

## **The complaint**

Mr G complains that Bank of Scotland plc trading as Halifax unfairly declined to process a chargeback and a claim made under section 75 of the Consumer Credit Act 1974 (“CCA”).

## **What happened**

In December 2021, Mr G booked a hotel using an online travel agency, who I’ll refer to as E. After doing so, he read reviews of the hotel which were less than complimentary. And he felt these showed it wasn’t four stars as advertised. So he asked E to cancel his booking, but they refused to refund him.

As he’d paid for the hotel using his credit card, Mr G contacted Halifax to see if it could help.

Halifax initially said it couldn’t raise a chargeback because Mr G was outside the 120-day time limit. Mr G disputed this, as he’d only made the booking a few days beforehand. Halifax acknowledged it had made a mistake. It raised the chargeback, but E defended it and provided evidence that the transactions were non-refundable. Because of this, Halifax said there were no chargeback rights under the card scheme’s rules.

Halifax also said a claim couldn’t be made under section 75 of the CCA because there was a break in the debtor-creditor-supplier (“DCS”) chain, which meant section 75 didn’t apply.

Mr G made a complaint about the outcome of the chargeback and section 75 process. He was also unhappy with the service provided, the amount of time he’d spent on the phone and that his email address had been blocked by Halifax’s system.

Halifax acknowledged that it had provided poor service and given incorrect information initially on why a chargeback couldn’t be processed. So it paid Mr G compensation of £25, plus £36 towards call costs. In addition, it refunded the £129.60 for the hotel booking as a gesture of goodwill. But it denied blocking Mr G’s email address.

But Mr G wasn’t happy with this outcome. He didn’t agree there was a break in the DCS chain as he considered E to be the supplier of the services, rather than the hotel itself. So he feels Halifax should’ve refunded the hotel costs as a result of a successful claim, rather than as a gesture of goodwill. He also felt the compensation offered didn’t reflect the hassle he’d been caused, and he wants an additional £250.

Mr G brought his complaint to our service and asked that we look into the actions of both E and Halifax. Our investigator explained that we can’t investigate a complaint against E because they fall outside of our jurisdiction. She looked into the complaint against Halifax but didn’t uphold it, as she was satisfied it hadn’t done anything wrong or unfair.

As Mr G didn’t agree, the complaint was passed to me and I issued a provisional decision which said:

*"I've reached the same conclusion as our investigator on the chargeback and section 75 complaints and for broadly the same reasons. But I intend to uphold the customer service complaint. I'll explain why below.*

*To clarify, this decision relates solely to the complaint against Halifax. I will not be commenting on the actions of E as they fall outside of our remit for the reasons our investigator has already explained.*

### *Chargeback*

*The chargeback process enables the card issuer – in this case, Halifax – to settle disputes between a customer and a merchant, provided that the circumstances of the dispute fall within the scheme rules.*

*The rules are set by the card scheme operator, whose symbol is on the card. And it's for Halifax to review the evidence and decide whether the claim falls within them. If it doesn't, or if Halifax thinks the claim is unlikely to succeed, then it may decide not to raise it. There's no automatic right to a chargeback, nor is it a guaranteed method of getting a refund.*

*Halifax acknowledges that it incorrectly declined Mr G's chargeback request initially, when it said the claim was outside the 120-day time limit. So I don't need to decide whether it did something wrong here – it did. What I need to decide is whether it did enough to put things right.*

*Where a business has done something wrong, I'd expect it to put the customer back in the situation they would've been in had everything been done correctly. In this case, once Halifax was notified of its error, it went on to raise the chargeback to E, thereby putting Mr G back in the position he would've been in had his chargeback not been declined.*

*Halifax says, in hindsight, the chargeback shouldn't have been attempted as there were no chargeback rights under the card scheme's rules because the transaction was non-refundable. Having reviewed the rules, I'm satisfied this is the case as I can't find an applicable rule that the claim could be made under given the service had been provided and there was no right to a refund on cancellation.*

*Because of this, I'm persuaded Halifax made a fair decision not to pursue the chargeback any further after E defended it. I appreciate Mr G was unhappy about this but, as I've explained above, Halifax don't set the scheme rules and it's not obligated to raise or pursue a chargeback if it doesn't consider it appropriate to do so.*

