C's testimony that leads me to think it was the salesman's qualifications and not the potential benefits of the product that was the main driver of her decision to purchase spray foam.

From the available evidence I've not seen anything that makes me think BOS should have met Mrs C's s.75 claim on this ground.

The representative failed to tell Mrs C that S was not approved by the manufacturer to sell its products.

PR said that S was not authorised by the company that owned the manufacturer to sell or install the product that the order form said would be installed in Mrs C's home (product A). In support of this it provided a list of 'approved installers' from this company along with a statement that "no other spray foam company has permission to install these products"

The list appears to have come from a website but it's not clear what website and the information has nothing that puts a date on it. So, I don't think it's persuasive evidence that S was not authorised to sell product A at the time of this particular sale.

In any event PR said that S in fact arranged for another product to be installed (product B) and I agree it appears that may have been the case. I'll address this discrepancy in more detail later in this decision. But for now, I note that PR didn't provide anything to show that S was not authorised to install product B.

The representative failed to tell Mrs C that she would have a problem getting equity release or selling her property after the installation

There's no suggestion that Mrs C was planning to sell her house or obtain equity release and she's not said that this came up during her negotiations with S before the sale. It seems unlikely therefore that any statements as to the prospects of obtaining future borrowing secured against the property (good or bad) were made by S.

I recognise that at the time of this particular sale, The Property Care Association (PRA), which describes itself as "*the leading representative organisation for the UK's building protection industry*" had some four months earlier (in November 2021) released observations and recommendations for its members relating to spray foam applied to pitches of existing roofs in domestic buildings. This paper concluded that:

"unless the surveyor understands:

- The constitution of the foam – open or closed cell.*
- The reason for its installation i.e., insulation or prolonging the life of a failed roof.*
- The construction of the roof.*
- If the roof is a cold roof or a warm roof.*
- Ventilation requirements of the roof void.*

Then it is unlikely that it would be possible or reasonable to comment on the condition of the timber roof structures or speculate on risk."

This paper was retracted in October 2022 and replaced with different guidance in March 2023.

Research tells me that following the 2021 paper and before the October 2022 retraction there may have been a reluctance amongst some mortgage lenders and equity release providers in certain situations to lend where spray foam had been fitted on older pitched roofs.

However, I've not been provided with information that suggests all lenders would have refused to lend on this basis. And as I've said, it seems unlikely that Mrs C spoke of any plans to sell or take equity release. So overall, I'm not persuaded that S said or did not say something that amounted to a misrepresentation on its part in respect of this complaint point.

The representative failed to tell Mrs C that the product would give off a 'foul and repulsive' smell or that it was a flammable product that would give off poisonous and noxious gases if burnt

It's possible that S didn't tell Mrs C the above. But that doesn't mean that S breached its contract with her or misrepresented something to her. PR said that a failure to disclose this information meant that S didn't provide all the key information Mrs C needed to make an informed decision on whether to proceed. I'm not an expert on what might happen to spray foam if it is burnt although I have seen commentary from and on the industry which does suggest that it might pose a health risk.

But there's no evidence that showed, for example, that the spray foam was installed close to a source of some kind that might have increased the possibility of the product burning. There are many things that might present a hazard in the home; that doesn't mean that there was an increased risk that something might happen in Mrs C's case.

There also isn't any suggestion here that the spray foam installed at Mrs C's property gave off any pungent or repulsive smell after it had set. Had this been the case, I would've expected that to have been raised with S or BOS. Mrs C didn't contact either until eight months after the product had been installed and three months after it had been removed. PR said that the necessary precautions were not taken in respect of harmful vapours given off at the time of installation. But again, no mention was made of this until eight months later and no suggestion has been made that Mrs C watched the installation to know the necessary ventilation precautions were not taken at the time.

The product was not installed correctly and not in compliance with the British Board of Agrément (BBA) certificate

I'm not an expert on spray foam installation and neither is BOS. Even with the benefit of the information contained in the BBA certificate as to what an installer must do to obtain certification, the only evidence provided in support of a claim the installation did not meet the necessary requirements is PR's letter of claim. No other evidence has been provided, such as photographs or expert testimony and the spray foam has been removed now so it's unlikely that any further evidence as to the standard of the installation could be obtained.

