DRN-6005202

The complaint

Mr W complains about Bank of Scotland plc trading as Halifax's decision not to uphold a dispute about a service he paid for in part with his Halifax credit card.

What happened

In March 2023 Mr W purchased services for tax advice and management from a merchant (who I'll refer to as 'B' throughout this decision) which had a total value of £19,494. Mr W paid B £3,000 by way of his Halifax credit card and £16,494 by way of a bank transfer.

In October 2023 Mr W was made aware that the services B had provided had been found by HMRC to not work as B had set out, and that in many cases the services and advice provided would lead to financial loss rather than profit. Mr W engaged with B to look to obtain a refund of the funds he'd paid for the services but it didn't resolve his dispute, and after ongoing dialogue still hasn't resolved his dispute to date.

In October 2024 Mr W contacted Halifax to make a claim under Section 75 (S75) of the Consumer Credit Act 1974 (CCA). Halifax reviewed the details and said it wasn't liable to consider Mr W's dispute as a like claim under S75, because it considered the purchase of the service had been made for business purposes. Mr W complained to Halifax about its decision, and it issued a final response in January 2025 in which it didn't uphold his complaint, endorsing its outcome of his claim. Unhappy with Halifax's response Mr W referred his complaint to our service.

One of our investigators reviewed the details and upheld the complaint. She considered that the individual details of Mr W's dispute made Halifax liable for a like claim under S75 of the CCA; and went on to conclude there had been a breach of contract, for which Halifax needed to redress Mr W.

Mr W accepted our investigator's view; Halifax didn't. In summary it maintained its position and said:

- While the CCA doesn't explicitly exclude business use, its interpretation has consistently aligned with its consumer protection purpose.
- Section 16B of the CCA states that agreements entered into wholly or mainly for business purposes may be excluded from protection.
- HMRC's publications about the type of scheme B was advising on was published in October 2023, some six months after it had provided Mr W with the service he's disputing.
- Our investigator's conclusion that the service B provided Mr W lacked reasonable care and skill appears to have been reached without expert evidence, which may not meet the S75 threshold required to establish a breach of contract.
- This outcome and redress recommendation is inconsistent with both the spirit and the letter of the CCA.

As an agreement couldn't be reached 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.

The information in this case is well known to Mr W and Halifax, so I don't intend to repeat it in detail here. I would like to assure both Mr W and Halifax that I've very carefully considered all of the evidence available on this case, including the detailed replies received from Halifax in response to our investigator's communications; however, I've not commented on all points raised as I've focused my decision on what I consider to be the key points of this complaint. I don't mean to be discourteous to Mr W or Halifax by taking this approach, but this simply reflects the informal nature of our service.

Before considering Halifax's position on the S75 claim, I've first thought about whether it acted reasonably by not raising a chargeback claim on Mr W's behalf. I say this because our service generally considers it good practice for a business to first consider a chargeback claim, where a resolution may be achieved with the merchant through this method, before considering the details under a S75 claim.

Having done so I consider Halifax acted reasonably by considering Mr W's claim under S75. I say this because by the time Mr W raised his concerns with Halifax, he was outside of the chargeback card scheme operator's timescales for raising a claim under the dispute condition I consider relevant in the individual circumstances. So, I don't consider Halifax acted unreasonably by not first pursuing Mr W's dispute through the chargeback process.

I would also set out that before going on to consider the specific details of Mr W's dispute, I'm satisfied it meets the S75 qualifying requirements – in that there is a valid Debtor, Creditor, Supplier (DCS) agreement, and the cash price paid for the services meets the value requirements.

Now I'll deal with Halifax's response relating to Section 16B of the CCA, and its suggestion that this agreement is excluded from protection under the CCA.

Section 16B of the CCA/Article 60C of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) sets out the types of agreements that are exempt relating to the nature of the agreement, for different periods of time. While I acknowledge Halifax's submissions of the nature of the services Mr W purchased; ultimately Mr W made this purchase in his personal capacity with his personal credit card agreement to limit his personal tax liability.

So, I'm not persuaded that Mr W's use of his personal credit card for this transaction does mean this credit agreement should be considered as exempt. As such, I'm satisfied Mr W is afforded the protection of the CCA and therefore S75.

I've therefore gone on to consider the details of the dispute.

Mr W received an email in early March 2023 setting out details of the meeting he was to attend with B later in the month, which confirmed he'd already provided detailed information about his situation, and the services B would provide would be discussed.

