

The complaint

Mr F has complained that The Royal Bank of Scotland Plc (RBS) didn't pursue his claim against them under Section 75 (S75) Consumer Credit Act 1974 in relation to his purchase of a hotel stay.

What happened

On 12 March 2020 Mr F paid for a two-night stay at a hotel abroad. The trip was planned for 18 and 19 March 2020 and was paid using Mr F's RBS credit card. However, on 18 March Mr F received a text message and an email from the hotel explaining it had decided to shut with immediate effect, in response to the COVID-19 pandemic.

A few days later, Mr F was surprised to see that he had been charged by the hotel in full for the hotel stay. He tried to contact the hotel but couldn't as they were closed. So, Mr F got in touch with RBS and raised a dispute with them. Within his communication to RBS, Mr F provided the messages from the hotel confirming his stay had been cancelled.

RBS responded to Mr F the next day, asking him to provide a copy of the original invoice for the stay and a copy of the retailer's terms and conditions to enable them to continue to review the matter. Mr F replied to RBS a couple of weeks' later explaining that he felt the information he'd already provided was sufficient. He raised a complaint with RBS at this point.

RBS sent their final response to Mr F shortly after. They explained that they will usually attempt a chargeback claim before pursuing a S75 one, and that certain criteria had to be followed to allow a claim to be processed. As Mr F hadn't returned the requested information, RBS said they remained unable to take the claim forward.

Unhappy with this, Mr F raised a further complaint to RBS. Within this complaint Mr F said that he wasn't going to make payment towards his outstanding credit card balance. RBS responded again explaining their position remained unchanged and they still required Mr F to provide the requested information to take the claim forward. Within their response, RBS also expressed their concern at Mr F's decision not to pay anything towards his credit card balance. The letter explained the implications to Mr F of not doing this, including the potential for an adverse effect on his credit file.

While Mr F was still in dispute with RBS, he brought his complaint to our service. During her review, our investigator was told by RBS that they had made the decision to close Mr F's account in September 2020 and write off the outstanding balance. It was confirmed that RBS hadn't defaulted Mr F's credit file but had recorded missed payment markers for the months April – August 2020 due to Mr F not making any payment towards the outstanding balance.

Having considered everything, our investigator felt that RBS should have raised the chargeback claim for Mr F at the outset. She said RBS had enough information to process the dispute in line with the Mastercard chargeback rules at that stage. As RBS had written Mr F's credit card balance off, our investigator didn't ask them to do anything further in that regard. But she did say they should remove any adverse information on Mr F's credit file, as

had the chargeback been raised at the appropriate time it's likely to have succeeded and Mr F wouldn't have had an outstanding balance to pay on his credit card account.

RBs accepted our investigator's opinion in full. But Mr F didn't. He said he asked that his claim for a refund be processed under S75 from the outset, and it wasn't for RBS to choose whether they thought chargeback or S75 was the most appropriate route to help him get his money back. He also said the missed payment markers on his credit file had had an adverse impact on other financial commitments and overdraft facilities with his main banking provider. He felt our investigator hadn't addressed the crux of his complaint. To resolve matters, Mr F asked for an apology from RBS, all the credit reference agencies to be made aware of the status of the account (not just those that RBS had informed) and compensation of £500 for the distress and financial inconvenience he had experienced.

As Mr F didn't agree, it's 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 agree with the outcome reached by our investigator. I'll explain why.

I understand Mr F's frustrations here and I know he would like to know why RBS didn't follow his instructions and process a S75 claim when he notified them that his hotel stay had been cancelled and he'd been charged the full price for it. It's clearly important to Mr F that RBS pursued a S75 claim rather than try to recover his money through the chargeback route. His reason for this is, he says, because it's a legal right, whereas chargeback is not.

There are different ways that a bank can assist customers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that's Mastercard. In certain circumstances the process provides a way for RBS to ask for a payment Mr F made to be refunded. Those circumstances can include where services aren't supplied.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable prospect of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration. Alternatively, or in addition, a bank can go on to consider whether there has been a breach of contract (or misrepresentation) under S75 Consumer Credit Act 1974.

S75 says that in certain circumstances 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.

But for S75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is a specific relationship between the parties, known as the debtor-creditor-supplier relationship

and that the purchase meets a certain cash price.

It's important to note that neither a chargeback nor S75 are a guarantee that a consumer recover their funds. It's not uncommon for a bank to deal with a customer dispute by raising a chargeback first and then, if that is declined, to consider whether a valid claim exists under S75. Usually, it won't make much difference as to which route a bank follows, so long as the bank acts fairly and reasonably in assisting its customer to recover their funds.

