

## The complaint

Mr G complains that Bank of Scotland plc trading as Halifax ('Halifax') acted unfairly and unreasonably when deciding against a claim under Section 75 of the Consumer Credit Act 1974 – as amended (the 'CCA').

## What happened

In or around August 2023 (the 'Time of Sale'), Mr G (together with another) agreed to purchase a Holiday Programme (the 'Product') from a Hotel and Motel operator located in a South American country (the 'Supplier'). He entered into an agreement with the Supplier to buy the Product which provided 110 units each year, for 20 years - a total of 2,200 units (the 'Purchase Agreement'). The units could then be redeemed for hotel rights throughout the term of the contract. The Purchase Agreement also provided Mr G with "*free two-year membership*" in an 'Exchange Programme' operated by an independent third-party business (the 'Exchange Company').

The price agreed for the Product and associated units was US\$11,000, with an initial payment of US\$3,410 followed by equal monthly and consecutive instalments of US\$126.50 for 60 months commencing on 10 December 2023.

Mr G paid the initial payment in local currency using a credit card provided to him by Halifax in his sole name (the 'Credit Agreement'). The payment equated to £2,887.61 plus an additional £85.18 'Non-Sterling Transaction Fee'. Whilst the Purchase Agreement was entered into in joint names, the payment was made using a credit card in Mr G's sole name. So, only he is an eligible claimant and consequently, the only eligible complainant here.

In or around September 2024, Mr G contacted Halifax to raise a claim under Section 75 of the CCA ('S75'). He said that upon attempting to use his units to make a booking through the Exchange Programme, he discovered that there was a further booking charge of US\$200 levied by the Exchange Company. However, he says he wasn't informed of that additional charge at the Time of Sale. Mr G argues that the Supplier's failure to disclose the additional charge constitutes a misrepresentation. And pursuant to S75, he believes Halifax are jointly liable for that misrepresentation.

Having considered all the circumstances and evidence provided by Mr G, Halifax rejected his claim. In particular, it argued that Mr G had entered into a contract with the Supplier, and payment had been made to that Supplier. However, the Exchange Programme was provided by the Exchange Company, rather than the Supplier. And no payment had been made for that service using his credit card. As a consequence, Halifax didn't think the necessary Debtor-Creditor-Supplier ('DCS') relationship existing to enable a successful claim under S75.

Mr G disagreed with Halifax's response, so complained. Having considered Mr G's complaint, Halifax didn't think it had done anything wrong, so didn't uphold it. But Mr G remained unhappy, so referred his complaint to the Financial Ombudsman Service.

An investigator considered all the evidence and information provided. Having done so, the investigator didn't think Halifax was right to conclude there wasn't the necessary DCS relationship. However, having then considered the circumstances of Mr G's claim, the investigator didn't think Halifax decision to reject the claim was ultimately unfair or unreasonable.

Mr G didn't accept the investigator's findings. In particular, he said:

- Whilst accepting he'd signed the Purchase Agreement which stated that he would "*assume the cost of exchange*", the extent of those charges had not been explained and should have been more overtly disclosed.
- The conduct of the Supplier should not be excluded from any assessment as its representations, contractual practices and conduct as this is central to his claim under S75.
- The investigator's conclusion that a chargeback had no reasonable chance of success is questionable as he believed the failure to disclose exchange costs renders the product substantially different from what was represented.
- He disagreed that his dissatisfaction with the Supplier's service does not amount to a breach given its actions fall short of fair trading standards and expected service levels.
- Offered to arrange for other persons to contact the Supplier posing as prospective purchasers in order to gather recorded evidence of the Supplier's sales practices.

As an informal resolution could not be reached, Mr G's complaint was passed to me to consider.

### **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.

#### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 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.

The CCA introduced certain protections that afforded consumers (like Mr G) a right of recourse against lenders (here that's Halifax) that provide the finance for the acquisition of goods or services (like the Product purchased) from suppliers.

The concerns Mr G has about the sale of the Product he purchased only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind.

