

The complaint

Mr W complains Bank of Scotland plc t/a Halifax has not refunded him for a holiday he paid for using his credit card.

What happened

In February 2020, Mr W booked a holiday to St Lucia for him and his wife on 15 March 2020 for fourteen nights. Mr W booked the holiday through a company I'll refer to as "V" and the booking consisted of flights and accommodation. The cost of the holiday was £10,476.09.

Mr W says on the first day of the holiday, he noticed the return flight had unfortunately been changed due to the Covid-19 pandemic. As a result, Mr W and his wife's holiday was cut short as they were put on an earlier flight back to the UK after just five days. Mr W says the return flight was for economy seats, whereas, the original booking he had was for premium seats. Mr W also says he incurred further costs once he and his wife were back in the UK.

Mr W outlined the additional costs he incurred such as a hotel stay at the airport, a rescheduled train fare as a result of returning back to the UK sooner than planned (this transaction came with a non-sterling transaction fee which Mr W is also claiming for) a taxi from the train station to his house and massages that he and his wife had in St Lucia to relieve the stress. Mr W also said he received air miles points equivalent to seats in economy cabin rather than premium cabin for the earlier return flight – so this was another loss to him.

But since then, Mr W has clarified the amount he is claiming for which is in fact £14,239.76 – Mr W says in March 2022, he booked a return holiday to finish the nine nights he and his wife missed out on and this was the cost of that holiday so he wants to be reimbursed this amount.

Mr W says he tried phoning and emailing V about this matter, but they wouldn't respond to him. So, he raised a Section 75 claim with Halifax in May 2020. Halifax reviewed Mr W's claim and while they didn't think there had been a breach of contract on behalf of V, they did agree to offer Mr W:

- a pro rata refund of £6,734.62 for the nine nights of the holiday Mr W and his wife missed out on as a result of having to return earlier than planned.
- £212.18 to cover the hotel and rail costs Mr W incurred once he was back in the UK. (Halifax said they weren't prepared to cover the spa costs at the destination that Mr W chose to incur as they didn't deem this to be reasonable or necessary.)
- £250 compensation for distress and inconvenience due to the time it took to deal with Mr W's claim.

Our Investigator looked into Mr W's concerns. He explained The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) applied in Mr W's case and that as the service was partially provided (as Mr W and his wife were on holiday for five out of the fourteen nights they'd booked) our Investigator didn't think a full refund was due. However, the PTRs explained an appropriate reduction for where a package is curtailed was

warranted. And our Investigator said a pro rata refund for the unused days, like what Halifax had already offered, was a fair way of calculating an appropriate reduction.

Additionally, our Investigator said the express terms of Mr W's contract with V and the terms implied by the PTRs meant Mr W wasn't entitled to additional compensation for losses incurred such as the hotel and travel costs Mr W has set out, nor loss of enjoyment where a lack of conformity to the contract was due to unavoidable or extraordinary circumstances. So overall, our Investigator felt Halifax had acted fairly when assessing Mr W's claim and he felt Halifax's offer was fair. So, he didn't recommend Halifax do anything more to put things right. Mr W didn't agree and requested his case be reviewed by an Ombudsman. So, the complaint has been passed to me to decide.

I issued a provisional decision on the matter, setting out the below:

First, I'm aware I've summarised this complaint in less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved - no discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. If there's something I've not mentioned, it isn't because I've ignored it, I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In this case, I'm looking at whether Halifax acted fairly and reasonably in the way they handled Mr W's request for a refund and additional losses. This will take into account the circumstances of the problem and how V have acted, as well as the relevant law.

Chargeback

I can't see Halifax considered Mr W's request for a refund under the chargeback scheme. While chargeback was available, I don't think it would have been of any additional help to Mr W given the chargeback rules set out that he'd only be able to claim for services he didn't receive. And I think in this case, that would have been the nine nights of holiday out of the fourteen Mr W didn't get. So, all in all, I don't think Mr W would have been able to claim for anything different to what he claimed for under Section 75.

Therefore, the focus of my decision is on Section 75 – and whether Halifax should fairly do more than they've already offered to.

Section 75

In deciding what is fair and reasonable in this case, I am required to give consideration to relevant law. This includes Section 75 of the Consumer Credit Act 1974 which 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 a misrepresentation by the supplier of goods or services.

