

## **complaint**

Mr D complains about a custom engine build he part paid for using his credit card. He brings his claim against Bank of Scotland plc under section 75 of the Consumer Credit Act 1974.

## **background**

Mr D contacted a supplier to renovate and customise his old engine for a performance car. After negotiations an initial quote was agreed. Mr D paid a deposit on his credit card and work begun on the engine.

Communication broke down between the supplier and Mr D. In summary, Mr D says that the supplier has been slow to finish the build and has added unauthorised costs to the job.

In summary, the supplier says that costs have gone up because Mr D added extra customisations since the original quote and Mr D has now refused to pay for them. It says that it has ordered bespoke parts for the build that it cannot reuse. The supplier also says that it agreed an initial discount because Mr D had given the impression he was an editor for a magazine and could provide beneficial exposure for the build process – it says it removed this discount when Mr D wanted to modify the agreement and build the engine himself.

Bank of Scotland refused Mr D's section 75 claim so the matter was referred to this service.

Our adjudicator did not recommend this complaint be upheld. She said that Mr D acknowledged that parts and services would be added during the build and that the contract was open ended. She said that there were numerous discussions about parts and prices over the phone and by text message which she had not heard or seen. She could not safely conclude that there has been any breach of contract or misrepresentation under section 75.

Mr D disagreed with the assessment. In summary he says that he feels he has been treated unfairly by the supplier and he has made a payment with nothing to show for it.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened I make my findings on the balance of probabilities – which is to say what I consider most likely to have happened based on the evidence available and the wider surrounding circumstances.

Mr D has raised many issues and made extensive submissions as to why his complaint should succeed. However, I will be focusing on the matters that I believe to be material to this complaint.

There is a wealth of correspondence between Mr D and the supplier. There also appear to have been several phone calls and texts messages which I am not a party to. However, what appears to be the central cause of the stalemate between the parties are the additional costs which have been added to the job since the original quote.

I am not an engine expert. However, from my reading of the correspondence I am satisfied that a custom rebuild of an engine for a performance car is a complex matter with many variables and possible modifications. I am not satisfied that Mr D did not understand this or that he reasonably believed that costs could not increase as the job progressed. I have seen specific email correspondence from Mr D where he accepts that the build was a big job and that there may be modifications and customisations which would be necessary at a later date. The supplier also confirms this and mentions the potential for extra costs in the future.

Furthermore, the supplier says that Mr D agreed to later modifications and additions to the original build, and that he was informed of the costs of these (or reasonably estimated costs in the case of certain bespoke items from third party manufacturers). Many of these conversations appear to have taken place over the telephone. I find the supplier's account of telephone conversations to be consistent and credible - I also note that there is email communication where Mr D specifically requests modifications and agrees to extras. On balance, I am satisfied that Mr D made similar requests over the telephone.

Mr D says that the supplier was slow to progress the build – however it appears that Mr D was kept informed of progress and sent photos. The supplier also informed Mr D of third party manufacturing delays for his bespoke parts. Considering the custom nature of Mr D's build I don't find the supplier has acted unreasonably.

Mr D has said that the supplier will not complete his build and he has nothing to show for the money he has spent. However, I am persuaded that Mr D modified the original agreement by ordering further customisations, and because of this the supplier has incurred additional costs for custom parts. The supplier has shown this service order forms for, and photos of these items. Mr D is refusing to pay for these as agreed and they cannot be resold due to their custom nature. In the circumstances, I do not find that the supplier has acted unreasonably by refusing to progress the build.

I have also seen correspondence which indicates that to save costs Mr D attempted to modify the agreement and suggested he complete the build of the engine himself. I am satisfied from the initial email negotiations that the original discounts agreed with Mr D were conditional on him providing media coverage of the build through his media connections– as it appeared Mr D was no longer able to provide the coverage promised I don't find the supplier has acted unreasonably by removing these discounts.

Mr D has indicated that the supplier has now disappeared and refused to complete the work or respond to his communications– however from the correspondence it appears that communication completely broke down between the parties once the formal dispute became protracted. I am not satisfied that, in these circumstances, it means there has been a breach of contract by the supplier.

Overall, for the reasons outlined above I am not satisfied that there has been a breach of contract or misrepresentation by the supplier here. Therefore I cannot hold Bank of Scotland liable to refund Mr D under section 75.

I appreciate that Mr D is likely to be disappointed by this decision – he does not have to accept it and may pursue this matter by alternative means, such as court, if he wishes to do so.

**my final decision**

My final decision is that I do not uphold this complaint.

Mark Lancod  
**ombudsman**