

The complaint

Mr C complains that Bank of Scotland plc, trading as Halifax, declined his claim under section 75 of the Consumer Credit Act 1974 about the supply of a kitchen.

What happened

In 2021 Mr C ordered a new kitchen from a third party, which I will call the merchant, and paid for it with his Halifax credit card in two instalments of £4,100 each. It is not in dispute that section 75 applies to his purchase. The kitchen was subsequently supplied, and was installed by Mr C's own fitters.

Mr C was not satisfied with the kitchen, which he says was not of satisfactory quality. In 2023 he asked Halifax to refund his purchase. As it was too late to raise a chargeback dispute, Halifax considered his request as a claim under section 75. But it told him that he had not provided enough evidence, such as a contract or an invoice, and so it declined his claim. That was in May 2023.

Meanwhile, Mr C had already complained to our service, which was waiting for Halifax's response. He is represented in this complaint by his wife, who I will call Mrs C. Mrs C told us that the merchant had not given her husband anything in writing, other than some WhatsApp messages, of which she provided screenshots. She said she had asked the merchant for a contract, delivery note, invoice or receipt, but it had declined to provide her with anything; she provided some emails to prove that. In September 2023, she provided a letter which she said had been written by the fitters, listing the various defects which they had identified with the kitchen materials. The list was not exhaustive, but it included door fronts, hinges, drawer handles, and panels.

In response, Halifax said that as the onus was on Mr C to prove his claim under section 75, and he had failed to do so, it had been entitled to decline his claim.

One of our investigators upheld this complaint. He said that Halifax should have asked the merchant directly for the evidence it needed. He accepted that the kitchen had not been of satisfactory quality when it was delivered, and that this was a breach of an implied term under the Consumer Rights Act 2015. As the model of kitchen which Mr C had bought was no longer available, the investigator thought that neither repairing nor replacing it would be practical. Accordingly, he recommended that Mr C be allowed to reject the kitchen; that it be removed at no cost to Mr C; that the £8,200 be refunded; and that the installation costs be refunded too (on production of proof of what Mr C had paid).

Mr C accepted that decision. Halifax did not, and it made the following points:

- As the burden of proving a section 75 claim is on the claimant, Halifax had been under no obligation to obtain Mr C's evidence for him.
- The reason Halifax had needed a contract or invoice was so that it could determine exactly what the merchant had actually supplied to Mr C. It needed a breakdown of what his £8,200 had paid for, since if this had included white goods, for example,

then a full refund would not be justified.

- The evidence which had been provided was unpersuasive. The WhatsApp screenshots did not indicate which company Mr C had been communicating with, or even that the other correspondent was Mr C. And the letter from his fitters was no on headed paper, or give any details about the company (other than its name), and could have been written by anybody.

Halifax asked the investigator to reconsider. The investigator did not change his mind, and referred this case for an ombudsman's decision. I wrote a provisional decision which read as follows.

What I've provisionally 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.

Having done so, I agree with Halifax's objections. I will explain why.

Firstly, section 75 is a law which makes the provider of credit jointly and severally liable for a breach of contract by a third party which supplies goods which are paid for with credit. In an action for breach of contract, it is generally for the claimant to prove his case. I am aware of one partial exception, which is that under section 19 of the Consumer Rights Act 2015, if goods are discovered to be defective within six months of when they are delivered to the buyer, then they may be presumed to have been defective on the date of delivery, unless the seller can prove that they weren't. But that aside, it is for Mr C to prove what he was buying for his £8,200; Halifax didn't have to do that for him. And it is for him to prove that what he bought was not of satisfactory quality when it was delivered.

That matters because if I agreed that the kitchen materials were indeed defective, and that they have to be refunded (or repaired, or replaced), then I need to know exactly what they were. If Mr C's purchase included a fridge or a washing machine, for example, and those items were not defective, then I most likely wouldn't require Halifax to pay for them. So I need to know (and Halifax needed to know too) whether the allegedly defective items made up the entire order, or just a portion of it.

I say "allegedly" because I do not think that the letter from the fitters is persuasive. I would normally expect a letter of that nature to be on the company's headed paper, with the company's full details on it. This is just a plain letter, with the company's name, and the first name and mobile phone number of the author. I looked up the company's name on the Companies House website, and found that it is about 190 miles away from Mr C's address, so it is not an obvious choice of company for him to use to fit a kitchen in his home. I do not need to decide for myself whether I believe this letter, because I am only considering how Halifax handled Mr C's section 75 claim; I am not determining that claim myself. I am satisfied that Halifax was entitled to be sceptical about this letter.

I think the screenshots of the WhatsApp messages are not probative either, and I think that Halifax's decision not to accept them was justifiable. They do not identify the parties, nor do they really prove what was ordered.

Taking all of these matters into account, I do not think that Halifax made an error in how it dealt with Mr C's request for a refund.

If Mr C wants to pursue this matter further, he may wish to ask the merchant directly for whatever records it has of his purchase, since the reason it gave his wife for not sharing this

with her was that she was not its customer. It might be willing to assist him. But if that doesn't work, then he can make a data subject access request to the merchant. Alternatively, he may need to consider taking independent legal advice about how to ask a court to compel the merchant to disclose this evidence, which he can then submit to Halifax in a new claim. But that would not affect the outcome of this complaint.

So my provisional decision is that I do not intend to uphold this complaint.

My final decision

Neither party made any further submissions, so there is no reason for me to depart from my provisional findings, and I confirm them here.

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2024. But apart from that, this final decision brings our service's involvement in this case to an end.

Richard Wood
Ombudsman