

The complaint

Mr B complains about a claim he made to Bank of Scotland plc trading as Halifax ('Halifax').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr B purchased goods from a supplier ('Supplier A') over a course of time. He used several ways to pay for the goods including plastic cards. He paid for goods using his Halifax card from 2019 to November 2022.

Supplier A went into liquidation and Mr B says the goods didn't provide the investment returns promised. So he made a claim to Halifax to get his money back.

Halifax did not uphold the claim or the complaint about said claim. In summary, it said that there was no evidence Supplier A had breached its contract with him. It said Mr B had invested in a product to sell on for profit – so this was not the sort of purchase that would be covered by Section 75 of the Consumer Credit Act 1974 ('Section 75'). And it didn't agree that Supplier A was a scam company.

Mr B contacted Halifax to state, in summary:

- Supplier A sold the goods as an investment which were due to be sold on for a '*sure-fire guaranteed*' profit of about 20%. He said this had not taken place and the goods were not in his possession. He said Supplier A has carried out a fraud.
- The main part of his complaint is that Halifax rejected his Section 75 claim. He bought goods which are not in his possession or stored anywhere so he has bought goods that have not been delivered.
- Halifax failed to intervene, warn or pick up on the fact the transactions for the goods were highly unusual and it should have intervened to protect him.

Mr B escalated the complaint about the claim to this service. Our investigator looked into things and did not uphold the complaint so it was passed to me for a final decision.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I am sorry to hear about Mr B's issue with the goods he paid for. However, it is worth noting that Halifax is not the supplier. So when looking at what is fair I consider its role as a

provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Mr B used a credit card to pay for the goods in dispute I consider the protections of chargeback and Section 75 to be particularly relevant here.

Section 75

The focus of Mr B's complaint is on Halifax's decline of his Section 75 claim. So it is this I have focused on here.

Section 75 in certain circumstances allows Mr B to hold Halifax liable for a '*like claim*' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mr B to have a valid Section 75 claim against Halifax.

In concluding there are the requirements for a claim I note Halifax has said:

1. Mr B doesn't have a valid Section 75 claim as his purchase was made with a view to profit from; and
2. some of his claim relates to payments he made to another company ('Supplier B') even though his contract was with 'Supplier A' – which breaks the 'Debtor-Creditor-Supplier' ('DCS') requirement for a valid Section 75 claim.

I will deal with these points briefly – as they don't change the outcome here in any event.

Ultimately, I am not persuaded using the card to buy goods for profit will mean Section 75 doesn't apply. Although it might mean certain consumer law doesn't apply to that transaction. It might also be a breach of the terms of the card agreement Mr B has with Halifax (and that isn't clear here) which could impact how fair it would be to uphold a claim. But as I am not telling Halifax it should have upheld the claim this doesn't make a difference to the outcome here.

Furthermore, although Mr B did make some later payments to Supplier B it seems to share a director with Supplier A. Therefore, under the Consumer Credit Act 1974 there is likely an 'associates' relationship which would mean for the purposes of Section 75 payments to Supplier B in respect of an agreement with Supplier A would not invalidate the required DCS agreement. Alternatively, Mr B might have a separate claim against Halifax in respect of Supplier B if it contracted for goods or services with him independently of Supplier A. Although it isn't clear if that is the case here – Mr B's claim appears to be focused on the agreement with Supplier A.

I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by Supplier A which would reasonably have been available to Halifax at the time it considered the claim. And if so, what Halifax should fairly do now to put things right.

I consider, that Mr B's card transactions were essentially for goods. So it is this I have focused on. Although I do acknowledge a service element to the terms of the agreement with Supplier A in respect of the re-sale of goods it doesn't change my findings here. I also note that Supplier A appears to exclude terms implied into contracts for the sale of goods or

services from its agreement with Mr B. As this is essentially a business to business transaction it may be able to do this, however, in the interest of completeness, and noting the nature of Mr B's claim I don't consider these implied terms change the outcome here in respect of what Halifax should have done in any event.

One of Mr B's main points is Supplier A sold the goods on the basis that they were an investment and would return a certain amount of profit. I know Mr B says his interactions regarding the sale of the goods were over the phone. However, that makes it difficult for Halifax to fairly conclude Supplier A gave him false information.

