

The complaint

Mrs C complains about the way Bank of Scotland plc trading as Halifax handled a claim she made in respect of a purchase on her credit card.

What happened

Mrs C bought theme park tickets using her Halifax credit card from a travel agent ('the supplier') for use abroad in July 2020. However, due to the global Covid-19 pandemic her flights to the theme park destination were cancelled and the park temporarily closed.

Mrs C was offered an extension on the theme park tickets for the following year which she accepted. However, Mrs C had second thoughts about this at a later date so the supplier then offered her an 80% refund in line with its Covid-19 policy. Mrs C then contacted Halifax about things. Mrs C says Halifax advised her to return the tickets and ask for a full refund and then she could raise a claim for the 20% balance if unsuccessful.

Mrs C returned the tickets and obtained an 80% refund but after looking into things Halifax would not refund Mrs C the remaining 20% either via chargeback or Section 75 of the Consumer Credit Act 1974. Mrs C is unhappy with this and believes that Halifax had given her wrong advice and she would have been better off holding on to the tickets to use at a later date (she said there was a possibility she could have swapped them for 2022 tickets). Mrs C says she is at a financial loss due to the error of Halifax and wants it to reimburse her the 20%.

Our investigator didn't think Halifax had incorrectly advised Mrs C. And he thought there was no valid chargeback or Section 75 claim. So he didn't think it should refund 20% of the ticket price. He said the £100 it had offered her for poor service was fair and reasonable.

Mrs C wants the matter considered by an ombudsman. Since my involvement in the case she has now had the opportunity to listen back to the call she had with Halifax but she is still unhappy. In summary, Mrs C thinks Halifax failed to make it clear it couldn't advise her of the best approach, and that its actions have led to her financial loss.

I issued a provisional decision on this matter. In this I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I am sorry to hear about the disruption to Mrs C's plans arising out of the events of the global pandemic. However, it is worth noting that Halifax is not the supplier of theme park tickets here – so its liability will be limited to what it is able to do in its capacity as the credit card provider. In that respect the key protections are in relation to chargeback and Section 75. So I have considered those in addition to what Mrs C was told when she initially spoke to Halifax.

Section 75

Section 75 means Mrs C is able to make a 'like claim' against Halifax for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it has with her for the provision of goods or services. However, certain criteria apply to Section 75 in order for it to apply. I am satisfied those criteria are met here.

I note Halifax said Section 75 does not apply because Mrs C paid the supplier but the service was provided by the third-party theme park. However, there is a Section 75 claim in respect of any breach of contract or misrepresentation by the supplier which took the credit card payment in exchange for providing its own services. So I have considered the nature of the agreement between said supplier and Mrs C.

We do not appear to have received the terms and conditions from Mrs C's booking from either party. But I have asked our investigator to find an archived pre-pandemic copy. In the absence of any other evidence the parties wish to submit I think it is reasonable to rely on the contents of this along with the other evidence available.

From what I can see the theme park had to close due to the pandemic so as a way of allowing the contract to continue the supplier and Mrs C agreed to vary the original agreement by extending the original tickets until September 2021 so they could be used once the park re-opened (which it did in April 2021). This would not be a breach of contract.

Even if I accepted that the contract was not mutually varied by both parties I also note there is nothing in the contract with the supplier which persuades me Mrs C would have contractually been entitled to a refund from it due to the circumstances which arose. And what Mrs C has said reinforces that there was no refund policy that would have covered this situation even though the supplier gave her some other options.

All things considered, I don't think the supplier's failure to issue a full refund gives rise to a breach of contract. So, with Section 75 in mind I don't think there is a breach which Halifax is liable to remedy here. And for the sake of completeness I note Mrs C has not alleged any misrepresentation at the point the tickets were sold – nor do I think there would be a valid claim under this ground in the circumstances here.

Chargeback

I have also thought about chargeback. Chargeback is not a legal right and the rules are set out by the particular card scheme – in this case Mastercard. I have considered the relevant card scheme rules and additional guidance published in light of the Covid-19 pandemic.

There is no requirement for Halifax to raise a chargeback, but in some circumstances it would be considered good practice to do so. In this case it appears the most appropriate chargeback rule would be that relating to services not being provided.

Here I don't think Halifax were acting unreasonably in not attempting a chargeback when Mrs C first got in touch with it around January 2021. I say this because I think it is unlikely the chargeback would have been successful for the following reasons:

- when Mrs C contacted Halifax any chargeback in relation to the booking appears to have been outside of the 120-day time limit to raise a chargeback from the date the service was originally due to be provided; and*
- even if the chargeback were considered to be in time Mrs C accepted a reasonable alternative (extension of the ticket) as a resolution– which was available for her to use at a later date (I understand the park re-opened in April 2021). Even if she*

changed her mind later this will not give her chargeback rights based on the relevant scheme guidance.

So ultimately, I don't think it would be fair and reasonable to say that Halifax should refund Mrs C because of its failure to raise a chargeback when she first got in touch with it.