S.75 provides protection for consumers for goods or services bought using credit. Mr G paid for the Product under a pre-existing Credit Agreement with Halifax. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr G is afforded the protection offered to borrowers like him under those provisions. As a result, I've taken this section into account - together with any related provisions within the CCA - 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 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 Mr 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.

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<sup>1</sup> Dispute Resolution – Complaint Sourcebook ('DISP')

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.

#### Is Halifax jointly responsible for any breach of contract or misrepresentation?

S75 states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a 'like' claim against the creditor. So here, Mr G (the debtor) was asking Halifax (the creditor) to answer a claim about what he said had gone wrong.

But this doesn't apply to every claim Mr G may have. The Lender is only responsible for claims when there is a debtor-creditor-supplier ("DCS") agreement in place. This is set out more fully in sections 11(b) and 12(b) of the CCA. In short, there have to be arrangements in place so that the supplier of any goods or services is paid using the credit card provided by the Lender.

Having considered Mr G's claim, Halifax argue that no such DCS exists, as responsibility for providing the Exchange Programme doesn't sit with the Supplier. Rather, it is the Exchange Company who is responsible for fulfilling that element of the contract. But there was no payment made to the Exchange Company using Mr G's credit card. I agree with Halifax on this point so far as it relates to fulfilment of the Exchange Programme contract. The Supplier would not be responsible for a breach of that contract.

However, in this particular case, it was the Supplier that sold the Product to Mr G, which included free membership of the Exchange Programme. So, the Supplier remains responsible for any representations made to Mr G at the Time of Sale which would include all aspects of what was included under the Purchase Agreement. So here, that included the Exchange Programme Membership. So, even though I don't think Halifax could be held responsible for a breach of the Exchange Programme Contract, if I was to find that the Supplier had misrepresented the Exchange Programme to Mr G, it's likely Mr G would have a 'like' claim against Halifax under S75 for that aspect. So, it is this that I will consider next.

#### Mr G's S75 claim for misrepresentation

This part of the complaint was made based upon Mr G's assertion that the Supplier failed to inform him and explain the basis of additional charges levied by the Exchange Company for using the Exchange Programme. He says it was this particular element that attracted him to entering into the Purchase Agreement at the Time of Sale. And had he known there were additional charges, Mr G says he wouldn't have proceeded with the purchase.

For me to conclude there were misrepresentations by the Supplier in the way alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Supplier made false statements of fact when selling the Product. In other words, that it told Mr G something that wasn't true in relation to one or more of the points raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr G to enter into the Purchase Agreement. This means I would need to be persuaded that he reasonably relied on those false statements when deciding to buy the Product.

The difficulty I have is identifying what Mr M was (or was not) told by the Supplier at the Time of Sale. The claim and subsequent complaint provides limited details and evidence to support specifically what was (or wasn't) said. Mr G argues that the Supplier's failure to point out the additional charges levied by the Exchange Company constitutes a misrepresentation. So, I've thought about this alongside the evidence that is available from the Time of Sale.

I've seen a copy of the Purchase Agreement, the original of which is written in Spanish. However, I have also seen an English translation. It is a lengthy document which sets out the various terms conditions and definitions. That includes:

- Defining the parties to the Purchase Agreement together with their roles and responsibilities;
- Explaining how the Product operates and what Mr G will receive under it.
- Confirming the price payable and the agreed payment terms.
- Confirming that the Purchase Agreement is subject to Colombian Law.

I'm not familiar with the finer points of Colombian Law. However, in considering Mr G's misrepresentation claim, I don't think it unreasonable to adopt an approach similar to that adopted under English Law.

There is a section within the Purchase Agreement translated as the following:

*"Paragraph 1. The cost of the exchange, to use a development affiliated with the Exchange Chain, whether national or international, will always be assumed by the BUYER".*

Here, the Purchase Agreement defines the "BUYER" as Mr G (and another). So, I think it is clear that any additional costs due for using the Exchange Programme are the responsibility of Mr G. I accept that it doesn't give any indication of the level of those costs. However, given those are imposed by the Exchange Company (rather than the Supplier), I wouldn't reasonably expect it to do so. After all, the Supplier has no control over those costs given it isn't fulfilling the Exchange Programme contract.

