

The complaint

Mr B says Bank of Scotland plc – trading as Halifax ('Halifax') – has unfairly declined his claim under section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

- In 2014, Mr B purchased six 'participaciones' or shares of a company I'll call 'Business 1' from a company I'll call 'Business 2'.
- In total, Mr B paid €212,222 for the shares. (Each share had a nominal value of €35,370.33.)
- He used his Halifax credit card account to make an initial payment of €5,000 (£4,004.64) on 26 June 2014, and a further payment of €5,000 (£4,004.64) on 28 June 2014. Mr B paid the balance by bank transfer.
- Mr B purchased the shares with his two daughters. According to the notarised sale agreement, they owned 'an equal third parts each', and appointed Mr B to be a partner of Business 1.
- Mr B says he purchased the six shares because he was told he'd fully own a two-bedroom, seafront apartment in Tenerife after three years – which would be transferred into his name – and that he'd receive a yearly dividend of 4% until then.
- In 2017, Mr B paid Business 2 a further £104,048 for a different investment. He didn't use his Halifax credit card account – or any other Halifax account – to pay for this, so I can't consider it as part of this complaint.
- In June 2020, Mr B – initially with the help of a professional representative ('PR') – wrote to Halifax to make a claim under section 75 of the CCA. He said the 2014 investment had been misrepresented. And he said that as Business 2 was now in liquidation, it couldn't provide the services he had purchased, which was a breach of contract.
- Halifax declined the claim. It explained that section 75 of the CCA only applies to items that cost more than £100 and less than £30,000. As the cash price of the investment exceeded £30,000, it said section 75 doesn't apply.
- Mr B then referred his complaint to our service.
- One of our investigators didn't think it was unfair for Halifax to decline the claim. She agreed that section 75 doesn't apply in this case because the value of the investment exceeded £30,000.
- Mr B disagrees and has asked that an ombudsman 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.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

However, subsection (3) specifically says that it doesn't apply if the item has a 'cash price' of more than £30,000. Here, the 'cash price' of the investment was €212,222, which is significantly more than £30,000.

Mr B says Halifax could have offered him £30,000 or at least refunded the two payments he made with his credit card account.

I can appreciate why Mr B says this, and I understand his frustration and disappointment.

However, Halifax isn't a party to the underlying contract, and it didn't receive or keep any of the money Mr B paid Business 2. Importantly, it didn't do anything wrong.

Section 75 of the CCA is an unusual piece of consumer protection legislation in that it makes a creditor legally answerable for a supplier's wrongdoing – but only in limited circumstances. When it doesn't apply, I don't think it's unfair for a creditor to decline a claim for a refund of some or all of the money that's been paid. And so although I have a great deal of sympathy for Mr B, I don't think it was unfair for Halifax to decline his claim.

My final decision

For the reasons I've given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 August 2023.

Christopher Reeves
Ombudsman