I note Mr B has not been able to provide a copy of an initial terms of engagement with Supplier A or marketing materials which would show any claims about profits and/or investment returns. And (crucially) that these claims were more like false statements of fact than generally accepted marketing about speculative returns. So I don't think Halifax had clear information available to it showing a misrepresentation or breach in respect of investment returns here.

Furthermore, I note Mr B supplied Halifax with copies of invoices from Supplier A titled '*Contract*' which had terms and conditions on the reverse. These terms and conditions are quite clear that '*due to the nature of the goods*' there is no '*warranty, guarantee or indemnity as to the quality and suitability*' of the goods '*as an investment product and its future market value*'. Considering Mr B had traded with Supplier A for many years – and received many of these invoices it would appear he would be reasonably aware of the terms of business applicable to each purchase. I am not saying this means things could not have been misrepresented – but I think these terms (in the absence of any other persuasive evidence) would fairly indicate to Halifax there was likely no misrepresentation or breach of contract by Supplier A in respect of the purchase as a source of profit.

Mr B has provided what seems to be recordings of calls he says are with Supplier A. I am not sure if he provided these to Halifax. So it wouldn't be fair to say it should have considered these when looking at the claim. But in any event it doesn't change things here. It isn't clear when the calls are from or who they are with, some seem to be partial calls and broadly the context of these conversations isn't that clear. The calls are also low quality and difficult to make out in places. Overall the discussions don't clearly show that Halifax is liable for a misrepresentation or breach of contract by Supplier A here in respect of goods financed by its credit card.

I note Mr B says Supplier A was due to make sales for him and it didn't. It seems the terms indicate that Supplier A will sell goods on behalf of the customer (despite not guaranteeing a profit). But it isn't clear what any specific instructions or agreements were between Mr B and Supplier A regarding the re-sale of his goods once he purchased these. Mr B has no correspondence between the parties which makes it harder for Halifax to ascertain what instructions and agreements existed in regard to sales opportunities on an ongoing basis (and whether Supplier A had breached such an agreement).

I also note Mr B has said he did not receive all the goods. I think this is a difficult thing for Halifax to assess and accept in the circumstances here. I say this noting the following:

- Mr B has accepted he did receive and sell goods he got from his agreement with Supplier A (although it did not realise the profits he wanted).
- As part of the contract with Supplier A in order to take title of the goods Mr B was required to open an account with a third party storage facility. Mr B says he did this – but it isn't clear:

- Why Mr B would not have fairly been checking goods were being transferred to the storage facility by Supplier A and raised issues sooner (noting he started buying the goods and registered with the third party as early as 2019). I note here that Supplier A's contract says that it recommends the customer inspects the goods at the storage facility and notifies it within 7 days of any shortages or other issues. I can't see where Mr B provided evidence that he did this at the time.
- What goods were confirmed as received by the third party facility (and whether Mr B's agreement with it covered storage of all the goods he purchased in any event).
- To what extent goods were removed or sold from the third party facility over the years and who was responsible for that.
- To what extent goods were purchased back by Supplier A over the years (there is some evidence of this occurring – although the nature of this buy back is unclear) - which might explain why certain goods were not available in the third party facility.
- Although Mr B has provided evidence to show he applied to register as a creditor of Supplier A and that it owes money to creditors – this is not clear evidence in itself for Halifax to fairly accept that it owes Mr B a specific amount arising from a breach of contract or misrepresentation.
- Overall, there is limited evidence to show Mr B likely did not get goods that he should have, that Supplier A is at fault for any goods unaccounted for, and that said goods were those funded by Halifax.

I want to emphasise I am not concluding Mr B is at fault here, but ultimately I don't think Halifax were acting unfairly in concluding that Supplier A had not breached its contract with him based on the information available to it.

I have not really focused on Supplier B here – but evidentially there appears to be even less information about any agreement it had with Mr B for goods or services or if it was simply accepting payment on behalf of Supplier A. I think this is most likely the case. But ultimately, even if there was a Section 75 claim in relation to the actions of Supplier B I don't think Halifax had persuasive evidence to show it had misrepresented or breached a contract with Mr B either.

In summary, I don't consider Halifax was acting unfairly in concluding there wasn't sufficient evidence of a breach of contract or misrepresentation here. I say this also noting my findings below in respect to Mr B's overall allegations that he was scammed/defrauded.

Chargeback

One way Halifax can dispute Mr B's card payments is via chargeback. A chargeback is not a legal right or guaranteed to get money back. It is also governed by specific rules which Halifax cannot change (in this case the Mastercard rules). However, it is often good practice to attempt one where there is a reasonable prospect of success.

