

complaint

Mr D has complained Bank of Scotland plc, trading as Halifax, wouldn't refund his claim under section 75 of the Consumer Credit Act 1974.

background

In December 2017 Mr D spent £3,750 using his Halifax credit card to buy tokens in a company's initial coin offering (ICO). I'll call this company – the supplier in this complaint – E.

Mr D received no tokens. E was subject to regulatory attention and has subsequently dissolved. Mr D asked Halifax to refund him as he believed the ICO was misrepresented. He was adamant he'd expected to purchase tokens and receive substantial future dividends which were his motivation for buying the tokens.

Halifax firstly confirmed Mr D had no chargeback rights under the international card schemes' rules as he'd brought his claim to them too late. They also believed section 75 didn't apply where Mr D was essentially carrying out a transaction putting money into an account rather than buying goods or services. Mr D was unhappy with this outcome and brought his complaint to the ombudsman service.

Our investigator initially upheld this complaint as she believed the company was unable to issue any tokens to Mr D. This meant there was a breach of contract. On further review and consideration of the issues around section 75, our investigator changed her view. She believed the money from Mr D's credit card transaction had been placed in a trading account which would finance his investments. She wasn't therefore able to ask Halifax to do anything further.

Mr D disagreed with this outcome. He asked an ombudsman to consider his complaint.

I completed a provisional decision on 15 July 2021. I didn't think it was fair and reasonable to uphold Mr D's complaint but my reasoning differed from our investigator's. I pointed out that the cash price of each token was \$1 and therefore fell under the limits for a section 75 claim.

Mr D disagreed with this analysis. He pointed out that they were purchased in a single transaction of \$5,000 and therefore section 75 applied.

Halifax didn't respond.

I now have all I need to complete my final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've come to the same conclusion as I did in my provisional decision. I'll explain why.

I'm aware that I've summarised this complaint above in far less detail than either of the two parties and I've done so using my own words. I'm not going to respond to every single point

made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr D has provided us with a copy of the prospectus issued by E outlining what was on offer. I'm also aware of the detail contained in our investigator's views of 27 February and 15 March 2021. This covers some of what happened which I'm not intending to repeat – particularly the history of what happened to E and the regulatory intervention which led to it being dissolved.

Firstly there's no dispute Halifax were unable to process Mr D's dispute as a chargeback. He brought this to their attention after the timescale for them to have raised this. I've not seen anything here that would lead me to expect Halifax should have done anything differently.

Section 75 of the Consumer Credit Act 1974 allows a customer to submit a claim for breach of contract or misrepresentation by a supplier to their credit provider. This applies when customers use certain types of credit to buy goods or services. In this case Mr D used his Halifax credit card to make a payment of £3,750.10 to E in exchange for tokens priced at \$1 each.

It's worth clarifying I'm not deciding Halifax's liability under section 75 of the Consumer Credit Act. We consider the relevant law and that includes section 75. But we decide cases by considering what is fair and reasonable, as statute requires us to do. What I'm deciding is whether Halifax did enough in considering Mr D's complaint. And if they didn't, what else should they now do.

If there was a misrepresentation or breach of contract in the supply of the goods then it's fair to ask Halifax to put things right.

As our investigator laid out in her view of 27 February, there are certain provisions that need to be met for a transaction to qualify as a claim under section 75. One of these is the cash price of the goods or service must be more than £100 but no more than £30,000.

I've reviewed the prospectus which Mr D provided to us. It's clear that the cost of each token is \$1. I've found nothing within the prospectus to suggest there is a minimum purchase or that tokens can only be bought in blocks of a certain number.

Mr D has not provided us with a copy of any purchase invoice or confirmation of what he was actually purchasing. However I think it's fair to assume that he was buying a certain number of \$1 tokens. In fact Mr D's credit card statement confirms he paid a value of \$5,000 so I'm satisfied he was buying 5,000 tokens.

Mr D pointed out that he paid for 5,000 tokens in a single transaction. He believes this means this would be covered by section 75 and he confirmed the mention of the word "*transaction*" as stated in section 75(1). I don't dispute what that subsection says. However subsection (3) states:

“Subsection (1) does not apply to a claim –

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000”

I agree Mr D financed his purchase by a single transaction, however as shown above the supplier clearly states in the prospectus that the cost of each token was \$1. As the cash price of each token was \$1, I remain satisfied there are no grounds for me to say that section 75 should apply to his purchase.

my final decision

For the reasons I've given, my final decision is not to uphold Mr D's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 September 2021.

Sandra Quinn
ombudsman