

The complaint

Mr S is unhappy with how Bank of Scotland plc trading as Halifax (Halifax) handled a breach of contract claim he made to them.

What happened

Mr S purchased a pergola from a supplier I shall call 'M' in June 2023 using his Halifax credit card. The total cost paid, comprising of two transactions, was £2,944.05 and the pergola was installed in Mr S's garden in August 2023.

However the pergola subsequently fell over and was damaged in December 2023. Mr S contacted M regarding this but was told that M had since entered liquidation and the business taking over wouldn't accept liability for previous purchases. However as a gesture of goodwill they offered to remedy the situation – and this work was done in December 2023 and January 2024 which included the rebuilding and bolting of the pergola. They also ordered replacement parts for dented sections.

Mr S said however that he'd initially paid for the installation of the pergola including bolting it to the ground. As this wasn't done, Mr S felt there had been a breach of contract and in turn also felt that the item wasn't fit for purpose. He said that while the pergola was standing following the remedial work, it was badly damaged and needed to be entirely replaced.

Mr S subsequently contacted Halifax to raise a chargeback claim against M and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against Halifax.

Halifax said Mr S was out of time with regard to a chargeback claim against M, and in addition also felt there wouldn't be a successful outcome under S75.

They said M didn't bolt the pergola down as they'd been told to await ground works on Mr S's premises. Therefore this omission was at Mr S's request and so Halifax had insufficient evidence there had been a breach of contract here.

As Mr S didn't agree, he raised a complaint with Halifax about the outcome of his claim. Halifax sent a final response in April 2024 confirming they wouldn't be doing anything more but they'd be happy to review any further evidence that Mr S wished to submit to show M had failed to do what they should've.

Mr S was unhappy that Halifax was unable to provide a refund and brought the complaint to this service.

Our investigator looked at the complaint but didn't uphold it. They felt that a chargeback claim wouldn't be successful as the claim was made over 120 days from the purchase of the pergola. They also said that they'd seen the installation sign off sheet where M had added a note saying they were told to wait for Mr S's landscapers to add concrete pads and to await the customer's confirmation before returning to complete the pergola bolting.

The investigator also noted that it had been Mr S's daughter at home at the time of installation rather than Mr S. Likewise they said they hadn't seen any evidence that M had then been asked to return to complete the installation and the bolting of the pergola to the ground.

With this in mind, the investigator concluded that they had insufficient evidence that the installation hadn't occurred with reasonable care and skill, and in turn that there had been a breach of contract here by M with regard to the pergola installation.

Mr S didn't agree with the investigator and asked for an ombudsman to make a final decision.

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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Halifax aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr S paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for Halifax to raise a chargeback, but it is often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether Halifax acted fairly.

I note that Mr S's chargeback claim would fall under 'goods/services not as described'. However the claim would need to be made within 120 days from the date of the transaction or the date of delivery under Mastercard rules. As the pergola was installed on 15 August 2023 and the claim was raised with Halifax in March 2024, this would be outside the required timescales for a chargeback claim.

Therefore I'm satisfied that Halifax did nothing wrong in not raising a chargeback on behalf of Mr S.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to assess a valid claim, Halifax would've needed to consider all relevant evidence with regard to the alleged breach of contract.

Halifax said there was insufficient evidence here for a valid claim as M said they were given instructions not to bolt down the pergola until concrete pads had been added by Mr S's landscapers. Mr S has denied this is the case. I'll therefore consider the relevant evidence to determine what is most likely to have happened here and if it can be reasonably considered that there has been a breach of contract under S75 CCA.

Cash price of service

In order to have a valid claim under S75, certain requirements need to be met. One of those requirements is that the claim must relate to a single item or service to which the supplier has attached a cash price of over £100 but not more than £30,000.

M's invoice of June 2023 states the cost of the bolting is £100. In order for the bolting service to be considered under S75, the cost would have to be over £100, so the exact sum of £100 wouldn't meet these requirements. I understand Mr S's complaint is primarily to do with the fact the pergola wasn't bolted down so we don't have a valid S75 claim for the bolting service itself. However I also think the claim wouldn't succeed for other reasons which I'll break down further in this decision.

Breach of contract

I see M's invoice of June 2023 breaks down the purchase of the pergola, its installation cost and a specific separate cost for the bolting down service. Therefore I'm satisfied that the bolting service was a part of the agreement with M. I appreciate however that this service wasn't initially provided and Mr S wasn't subsequently refunded.

