

complaint

Mr W complains that Bank of Scotland plc, trading as Halifax ("Halifax"), didn't treat him fairly when they rejected a claim that legal services he partly paid for with his Halifax credit card – were not provided. He says he has a claim against the provider of the legal services and that the effect of section 75 of the Consumer Credit Act (1974) ("section 75") is that he has a "like" claim against Halifax.

background

I issued my provisional decision in June 2019. I explained why I was planning to uphold Mr W's complaint. An extract of that provisional decision is set out below:

Mr W purchased a legal service from a company I'll call "J". He made three payments to them, one of these was his deposit which he paid using his Halifax credit card. They promised to take a timeshare company he had a contract with, to court for him and recover some compensation. But J were liquidated and Mr W says they didn't fulfil their contract with him.

Because he used his credit card to pay for some of the service he believed he had a "like" claim against Halifax under section 75.

But Halifax rejected his claim. They said that the agreement Mr W had was with the company that processed the payment, I'll call them "P", and they thought P had not breached their contract with Mr W as they'd processed the transaction correctly.

They said they weren't jointly liable for any claim Mr W might have against J as under section 75 there needed to be a direct link between the debtor (Mr W), the creditor (Halifax) and the supplier (J) but as Mr W's payment had been processed through another company (I'll call "P"), the debtor, creditor, supplier link was incomplete.

But Mr W disagreed and he referred his complaint to this service. Our adjudicator agreed with Halifax. He explained that for a claim to be successful there needed to be a valid relationship between the debtor, the creditor and the supplier (J). But here he noted that Mr W's credit card statement said the payment was made "via P" and because P had added another step in the transaction, there was no valid relationship between debtor, creditor and supplier and section 75 couldn't apply. On that basis he did not think it was fair and reasonable to uphold the complaint.

But Mr W disagreed. He said that P were acting under a commercial entity agreement they had with J and were merely processing the payment on J's behalf. He said a representative from J told him they were taking a payment from his credit card and his statement showed that J had received the payment so the debtor, creditor, supplier link was intact and the section 75 claim should succeed. Mr W also told us he didn't have an account with P so could not have made a payment via it. He therefore asked for a final decision by an ombudsman.

my provisional findings

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

I'm expecting to uphold this complaint and I know that will come as a disappointment to Halifax, so please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mr W made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

One of those circumstances is that there must be a valid debtor, creditor, supplier relationship. So if I was satisfied that Mr W did not get the service he'd paid J for I'd think it fair and reasonable that Halifax refund him.

But for the creditor, Halifax in this case, to have that liability it needs to have a relevant relationship with the supplier of the goods and here Halifax argues that it hasn't, as the payment was made to P and not J.

But Mr W says he doesn't have an account with P and having asked them about it I'm persuaded that is the case. P hasn't been able to confirm the nature of the agreement it had with J as it hasn't got their permission to do so and that won't change now that J has been liquidated. But I think it's most likely, in all the circumstances, that P did have a commercial entity agreement with J to process payments. I say that because:

- Mr W has explained he doesn't have an account with P through which he could have made payments;*
- P hasn't disputed this;*
- Mr W was surprised to find P was involved at all; so it seems P's involvement was not of his making;*
- Mr W tells us he made the payment through one of J's advisors*

So I'm persuaded that the nature of the arrangement between J and P does not stop there being a valid debtor, creditor, supplier relationship.

J promised him that they would terminate his existing timeshare contract and get the money back he'd paid to the timeshare company. I'm satisfied this is the case because I've seen a letter from J to Mr W setting out the services he'd agreed to receive from them and explaining they were confident he'd be reimbursed 100% of the fees he paid the timeshare company.

Mr W paid J £22,680. I've seen copies of Mr W's bank account statements that detail two payments of £11,000 made to J and a further statement from his credit card that shows the deposit of £680.

J was liquidated in May 2017 and Mr W therefore seems to have little chance to recoup his money from them. I'm persuaded, on balance, that they've not fulfilled the contract he had with them and they'll not be able to do so in the future. I've read the liquidator's report and it's clear business activities have been terminated.

In the circumstances, for the reasons I have set out above, I can see no reason why Halifax shouldn't fairly and reasonably be asked to provide redress here

So I think they should refund the money Mr W paid for the service he didn't receive, on balance.

my provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Bank of Scotland plc to a

my findings

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

Neither party provided any further responses for me to review so my provisional decision remains the same.

my final decision

For the reasons I've given above I uphold this complaint and tell Bank of Scotland plc to refund the £22,680 Mr W paid for the service that wasn't delivered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 August 2019.

Phil McMahon
ombudsman