

The complaint

Mr E complains that Bank of Scotland plc trading as Halifax ("Halifax") unfairly handled his charge back request and a subsequent claim under section 75 of the Consumer Credit Act 1974 ("the CCA") in respect of a holiday product he purchased using his credit card.

What happened

In or around January 2022, whilst attending a holiday resort outside of the UK, Mr E met with a supplier of holiday products and packages who I'll refer to as "P". During that meeting, Mr E agreed to purchase a holiday package supplied by P. The purchase price agreed was €4,550 which Mr E funded using his Halifax credit card – equivalent to £3,820.28.

The holiday package purchased included six weeks accommodation to be utilised within a period of 12 months. The first week's accommodation was booked to be taken in February 2022 at a resort specified in the purchase contract. Subsequent weeks could then be booked by Mr E thereafter through a website - details of which were included within the purchase contract.

Mr E later attempted to book further weeks accommodation at the same resort he'd attended and was included for February 2022. However, despite many attempts using the specified website and booking system, Mr E couldn't find any availability for that resort.

Mr E approached the supplier for a refund as he wasn't happy that his preferred accommodation wasn't available. He insisted he'd been told he would be able to use the package to stay at the same named resort. But, despite that assurance, he was unable to find any availability and wasn't interested in bookings at other resorts or locations available. He believed the product had been mis-sold to him.

P offered a 50% refund, but Mr E wasn't prepared to accept this offer. So, Mr E contacted Halifax to initiate a chargeback claim. It was agreed with Halifax that as Mr P had, by that time, already utilised the first week's booked accommodation, a partial charge back claim would be submitted for £3,183.57. Halifax initiated the chargeback and refunded this amount to Mr E's credit card account with them.

Unfortunately, the chargeback claim was successfully defended by P, so the refund was reversed. But Mr E wasn't happy as he says he wasn't told the original refund was temporary. So, Halifax agreed to consider a claim under section 75 of the CCA ("S75") on the basis Mr E insisted the purchased had been mis-sold and misrepresented. Having considered Mr E's claim, Halifax didn't agree there was evidence to support the alleged misrepresentation.

Mr E complained to Halifax about their treatment of his chargeback request and subsequent S75 claim. He didn't think Halifax should've offered a temporary refund and insisted they hadn't told him the refund was conditional upon P accepting it. He also insisted the package had been misrepresented to him at the time of the sale and thought he was protected under S75.

In response, Halifax acknowledged there'd been a delay in responding to Mr E's complaint and offered a payment of £75 as compensation. But they didn't agree they'd done anything wrong in the way they'd processed Mr E's chargeback request. They also didn't think there

was any evidence P had breached the terms and conditions of the contract as holiday bookings remained available for Mr E at alternative resorts and hotels.

Unhappy with Halifax's response, Mr E referred his complaint to this service. One of our investigator's considered all the information and evidence provided. Having done so, they didn't think Halifax had acted unfairly in declining Mr E's S75 claim. But although the chargeback claim appeared to have been processed correctly, our investigator thought Halifax could've been clearer in their explanation of the refund and its temporary nature. To recognise Mr E's resultant loss of expectation, our investigator thought Halifax should compensate Mr E for any distress and inconvenience caused by paying him £100.

Mr E didn't agree with our investigator's findings. He suggested that during a telephone conversation with Halifax, they'd told him not to accept P's offer of a 50% refund. He says he did so on the basis they would refund him £3,183.57. Had Halifax told him this was temporary; Mr E says he would've accepted P's offer. Mr E thinks Halifax should pay him the 50% refund offered by P.

As an informal resolution couldn't be achieved, Mr E's complaint has been passed to me to consider further.

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.

Relevant considerations

When considering what's fair and reasonable, DISP¹ 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

The chargeback request

Chargeback is the process by which settlement disputes are resolved between card issuers (here that's Halifax) and merchants (here that's P) under the relevant card scheme. The card scheme is the business that runs the payment network and the chargeback scheme. And chargebacks are ultimately decided based on the card scheme's rules rather than the relative merits of the dispute.

Ultimately, the final decision as to whether a chargeback request is successful is made by the card scheme, not the card issuer (Halifax). So, as long as Halifax have done everything they reasonably could in submitting the chargeback request, if it's successfully defended, that isn't something that can be challenged by this service.

Chargeback schemes are voluntary codes that card issuers and merchant acquirers sign up to. They're not guaranteed to recover money as this depends on the underlying circumstances and the scheme rules.

I've listened to recordings of two calls between Mr E and Halifax. In the first of these, Halifax made it clear they could proceed with the dispute chargeback to try and get as much back as

¹ Dispute Resolution: The Complaints sourcebook (DISP)

they could for Mr E. Halifax also explained that P would be required to respond to any chargeback request within 45 days. If they did so, Halifax could further respond giving a further 30 days. They made it clear that the process could be long, so a negotiated resolution by Mr E with P may be the quicker option.