### *Section 75*

*Section 75 of the CCA allows consumers who have paid for goods or services on a credit card to claim against their credit provider for any breach of contract or misrepresentation on the part of the supplier of the goods or services, so long as certain technical conditions have been met – one of which is that there must be the required relationship between the debtor, creditor, and supplier.*

*Halifax declined Mr G's claim because, in its view, there was a break in the DCS chain. It said Mr G (the debtor) paid using his Halifax credit card (the creditor) to E who then paid the hotel (the supplier of the services). It's the involvement of E which causes the break in the chain.*

*Mr G doesn't agree as he believes E are the supplier of the services and that it was E who misrepresented the hotel as four stars.*

*From the information I've seen, the hotel is the supplier of the services that Mr G paid for. I say this because he paid for a hotel room and E isn't supplying this, neither was E acting as an agent or representative for the hotel. As Mr G didn't pay the hotel directly, there is a break in the DCS chain.*

*That said, as our investigator identified, there is a valid DCS chain between Mr G and E regarding the services E provided. So Mr G is correct that he has a valid DCS chain with E. I can't see that Halifax identified this possible claim, so I can understand why Mr G is frustrated with the decision made. I don't think this error warrants a payment of compensation, but I have thought about what the outcome of this claim would've been had Halifax correctly considered it.*

*In order for this claim to be successful under section 75, it would need to be established that there was a breach of contract and / or misrepresentation by E. Mr G says E misrepresented the hotel as four stars when the reviews, in his opinion, clearly show that it isn't. He also says E has breached the contract by failing to provide a refund.*

*Star ratings are based on what services the hotel provides as well as inspections carried out by independent bodies on the quality of those services.*

*Having looked at the hotel itself, it has been given a four-star rating. So the information E has provided is factually correct and not misrepresented. I'm not persuaded that because the hotel had received poor reviews it wasn't four stars. And I'm mindful that E did provide links to those reviews alongside the hotel information, to give customers the full picture to make an informed decision on whether or not to book a stay.*

*I've also considered whether there's been a breach of contract by E. But I can't see that there has been. E provided clear information in its contract with Mr G that the transaction was non-refundable. So their decision not to refund him wouldn't amount to a breach of contract, as there was no expressed or implied term to say it would.*

*Because of this, I'm not persuaded that had Halifax considered a section 75 claim against E, it would've been successful.*

*In any event, Halifax reimbursed Mr G the cost of the hotel booking as a gesture of goodwill. So he isn't out of pocket. From what I've seen, Halifax didn't have to do this. And I'm not asking it to do anything more.*

#### *Customer service*

*To apologise for the error of declining Mr G's chargeback claim incorrectly, Halifax paid £25 compensation which I think fairly reflects the distress and inconvenience he would've experienced for the short time he thought his claim had been declined. As I've said above, Halifax went on to consider the chargeback claim, putting Mr G back in the position he would've been in had it been handled correctly.*

*Halifax also paid £36 towards the cost of Mr G's calls that he wouldn't have had to make had it not declined the claim. I think this was reasonable in the circumstances.*

*But Halifax said it didn't block Mr G's email address. And on further review, that isn't quite right. Halifax has now confirmed that the whole domain name of one of Mr G's email addresses is blocked on its systems because it receives a high volume of malware from this domain. Whilst this isn't specific to Mr G's email account in isolation, it has caused his emails from this address to be blocked.*

*Mr G has emailed from another account, which were successfully delivered. But an email he sent on 25 January 2022 didn't go through. Halifax now say it's because the domain name of his other email address was detected in the body of this email, which caused its systems to block it.*

*Whilst it's understandable why Halifax has made the decision to block this domain, it's unclear why it didn't explain this to Mr G when he raised his complaint. He had delivery failures for emails he'd sent from both accounts, but Halifax didn't investigate why this had occurred, rather it insisted there wasn't an issue on its side.*

*Had it looked into things at the time, Mr G would've been aware that he couldn't contact Halifax using that particular email account. And this would've prevented further emails being sent and not delivered. For this, I do think further compensation is warranted and I'm inclined to award Mr G a further £50 compensation for what went wrong here."*

### **Responses to my provisional decision**

Both parties accepted my provisional decision and had no further submissions for consideration.

### **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.

As both parties have accepted, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons I've explained, I'm upholding the complaint and direct Bank of Scotland plc trading as Halifax to pay additional compensation of £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 September 2022.

Sheryl Sibley  
**Ombudsman**