The company who removed the spray foam didn't comment at all about why it needed to be removed, and there was no comment either on how it was installed, whether it was installed incorrectly, and if so why.

If the product had not been installed in accordance with the necessary standards, this might be evidence that S's services were not provided with reasonable care and skill. But the

available evidence does not support this. So, I don't find BOS was acting unreasonably in concluding there was insufficient evidence of a breach of contract in this regard.

S said it was going to install one product but then installed another, this was both a breach of contract and misrepresentation

PR said the order form S gave Mrs C said product A would be installed but when the warranty information was provided after installation it came from the manufacturer of a different product, product B. PR said that there's no way the provider of the warranty could have installed product A as it was the manufacturer of a different product.

BOS located information from a social media platform showing the company that provided the warranty was "the UK's provider" for product A so in fact, it could have installed product A. PR said that this was from 2018 and that there had been various disagreements between the parties since then which meant this was no longer the case.

Because the foam has now been removed it's difficult to know for certain whether it was product A or product B that was installed. It seems from the warranty that it may have been product B as it's on the headed paper of the manufacturer of that product. However, even if that is the case I don't think it makes a difference in this case. I'll explain why.

From what Mrs C has said, she was cold called by S and agreed to purchase the spray foam on the same day. So, it seems unlikely she'd have researched which manufacturer of spray foam she wanted to use or why one might be different from the other. And nothing she's said makes me think S had made any representations as to why it was going to install product A over any other product on the market – or that any discussions took place at all about which product would be used. Furthermore, no evidence has been provided as to the differences between the two products and both appear to be open cell spray foam insulation.

It seems therefore that Mrs C was happy to have open cell spray foam insulation installed without needing to know exactly who would be manufacturing the product that would be installed. I think this is supported by the fact Mrs C did not complain for eight months after receiving the warranty from a different supplier to that named on the order form. It seems unlikely to me, given no evidence has been provided of the difference between the two products that if S had told Mrs C it would be installing product B and not product A that it would have made any difference to Mrs C's decision to buy spray foam from it.

For there to have been a misrepresentation, S needs to have induced Mrs C to enter into the contract by a false statement of fact, but I'm not persuaded that was the case here.

It's possible that installing a different product to that on the order form was a breach of contract if that's what happened. However, even if that were the case, it would be difficult to conclude that Mrs C suffered a loss as a result. I say this again because no evidence has been provided that product B was an inferior product, for example because it was cheaper or less effective or not as suitable. So, I don't think BOS ought to have provided a refund to Mrs C on this basis.

No terms and conditions were provided

PR said that the failure to provide terms and conditions was a breach of contract. It's not clear whether S gave Mrs C or referred her to a set of written terms and conditions beyond the information contained on the order form (which included the price, the work to be done and when it would be done, and the product to be provided). Mrs C said it didn't and BOS has not provided anything to show it did. Again however, I don't think that impacts upon the overall decision BOS reached to not meet Mrs C's claim.

There is legislation that in certain circumstances implies a term in consumer contracts concluded off premises that a trader must reimburse all payments to a consumer in the event they validly exercise their right to cancel. And this right to cancel can be extended by up to a year where information about the right to cancel is not provided to a consumer in a particular way. However, I don't think the legislation assisted Mrs C in this case because it excludes the kind of goods that she purchased. I've seen no other reason why BOS should have met Mrs C's claim for a full refund in respect of this point, again keeping mind it was only liable to her under s.75 for breaches of contract or misrepresentation by S.

Lastly, I've considered what Mrs C said about some panels which were removed from her loft at the time of the installation and not replaced. It's very difficult to know however without supporting evidence that they were there to begin with and that S's installer removed them, or that this had the adverse effect on the insulation of the property that Mrs C suggested it might.

Overall, I don't find BOS unreasonably declined to meet Mrs C's claim and so I do not require it to do anything in respect of her complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 14 April 2025.

Michael Ball
Ombudsman