However, here it seems it was important to Mr F that RBS pursued a S75 claim rather than try to recover his money through the chargeback route.

In Mr F's case I don't think RBS acted reasonably from the outset when they refused to progress Mr F's claim with the information he had provided to them. RBS are bound by the scheme rules that apply. And each chargeback reason has a code attributed to it. As Mr F's hotel stay had been cancelled, the code 'Goods or Services Not Provided' would be the appropriate one for RBS to pursue a chargeback against. The rules set out the supporting documents that would be needed from Mr F to allow a chargeback claim to be brought. In this case, it needed to be an email, letter, message or Dispute Resolution Form that included a description of Mr F's complaint in enough detail to enable all parties to understand the dispute. It also required a *'reasonably specific description of the goods/services purchased'*.

When Mr F first raised his dispute with RBS, he provided them with the messages he received from the hotel confirming its decision to shut on the day Mr F intended to arrive. So, I'm satisfied that was enough to meet the criteria for a chargeback claim to be at least raised, and RBS should have done so at that point. In later correspondence with Mr F and our service, RBS have confirmed the nature of Mr F's complaint and the circumstances surrounding it – so it's clear they had enough information to understand Mr F's reasons for the dispute.

Had RBS acted as expected from the outset, I think the chargeback claim would have had a good chance of success, as it would have been difficult for the hotel to provide a valid defence to the claim when it had clearly cancelled the booking.

As I'm satisfied RBS should have pursued the chargeback claim with the information they had, I would normally now ask RBS to look at raising the chargeback, provided it was still within the time limits specified by the rules. And if it's outside of those limits, I might look to see if RBS should reimburse Mr F for the full amount of his claim. But in this case, RBS have taken the decision to write off Mr F's credit card balance following his decision not to make payments towards it while this dispute was ongoing. So, even though I think RBS acted unfairly by not raising the chargeback claim when they should have done, I'm not persuaded that Mr F has lost out because of this. I won't be asking RBS to do anything further in this regard.

In relation to Mr F's point about considering a claim under S75, I've already set out above what we'd normally expect to see from a bank. And here, where Mr F insisted that RBS look at his request for a refund under S75 rather than chargeback, I can see why he'd be upset they didn't do that and why it might have been reasonable for RBS to follow his specific instruction. But as Mr F has had his money back in any event, I don't need to explore this further. That isn't to underestimate Mr F's strength of feeling regarding RBS' decision to want to proceed with a chargeback rather than a S75 claim as he'd asked them to.

Our investigator has asked RBS to remove the missed payment markers recorded on Mr F's credit file as she didn't feel they were fair. RBS have agreed to do this. I accept that Mr F wasn't happy about what had happened in relation to his refund, but at the same time he had a contractual commitment to make the payments under his credit agreement. This was

irrespective of any dispute on the account and RBS warned him of the consequences of failing to meet his commitments. However, given that had RBS raised the chargeback when they should have, and that it would likely have been successful, I'm persuaded not to interfere with the removal of the adverse information, particularly given RBS have indicated they're happy to do this in the particular circumstances of this case.

But I don't agree with Mr F's request for compensation because of the impact the missed payment markers have had on him. As above, Mr F had an obligation under the terms and conditions of his credit card account to make a minimum payment towards his outstanding balance each month. RBS explained this to him in their letter in June 2020, and explained the impact not making a payment could have on his credit file. Mr F made a conscious decision not to make his contractual payments to RBS while he continued to pursue his right to claim the money back – while that is his choice to make, that decision has in part led to the problems he may have faced with his main banking provider. Mr F could have avoided that and mitigated his losses by continuing to make his required contractual payments. Because of that, although I'm asking RBS to remove any adverse information from Mr F's credit file, I won't be asking them to pay him compensation for any problems the missed payment markers may have caused.

Overall, I don't think RBS treated Mr F fairly or reasonably by not raising a chargeback claim when he first notified them his hotel stay had been cancelled. But as they have cleared Mr F's outstanding balance already, I'm satisfied that the removal of the adverse information on Mr F's credit file is a fair resolution.

My final decision

For the reasons above, I uphold this complaint. The Royal Bank of Scotland Plc must:

- Remove any adverse information regarding the missed payments from Mr F's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 March 2022.

Kevin Parmenter
Ombudsman