Here I don't think there was a reasonable prospect of success noting the most appropriate reason code here is relating to goods or services not being received.

Chargeback is subject to strict time limits. Firstly, I consider that all the transactions to Supplier A would appear to be out of time when Mr B approached Halifax to raise a chargeback (in December 2022) because (as appears the case from the evidence furnished here) 120 days elapsed from either the delivery or expected delivery date of wine (or 120 days from the transaction date where delivery date was not specified).

There appears to be some later transactions to Supplier B that might have been in time to raise a chargeback. However, the chances of this succeeding was questionable noting Mr B did not appear to have provided Halifax with paperwork/specific information about the nature of the transactions with Supplier B and how these related to any claim for goods or services not received. Furthermore, and in any event for the reasons I have already mentioned in relation to the Section 75 claim I think there was not persuasive evidence to show that goods or services had not been provided (noting that it appears Supplier B was still trading at the time so the chargeback would not necessarily have gone undefended).

In summary, I don't consider that Halifax has acted unfairly in respect of chargeback.

Halifax's other actions

I note as part of his complaint to it Mr B has said Halifax should have done more to prevent him spending the money with Supplier A in the first place as he considers he has been a victim of fraud and this could have been prevented.

Mr B is not disputing the transactions he made were authorised. So I don't consider it unfair for Halifax not to go down a disputed transactions avenue here. However, I have considered what Mr B has said about whether it could reasonably have done more in protecting him in respect of a scam/fraud.

The first issue here is whether Supplier A was operating a dishonest scheme that intended to deceive Mr B from parting with his money. I think the evidence on this is not conclusive, and suggests this is likely an investment opportunity which lost money rather than a scam. I say this noting that:

- Although Supplier A does not appear to be FCA Regulated – its activity in selling the goods does not appear to be regulated;
- selling goods as a potential investment and these not realising a profit is not in itself a scam – even if Mr B genuinely feels like he has been scammed;
- Supplier A does appear to have operated for a long period of time (over ten years) before it ran into financial difficulties and ceased trading which at least suggests legitimacy (along with the fact that it entered a formal liquidation process);
- going out of business and owing creditors money in itself does not mean a business is a fraud or scam;
- there is not persuasive evidence that Supplier A was specifically identified as a scammer by agencies aimed at protecting the public from fraud;
- although Mr B has contacted the police about it (and they appear to have investigated and questioned individuals in connection with this) it appears that no charges were brought.

However, even if I were able to conclude that Supplier A was perpetrating a scam I would also need to be persuaded that Halifax should have intervened because of specific signs (or 'triggers'). However, I don't think it would be fair to say it should have, noting there is no persuasive evidence to show Halifax had credible information at the time the payments were made to show Supplier A was perpetrating a scam.

I note in December 2019 Mr B did not receive payment for some goods that he was expecting from Supplier A so he contacted Halifax concerned he had been scammed. I have listened to this call. Although the initial agent found some information about potential risks relating to investments in goods like this it isn't clear that he found anything to show Supplier A was perpetrating a scam. Mr B was then put through to a specialist agent who said he could see no alerts about Supplier A on its system and that from the information he had things looked to be in order with its merchant account and it was unlikely to be a scam. He looked at its terms and conditions which appeared to cover the situation regarding delays in payment that Mr B was experiencing. At the time it seems Halifax didn't have persuasive information to show it Mr B had been scammed and there seemed like a reasonable explanation for the delay in payment. However, I also note Mr B said to Halifax during the call that if he didn't get the payment he was expecting from Supplier A he would get straight back to Halifax to tell it. But he didn't appear to do that and instead continued to spend money with Supplier A after this call – indicating that there were no concerns from his side.

I note Mr B spent a lot with Supplier A however, this was spread over a course of years and with the context that Mr B had already discussed with Halifax his relationship with Supplier A. In summary, I don't think there is sufficient evidence to say that Supplier A scammed Mr B or that Halifax acted unreasonably by not blocking the transactions in any event.

I know this decision will come as a disappointment to Mr B. However, I remind him that my role is to look at the actions of Halifax, and do so with minimal formality. Based on what I have seen I don't consider it fair and reasonable to direct it to reimburse him the monies he is claiming from it.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 September 2025.

Mark Lancod
Ombudsman