I know Mrs C went away and then claimed a refund with the supplier and came back to Halifax when she didn't get the full amount. At this point the nature of the chargeback would be more about a credit not being processed. But Halifax did not raise a chargeback then because the refund issued did not appear contrary to the contractual refund policy of the supplier disclosed at the time of transaction. In fact the refund issued by the supplier appeared to be more generous than this. So I don't think Halifax acted unfairly in not raising a chargeback at this point.

The initial contact with Halifax and customer service concerns

I have listened to Mrs C's initial discussion with Halifax about what her options were and where she claims it misled her.

Halifax has provided us with what appears to be a call in two parts (Mrs C is passed to the disputes team for the second half of the call) where Mrs C discusses a possible claim with it in respect of the tickets. Mrs C indicates Halifax was not clear that it could not advise her of the best approach to take. Mrs C has essentially said that because of what Halifax told her she decided to send the tickets back rather than hold on to them (with a prospect of rebooking for 2022).

I think it is important to note the context with which Mrs C approached the conversation. From what she says to the operator in the Halifax disputes team (which appears to be the key part of the call here) Mrs C is clearly not happy to keep the tickets with a view to using them later in 2021 or to wait until 2022 tickets go on sale. In fact she appears to have made her mind up that she wants to send them back for a refund. I note she says to the operator 'what is the best way of getting this money back'.

So while I agree Mrs C was seeking advice from Halifax I don't think the question posed was whether to send the tickets back or keep them. It was more about the process of trying to get a full refund. It follows that I don't think the agent would reasonably be expected to go into whether holding onto the tickets was possibly a better option (or clarify whether this was something they were even in a position to advise on).

Mrs C has also indicated that Halifax failed to point out the risk of her not getting a full refund. But as I have already indicated – I don't think the context of how she approached the call was based on her consideration of an alternative option. And while the operator is clearly sympathetic and agrees Mrs C should not lose out for something that isn't her fault I don't think anything she says can be taken as a guarantee that a subsequent chargeback / Section 75 claim (once she has returned the tickets and requested a full refund) would be a success.

The overall impression I have is the conversation is very much couched in the possibility rather than certainty of getting a full refund. The agent tells Mrs C 'we can take a look at it under Mastercard regulations to see if we can chargeback the full amount for you', that the Section 75 department can 'take a look at it to see what we can do under your consumer rights'. And they use phrases like 'we can take a look at the other 20%' (if Mrs C is unable to get more than the 80% back the supplier was currently offering).

I accept that towards the end of the conversation the operator talks about Mrs C being entitled to a full refund – but in the context of the call I don't think this is to be taken as a guarantee any chargeback or Section 75 claim would succeed. I think this is clearly the operator showing empathy at the circumstances around the pandemic, the cancelled trip and how Mrs C has lost out through no fault of her own. I note that after this statement the agent says Halifax can 'look into it' once Mrs C has 'all her evidence' – which again underlines how there are no firm assurances given about the outcome of any chargeback or Section 75 claim. So I don't think it is fair to say Mrs C would reasonably have come away from the call assuming the outcome of a subsequent claim was certain.

Overall, based on the calls I have listened to I don't think it would be reasonable to say that Halifax has caused Mrs C a financial loss here. I know Mrs C says she thinks there is another call but Halifax don't appear to have one. Mrs C has considered making a further request for this information from Halifax but this will add further delays to this case and based on what I have heard I think that even if there were another call, based on what I have seen and heard so far – it is unlikely to persuade me that Halifax are reasonably at fault for Mrs C doing something she otherwise wouldn't have done, causing her a financial loss.

I note Halifax did initially offer Mrs C £30 and then £60 compensation for some customer service failings. For example it appears that it didn't actually locate and listen to the calls in question before giving her an initial answer which caused her a lot of frustration as her main issue centered around what she was told on the phone. Mrs C also had difficulty getting further information about the calls from Halifax. Mrs C says Halifax has now offered her increased compensation of £100. I think this is a fairer amount for the frustration caused by the customer service issues that have occurred in any event so I will be directing Halifax to pay her this if it hasn't already done so.

My provisional decision

I partly uphold this complaint and direct Bank of Scotland plc trading as Halifax to pay Mrs C £100 compensation (if it has not done so already).

I asked the parties for their comments. Both accepted the findings of my provisional decision as a way of fairly resolving the complaint.

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.

Neither party has added anything that gives me cause to change my provisional findings (as set out above). I still consider my findings to be fair and reasonable.

Putting things right

Halifax should pay Mrs C compensation to reflect the distress and inconvenience caused by the customer service issues as detailed in my provisional decision.

My final decision

I partly uphold this complaint and direct Bank of Scotland plc trading as Halifax to pay Mrs C £100 compensation (if it has not done so already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or

reject my decision before 29 December 2022.

Mark Lancod
Ombudsman