In this case, Halifax didn't think there was a breach of contract. They said this was because V's terms and conditions include a clause that covers off V's responsibilities in the event of changes made to a contract as a result of unavoidable or extraordinary circumstances – which is what they think happened in Mr W's case when the original return flight didn't go ahead due to Covid-19. Halifax say because of this term, there is no Section 75 liability. However, the holiday was cut short so not all of the services under the package holiday were provided to Mr W. And V weren't able to provide a significant proportion of the travel services as agreed in the package travel contract. So, I think there was a breach of this term under the PTRs.

As Mr W purchased a package of travel services put together by V, this meant certain terms were implied in his contract with them by the PTRs. Some of these terms required V to offer Mr W suitable alternative arrangements of equivalent or higher quality in the event they were unable to provide a significant proportion of the package. And in the event, they could not do so, or if Mr W had grounds under the regulations to reject those alternative arrangements, he was entitled to an appropriate price reduction. While I haven't been provided with V's exact terms and conditions from the time of the booking, I've looked at V's current terms and archived terms. And having read these, they mirror the provisions set out in the PTR's - V may be forced by unavoidable or extraordinary circumstances to change or terminate arrangements after departure. And if this situation does occur, suitable alternative arrangements will be offered and if the alternative arrangements are of a lower quality than those originally booked, V may offer a price reduction. V's terms go on to say that in these circumstances, they'll be unable to pay compensation or meet any costs or expenses incurred as a result. V were also required to repatriate Mr W at no cost in such circumstances, which they did.

It is clear that V were unable to provide a part of the package here – that's not in dispute. So, I think it's fair to suggest V were unable to make a suitable alternative arrangement. Mr W initially wanted a full refund of the holiday plus other expenses incurred totalling £11,371.39 to be refunded or for V to provide him with a replacement holiday. But since then, Mr W said he booked a return holiday in March 2022, to finish the nine nights he and his wife missed out on and that this cost a further £14,239.76. So, in fact, Mr W has asked for this amount to be reimbursed. I've thought about this alongside whether the sum offered by Halifax amounts to a suitable price reduction and if Mr W would be due additional compensation.

An appropriate price reduction in Mr W's case is likely to be the part of the package he didn't receive – the nine nights and the difference in cost between the flight he booked and the flight he had to come home on. I haven't seen a breakdown of the cost of each night, so it's difficult for me to determine exactly what Mr W is owed for the nine nights. But I think the pro rata refund Halifax has calculated seems the fairest way to reimburse Mr W in the absence of a proper cost breakdown. I say this because Mr W missed out on about 64% of the holiday and the £6,734.62 offered by Halifax is around 64% of the total cost of the holiday which was £10,476.09. So, I currently think Halifax should pay Mr W £6,734.62.

I appreciate Mr W wants Halifax to reimburse him the cost of the holiday he bought in March 2022, but I won't be recommending they do this. I say this because holiday prices vary over time and ultimately, it was Mr W's choice to rebook the holiday in March 2022. While I understand Mr W wanted to finish the holiday that was cut short, a price reduction here is appropriate redress for the part of the original booking Mr W didn't receive as a result of the holiday being cut short.

In relation to the flights, I haven't seen a breakdown in the cost of the flights in Mr W's booking confirmation. I looked for a similar flight with the same airline at a similar time for two adults and compared the price of a premium cabin seat to an economy cabin seat which showed a difference of around £450 between the two cabins. While I realise the difference in cost of the two cabins would have been less in 2020 than it is now, in the absence of any other information, I think it's fair Halifax should pay Mr W £450 as I think this is an appropriate price reduction.

I also think Halifax should pay 8% simple interest on the £6,734.62 and the £450 I'm recommending they pay Mr W. Although Halifax turned down the claim when issuing Mr W with their final response letter in October 2020, it had taken an unreasonable amount of time to reach this conclusion. A more reasonable amount of time would have been around a month after Mr W raised his claim in May 2020. So, I think interest should be paid from June 2020, to the date of settlement.

I note Mr W initially asked for V to provide a continuation of the holiday, and says another airline were providing the same holiday to the same resort, but they allowed their customers to complete their holidays in line with their contracts. I can't comment on another airline's actions here, but having looked at what is fair and reasonable, I think the appropriate remedy is what is set out in the PTR's and V's terms and conditions as I've explained.

I've next gone on to consider the additional costs Mr W incurred and other losses Mr W set out. The position in the PTRs is that V aren't liable for any additional losses and they won't need to pay compensation if the lack of conformity of the contract was as a result of unavoidable and extraordinary circumstances - this position also seems to be mirrored in V's terms and conditions. And I think it's fair to suggest that Covid-19 and the impact this had was unavoidable and extraordinary circumstances in this particular case given V had to cut the holiday short and get Mr W home before he was potentially stranded. With this in mind, I don't think Halifax need to pay Mr W any additional costs or compensate for any other losses he incurred as set out in the PTR's and V's terms.