With regards to the fact the bolting down didn't occur, I've considered whether M performed their services with reasonable care and skill as stated under Section 49 (S49) of the Consumer Rights Act 2015 (CRA) as follows:

- (1) *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.*

Firstly I note that the sign off sheet for M's work for the pergola installation confirms this was done on 15 August 2023. Instead of Mr S's signature, it has a note stating Mr S wasn't available and it was his daughter who was on site at the time.

Most importantly, the comments section says the following:

'Customer advised he was getting landscapers to add concrete pads before bolting is completed. To await customer confirmation before return'.

It isn't clear whether this request was conveyed by Mr S prior to M's visit, or whether his daughter explained this on site, but regardless, the note does say the bolting needed to wait for concrete pads to be added first. I do think this is clear and I've insufficient evidence that M was then subsequently advised to return to complete this work prior to December 2023 when the pergola fell and sustained damage.

I appreciate Mr S has said he wasn't aware the pergola hadn't been bolted down and disagrees these instructions were made. Nonetheless I must also consider the documentary evidence available stating M was told not to do so at the time of installation.

I've also considered the impact of leaving the pergola unbolted in this way but I've insufficient evidence that this was negligent. I understand the pergola fell after a few months following significant adverse weather as M wasn't instructed to return. Therefore I'm not minded that these actions were negligent as M likely considered Mr S would instruct them to return soon after to bolt the pergola down.

In addition our investigator asked Mr S on 21 May 2024 whether M (as the original business was taken over, the new business will also be referred to as M) had since rectified the pergola. Mr S said that his family had performed the work and while it was subsequently standing, it was damaged extensively and needed replacing.

This is different from M's comments that the pergola was reinstalled at the start of the year as a gesture of goodwill and they'd promised to order replacement parts for the damaged sections. M has provided a copy of a remedial works sign off sheet dated 11 January 2024 which states the pergola had been blown over and suffered wind damage. It also says the remedial work conducted was to have been a rebuild and bolting of the pergola.

I also note there is a tick next to two lines at the bottom of the sign off sheet stating that the remedial works were carried out to a satisfactory level and that the outstanding issues had been completed.

This document includes a handwritten print of Mr S's name and his signature to confirm the above. I'm therefore satisfied that M did indeed perform these works and Mr S accepted they were done to a satisfactory level.

With all of this in mind, I'm not persuaded M didn't perform the initial installation of the pergola with reasonable care and skill and therefore there has been a breach of contract here. In addition I don't think a refund of the original bolting installation costs are due as these works were deferred and then the subsequent works were done to a level that Mr S considered satisfactory.

Misrepresentation

I must also briefly note that Mr S mentioned an element of misrepresentation in an email to our investigator on 21 May 2024. He said here that the pergola didn't adhere to the sample he had seen prior to purchase. However apart from the brief comment in this email, I've not seen this raised as a part of the claim to Halifax when they asked for further details on 12 March 2024.

Likewise I've not seen any evidence presented by Mr S beyond this statement to show the pergola was different from the one he intended to purchase and so I can't say there has been an element of misrepresentation here.

Satisfactory Quality

The CRA says that goods must be of satisfactory quality when they are supplied. If they aren't, then a breach of contract can be said to have occurred.

I note Mr S has complained that the pergola wasn't durable and therefore not of a satisfactory quality. However while the pergola suffered damage from falling at the end of 2023, I've insufficient evidence that this was due to any structural defect or quality issues with the pergola.

Therefore I'm not in a position to say that the pergola wasn't of a satisfactory quality when supplied to Mr S. It's more of a question of why the pergola suffered the damage it did, and upon review of the available evidence, this looks likely due to the pergola not having been bolted down at Mr S's own instructions and then having been blown over due to severe winds.

Consequential Losses

Mr S has also provided an invoice for work done by another contractor in December 2023, specifically repairs to triple glazing as a result of the pergola falling. He also provided a quote from the same contractor for the reinstallation of the pergola.

On this, I'm not in a position to say M is responsible for any further damage from the pergola's fall as I've insufficient evidence this was due to an omission or a lack of care and skill on M's part.

In summary, while I appreciate Mr S believes Halifax is liable to refund the costs of his pergola, I don't think the damage incurred was due to any negligence or lack of care and skill on M's part. I also have insufficient evidence that the pergola wasn't of a satisfactory quality nor that it wasn't sufficiently durable or was misrepresented in any way.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 March 2025.

Viral Patel
Ombudsman