

## **The complaint**

Mrs S complains that Bank of Scotland plc, trading as Halifax, didn't uphold a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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 know it will disappoint Mrs S, but I agree with the investigator's view of this complaint. Please let me explain why.

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 something goes wrong and the payment was made with a credit card, it might be possible to make 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.

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 when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

I don't think Halifax had sufficient information to demonstrate there had been a breach of contract that would enable them to uphold a claim under section 75.

While it's clear the first repair didn't resolve all of the issues with the freezer it is not clear that the repair wasn't necessary, and it hasn't been possible for Mrs S to demonstrate that because the failed parts were taken away and the freezer is now fixed.

The invoice for the first repair explained, in a highlighted and prominent position, that there may be “*possible damage to other parts run for 48 hours*”. It’s clear that further repairs were necessary, but that was in line with what Mrs S had been told and doesn’t therefore suggest a breach of contract or a misrepresentation upon which a section 75 claim could succeed.

It may also have been possible to raise a chargeback claim but, for the same reasons, I don’t think that could have succeeded.

I don’t therefore think that Halifax were unreasonable to reject the section 75 claim.

### **My final decision**

For the reasons I’ve given above I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 24 November 2023.

Phillip McMahon  
**Ombudsman**