I've also thought about the compensation Halifax have offered for the distress and inconvenience caused due to the time taken to deal with Mr W's claim and complaint. Mr W first raised a claim with Halifax in May 2020. It seems from the email communications that Halifax weren't able to identify the payment for the booking at first, so they weren't able to help Mr W immediately. This understandably caused Mr W frustration. Mr W didn't hear from Halifax, so he then sent chaser emails to them in June 2020 asking for a response. As previously mentioned, Halifax then sent their final response letter addressing Mr W's concerns in October 2020.

I acknowledge Halifax apologised for not getting back to Mr W sooner and also that they could have given Mr W better service. It's clear from Mr W's communications with Halifax that he wasn't receiving a response from V in relation to his request for a refund, and this was why he then approached Halifax for help. I think it would have caused further upset to Mr W when he didn't receive an acknowledgement nor a response sooner from Halifax.

Understandably, Mr W wanted to try and get an answer from Halifax as he was raising concerns about a holiday booking that cost a lot of money. And I think waiting several months for Halifax's response on the matter would have caused frustration. Having thought about the inconvenience caused and time taken to provide Mr W with a response, I currently think £250 compensation offered by Halifax is fair in the circumstances.

Putting things right

In summary, I currently think Halifax should refund the following to Mr W:

- *£6,734.62 for the nine nights of the holiday Mr W and his wife missed out on as a result of having to return earlier than planned.*
- *£450 for the difference in flying back in economy rather than premium cabin.*
- *Pay 8% simple yearly interest on the above amounts from June 2020 to the date of settlement.**
- *£250 compensation for distress and inconvenience caused due to the time it took Halifax to deal with Mr W's claim.*

** If Bank of Scotland plc t/a Halifax consider that they're required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mr W how much they've taken off. They should also provide Mr W with a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Responses to my provisional decision

Halifax responded and confirmed they agreed with my provisional decision.

Mr W responded and said he wasn't happy with my provisional decision. Mr W provided a number of points he wanted to make. In summary, Mr W said he finds it hard to believe that a product or service can be paid for, but the provider of that product or service doesn't have to adhere to the contract. Mr W reiterated in this case, he didn't get what he paid for.

Mr W also said the cost of completing the contract would have been minimal to V and that he didn't think a 64% refund of the original cost of the holiday was adequate. Mr W also made reference to advice shared in the media to explain that if a customer doesn't get what they paid for from the supplier, the credit card company is jointly liable, implying a customer will get back what they paid for. So, Mr W has asked me to rethink my decision from his point of view.

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'm sorry to read Mr W doesn't feel his case has been taken seriously. I want to assure Mr W that although I may not comment on every point he made in response to my provisional decision, I have read his submissions.

I understand Mr W says the cost V would have incurred as a result of completing the contract or offering an alternative wouldn't have been a lot. While I appreciate Mr W's point, the holiday was cut short as a result of Covid-19 so the contract couldn't be completed and I think V weren't able to provide a suitable alternative, so as explained in my provisional decision, a price reduction was appropriate here.

I note Mr W has made reference to The Consumer Rights Act 2015 and says that if a customer doesn't get what they paid for, the credit card company is jointly liable, implying a customer will get back what they paid for. I understand what Mr W has said, but it depends on the circumstances of each case as to what money a customer gets back. Additionally, in Mr W's case, I've considered the PTR's to be most relevant to the circumstances. I appreciate Mr W doesn't feel the redress I've recommended is fair. But my decision remains the same for the reasons I explained in my provisional decision.

Putting things right

In summary, I think Halifax should refund the following to Mr W:

- £6,734.62 for the nine nights of the holiday Mr W and his wife missed out on as a result of having to return earlier than planned.
- £450 for the difference in flying back in economy rather than premium cabin.
- Pay 8% simple yearly interest on the above amounts from June 2020 to the date of settlement.*
- £250 compensation for distress and inconvenience caused due to the time it took Halifax to deal with Mr W's claim.

** If Bank of Scotland plc t/a Halifax consider that they're required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mr W how much they've*

taken off. They should also provide Mr W with a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint and I require Bank of Scotland plc t/a Halifax to carry out the actions as set out under the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 March 2023.

Leanne McEvoy
Ombudsman