I appreciate that Mr G believes the Supplier's failure to highlight those charges constitutes misrepresentation. However, I don't agree. It's clear to me that the Purchase Agreement referred to those costs. And I wouldn't reasonably expect the Supplier to go through the Purchase Agreement with Mr G on a line-by-line basis. Misrepresentation would only have occurred were it proven that the Supplier specifically told Mr G there were no additional charges levied by the Exchange Company. Or, in the event that Mr G had specifically asked the question of the Supplier, they weren't reasonably disclosed. I've seen no evidence to suggest either of those scenarios arose here.

Ultimately, the principal purpose of the Purchase Agreement was to provide units to be used against hotel bookings through the Supplier. The added (free) benefit providing two years Exchange Programme membership is, in my view secondary. After all, no consideration is attributed to that particular benefit. And Mr G is under no obligation to use that benefit, should he so choose.

In view of my findings above, I can't say that Halifax's ultimate decision to reject Mr G's claim for misrepresentation under S75 was unfair or unreasonable.

### Chargeback

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme. The term 'chargeback' basically refers to the payment liability - in other words, where the debt sits.

The chargeback system is intended to resolve settlement disputes. So most of the chargeback reasons in the card scheme rules relate to problems with settlements. But behind some of those settlement disputes, there may be something that's gone wrong between a cardholder and a merchant. So the chargeback scheme might be able to be used to try to resolve that problem, without needing to resort to more formal resolution, such as court action. There are various situations where a business may be able to do a chargeback. The most relevant to this case is where the product or service was not as described.

Chargeback schemes are voluntary codes the card issuers and acquirers sign up to. They are not a right: the card issuer doesn't have to do a chargeback, and they're not guaranteed to recover money. That depends on the underlying circumstances and the card scheme rules.

Having considered all the circumstances and evidence in Mr G's case, I haven't seen anything to suggest that the Product wasn't as described in the documentation provided at the Time of Sale. And certainly given what I've already said above about where responsibility lies for any additional exchange charges levied by the Exchange Company. So, I agree with the investigator here in so far as I don't believe that a chargeback request would have had much (if any) prospect of success.

#### The service provided by the Supplier

The protection afforded to consumers under S75 is not all encompassing. It is limited to proven misrepresentation and/or breach of contract by the Supplier. It does not extend to the ongoing levels of general customer service provided by the Supplier.

This service is afforded powers as an Alternative Dispute Resolution service under the Financial Services and Markets Act 2000 ('FSMA'). This means that I can only consider complaints about regulated businesses and activities defined under FSMA. For the purposes of this complaint, I would make the following observations:

- The Supplier is not a financial business regulated by the FCA under FSMA.
- The Product purchased was not a product or activity as defined under FSMA.

As I explained earlier in this decision, the complaint I'm considering here is based upon whether I believe Halifax's handling of Mr G's claim under S75 was fair and reasonable. I am not able to make any findings in relation to the levels of service provided by the Supplier given it isn't a regulated business and in any event, sits outside of this service's territorial jurisdiction.

On a final note, whilst acknowledging Mr G's suggestion he attempt to obtain recorded evidence by enlisting others to pose as potential product purchasers, I can't see how this helps in establishing exactly what happened at the Time of Sale in his own particular case.

#### Summary

Having carefully considered everything that has been said and provided, I'm not persuaded that Halifax acted unfairly or unreasonably in reaching the decision it did. And because of that, whilst I realise and appreciate that Mr G will be extremely disappointed, I will not be asking Halifax to do anything more.

#### **My final decision**

For the reasons set out above, I do not uphold Mr G's complaint about Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 July 2025.

Dave Morgan  
**Ombudsman**