

## The complaint

Mr G is unhappy with how Bank of Scotland plc trading as Halifax ('BOS') dealt with a claim under Section 75 of the Consumer Credit Act 1974 ('S75').

## What happened

Around late 2019 Mr G says a family member, who I'll refer to as 'T', underwent surgery organised by a company I'll refer to as 'A', performed by a medical professional I'll refer to as 'B'. This was in order to resolve issues following an earlier cosmetic surgery.

Mr G paid A on his BOS credit card.

Mr G says the consultation was rushed and serious risks were not discussed. Following the surgery, Mr G said B was not available as was promised, and that T was discharged without having a further consultation and while still in considerable pain.

In mid 2020 Mr G says he and T discussed the results with B and were told further corrective surgery was required. Mr G says T was in pain throughout this period.

Mr G says surgery was again performed by B around January 2021, but he says this made the appearance of the area worse and left T in pain. He said he believes part of the procedure should've been performed by a different medical professional. He also says T had issues with drugs given and believes the procedure was rushed.

Mr G says around June 2021, B agreed the results from the surgery were 'not right' and a further surgery was required. Mr G says he nor T were told this was a risk.

Mr G says he then asked A to get involved and to arrange a second opinion. He says another medical professional who I'll refer to as 'C' told him and T that they couldn't see issues with the surgery and blamed the results on other factors.

Mr G says he complained to A but this did not get upheld.

Mr G then contacted BOS to raise a claim about the issues under S75. In February 2023, it issued a response to the claim. This said, in summary, that for a claim to be considered under S75, a valid debtor-creditor-supplier ('DCS') agreement must be in place. But, it said this agreement was not in place as Mr G paid for the services received, but T was the contracting party with A.

Mr G disputed this with BOS. Later in February 2023 it explained it had reviewed things but still reached the same conclusion. And it directed Mr G to our service if he remained unhappy.

Mr G was unhappy with this and referred the complaint to our service. In summary, he said he was a beneficiary to the medical procedure as it was a potentially lifesaving operation. He said this should not be considered as cosmetic surgery because of this. He said he had to take time off work to look after his family members because of the associated illness. He

said he was present at all consultations and operations. And he said BOS didn't question whether the transaction was for a third party when he called to discuss the payment before it went through.

BOS later issued a final response to Mr G's complaint in August 2024. This said, in summary, that it still believed a DCS agreement was not in place and so it had been right to decline the S75 claim. It also said it had declined the claim because C said the results were satisfactory, because T would've signed consent forms and because it believed it was confirmed with Mr G and T at the time that the surgery would carry a risk.

BOS apologised for not initially giving Mr G the full reasoning behind declining the claim and for not raising a complaint sooner. It said it had paid Mr G £150 to reflect this.

Our investigator then issued a view and did not uphold the complaint. In summary, she said she was satisfied it was T who contracted with A, not Mr G. So, she said a DCS agreement was not in place. Our investigator said this meant Mr G didn't have a valid claim under S75. And she said she thought the £150 already paid by BOS fairly reflected the issues with how it handled the S75 claim.

Mr G disagreed. In summary, he said there was no written contract, and the contract was verbal and made between himself, T and B. He said the surgery had benefitted him personally. And he said he was not told by BOS that he wouldn't be covered under S75 when he discussed the payment with it.

Our investigator explained this didn't change her opinion. Mr G remained unhappy, so the complaint has been passed to me to decide.

### **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.

Having done so, I do not think this complaint should be upheld. I'll explain why.

Mr G complains about a claim under S75 being declined. So, S75 is relevant to this complaint. This explains, under certain circumstances, that the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Firstly, I need to consider if Mr G had a valid claim under S75.

In order for there to be a valid claim, there needed to be a valid DCS agreement in place. BOS have explained in this case that it does not believe a valid DCS agreement exists. So, I've carefully considered if this was the case.

I've seen a copy of Mr G's credit card statement. And I can see a transaction to A dated 5 December 2019, for £7,108. So, I'm satisfied the payment to A was made by Mr G.

It isn't in any dispute here that the surgery was performed on T. I've seen a copy of a "TREATMENT LETTER/INVOICE" from A. This is addressed to T, and under "PATIENT NAME:" T's name is present. This also confirmed the specific amount due that was paid on Mr G's credit card.

I've seen a copy of A's response to the complaint about it. This is addressed to T.

I've also looked at a copy of A's terms and conditions online. These state:

*"Except for you or ('A'), no person will have any rights under or in connection with these terms"*

And I can't see any reference to contracting with a third party.

I've also seen multiple emails back and forth with A about the surgery and associated issues which appear to have been sent from T.

Thinking about all of this, I'm satisfied the contracting party with A is T, not Mr G.

I've very carefully considered Mr G's argument that he was the beneficiary of the surgery. But I disagree on this point. While I take on board what he's said about this, I think it's quite clear, in plain terms, that the beneficiary of the surgery on T, was T.

So, in summary, I'm satisfied that Mr G paid A for the surgery on his credit card. But I'm satisfied the contracting party with A and the beneficiary of the surgery was T. So, I find there was not a valid DCS agreement in place and so Mr G didn't have a valid claim under S75. It follows that I don't think BOS did anything wrong by declining the claim.

I've considered that Mr G said BOS didn't tell him that he wouldn't be able to claim under S75 if he paid for T's surgery when he discussed the transaction with it. But, even if I accepted this was the case, BOS weren't under any obligation to explain this to him. So this doesn't change my opinion.

BOS have paid Mr G £150 to reflect the issues caused by its handling of the S75 claim as it didn't give Mr G the full explanation of why the claim was declined when it initially responded to him. When thinking about whether this was reasonable, I need to make it clear that I'm *only* considering the distress and inconvenience caused by BOS, by this very specific issue.

I'm sure the overall situation must have been incredibly stressful and upsetting for both Mr G and T. But in terms of the specific distress and inconvenience caused by BOS in its handling of the complaint, I think £150 fairly reflects what happens and it doesn't need to take any further action.

Finally, I have considered if BOS should've also raised a claim under the chargeback scheme. The rules that apply here are set by the card scheme, not by BOS. And I'm satisfied when Mr G raised the issue with BOS, it was already outside of the time limits set by the card scheme to raise a claim. It's worth also pointing out that even if this wasn't the case, I'm not sure there is a relevant chargeback code for this specific claim. And if it did go through, I think it's highly likely A would've robustly defended the claim, given the length and detail of its response to T about the complaint. So, no further action needs to be taken on this point.

I want to reassure Mr G that I've carefully considered everything else he's said in relation to this complaint. But, this does not change my opinion.

### **My final decision**

My final decision is that this complaint should not be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 January 2025.

John Bower  
**Ombudsman**