I note that the second payment Mr W made of £16,494, by way of a bank transfer in late March 2023, was for the setup of the scheme to which Mr W had received advice and recommendations on.

I've reviewed the contract/terms of business provided to Mr W. I've seen it sets out:

"*Please read this document carefully and note that by agreeing to meet or instruct us, you will have accepted these Terms of Business.*"

Point six and seven with the terms of business state:

"*6. We will not start the onboarding work until we receive the* ***initial payment*** (my emphasis) *under the agreed terms.*

7. Ongoing support fees are collected monthly by direct debit on the 15th of each month. These payments would normally commence the month after the month where incorporation takes place."

As such, I'm persuaded by the evidence available to me that paying £3,000 for the initial meeting brought into force a contract between Mr W and B, and that the further payment of £16,494 for the setup of the scheme was made in furtherance of that contract.

I also consider it reasonable to conclude that the second payment came about as a natural consequence of the advice and recommendations B provided at the initial meeting Mr W had already paid for.

So, I'm satisfied the redress being considered under this S75 claim is the total Mr W paid B of £19,494.

I've gone on to consider whether there has been a breach of contract or misrepresentation. Having done so, I consider there has been.

The Consumer Rights Act 2015 (CRA) states under section 49 (1) that "*Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.*"

Our investigator set out why she considered B hadn't provided Mr W with the service he received with reasonable care and skill. I acknowledge Halifax's comments on this point, but I'm persuaded that it's reasonable for me to conclude that B didn't in fact provide its service with reasonable care and skill, and therefore there is a breach of contract to which Halifax is liable for under a like claim under S75 of the CCA.

I say this because there is much documentation, both in the details provided to this service from both parties, and in the media, about the service B had provided. HMRC has set out within its publication that "*HMRC's view is that this scheme does not work. People who use these arrangements may have to pay more than the tax they tried to avoid as well as paying interest, penalties and high fees for using such schemes.*"

I also note that in HRMC's publication it sets out that the type of scheme and the advice and recommendations B was providing through its service was in breach of various statutory Acts, which were already in place at the time B was providing its services, before HMRC issued its publication.

Within documentation provided to Mr W B stated:

"*...nothing we do is a notifiable tax avoidance scheme as defined under the Declaration of Tax Avoidance Schemes (DOTAS) provisions.*"

However, it is this DOTAS provision with which HMRC has named B, as it is in breach of its requirements.

I note Halifax's argument that HMRC's direction was provided around six months after the transactions Mr W is disputing; however, I don't consider this means it isn't relevant when considering the service B provided Mr W. I say this because the rules and Acts B needed to follow were already in place when it was providing its services and giving its advice and recommendations in March 2023. HMRC's consideration of the scheme and subsequent view and publication in October 2023 only go to strengthen the position that this scheme doesn't work as per the advice and recommendations B provided clients, and in many cases leads to individuals suffering financial loss; which was the opposite of the advice and recommendations it was providing.

I consider HMRC's actions and publications which relate to the service B was providing to be persuasive evidence from a government body; and I therefore consider it reasonable for me to conclude that the service B provided Mr W wasn't done so with reasonable care and skill; and this has therefore led to a breach in contract.

The CRA goes on to provide remedies for a breach of contract of a service: the right to repeat performance or the right to a price reduction.

In terms of the right to price reduction, section 56 (2) states: "*The amount of the reduction may, where appropriate, be the full amount of the price.*"

Given the individual details of this dispute, I'm satisfied that fair redress under this provision would be for Mr W to receive the full amount of the price he paid B for its services. I consider this to be fair redress in the individual circumstances, given the advice and recommendations Mr W received through the services provided by B have been found to have not met rules and Acts, and would therefore not lead to the services that Mr W reasonably believed he would be receiving and befitting from.

I'm therefore satisfied that Halifax is liable under a like claim of S75 of the CCA to redress Mr W for the full value he paid to B of £19,494.

Putting things right

In order to fairly resolve this complaint Halifax should take the following action:

- Pay Mr W £19,494 which is the total paid for the service B was to provide.
- Add 8% simple interest to this amount, from the date the claim was declined to the date of settlement. †

† HM Revenue & Customs requires Halifax to take off tax from this interest. It must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr W's complaint and I direct Bank of Scotland plc trading as Halifax to take the above action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 March 2026.

Richard Turner
Ombudsman