The second call follows Mr E's failed attempts to reach a satisfactory resolution with P having given them a reasonable period of time to do so. This is what I would expect to see here. But it appears Mr E still wasn't happy with P's offer to refund 50%. So, he'd returned to Halifax to confirm that a satisfactory resolution couldn't be achieved. From the evidence available, it appears Halifax then initiated the chargeback request.

Whilst the call recordings demonstrate that Halifax were satisfied that there was sufficient information to enable them to initiate the chargeback request, I don't think Halifax gave any guarantees of success at any point. And by explaining to Mr E the response times permitted for P, I think they also made it very clear the claim wasn't likely to be resolved quickly.

From the evidence available, I believe Halifax followed the card scheme rules correctly in processing Mr E's chargeback request. However, it appears there was some misunderstanding around the refund Mr E received to his credit card account. This was processed shortly after the claim was initiated and confirmed to Mr E in an SMS text message. But it seems it wasn't made clear to Mr E that the refund could be temporary. Because of that, Mr E thought his claim had been resolved in his favour. It wasn't until the refund was later reversed that he realised it hadn't.

As I've said above, I think Halifax had made it clear to Mr E that the chargeback request could take some time. Particularly given that P had the ability to respond to it within 45 days. So, I don't think it was safe to assume the claim had been successful even though Mr E had received a refund to his account. Particularly as it was so early in the chargeback process. But I accept that Halifax didn't clearly explain that Mr E would receive an up-front refund which could then be reversed if successfully defended.

In their response to Mr E's complaint, Halifax explained the reasons why they make an initial refund – principally so that Mr E doesn't incur interest costs while his dispute continues. I think this was a fair and reasonable explanation albeit hadn't previously been made clear. So, I can understand why this might've been misunderstood. Because of that, I appreciate Mr E will have suffered some concern and inconvenience due to that misunderstanding. And this could have been avoided had Halifax been clearer in their explanation of their chargeback process. So, I think this should be reflected in my decision. And a payment of £100 feels fair to me here.

Mr E says he only declined P's offer to refund 50% at Halifax's suggestion. But I think he'd already made it clear to them he wasn't satisfied with P's offer. And whilst he may have sought their view on that, Halifax had merely confirmed they were happy to try to secure a larger refund under the chargeback process. That's what they did here, albeit this was unsuccessful. And as chargeback decisions aren't ultimately made by Halifax, I can't reasonably hold them responsible for the outcome.

Was the product misrepresented or the contract breached?

S75 provides consumers with protection for goods or services bought using credit. Mr E paid for the holiday package under a pre-existing regulated credit card agreement. So it isn't in dispute that S75 applies here. This means Mr E is afforded the protection offered to borrowers like him under those provisions. And as a result, I've taken this section into account when deciding what's fair and reasonable in the circumstances of this case.

It's important to distinguish between the complaint being considered here and any legal claim (for misrepresentation or breach of contract). The complaint this service is able to consider specifically relates to whether I believe Halifax's failure to uphold Mr E's S75 claim was fair and reasonable given all the evidence and information available to me.

While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service. This service isn't able to make legal findings for claims – that is the role of the courts. However, where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

For me to conclude there was misrepresentation by P in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that P made false statements of fact when selling the holiday package. In other words, that they told Mr E something that wasn't true in relation to the allegation raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr E to enter into the contract. This means I would need to be persuaded that he reasonably relied upon false statements when deciding to buy the holiday package.

From the information available, I can't be certain about what Mr E was specifically told (or not told) about the benefits of the package he purchased. It was, however, indicated that he was told these things. So, I've thought about that alongside the evidence that is available from the time.

I've seen a copy of the agreement signed by Mr E at the time of the sale. Having considered this, I think the contract is clear that the first week (of the six) had been booked at the resort of Mr E's choice. But the contract is also clear that the following five weeks could be taken in any establishment provided by the supplier (or the associated booking agent). Based upon this, I'm not persuaded that P told Mr E that he was guaranteed to be able to secure booking at the same resort each time.

Further, the contract clearly states that “...*accommodation will be subject to availability at all times*”. All of this information was detailed on the front page of the contract which was signed at the bottom by Mr E. Further, page 4 of the contract headed “*Statement of Liability*” includes the point, “.../we have been informed that said accommodation is subject to availability”.

So, while I acknowledge Mr E's desire to make bookings for the same resort each time, I can't fairly conclude that P was under any contractual obligation to ensure he could achieve that. And given the contract remained valid and live at the time of his dispute, I think Mr E remained free to make bookings at any other resort offered (subject to availability) throughout the remaining term.

Given my findings above, I've not seen anything that persuades me the contract was misrepresented to Mr E by P in the manner alleged. And I also haven't seen anything that demonstrates P failed to deliver anything they were contractually obliged to.

Putting things right

As I've explained above, I think Halifax could've been clearer in explaining their process relating to chargebacks more clearly. Particularly in relation to the initial refund and its reversal. Because of that, I will be asking Halifax to pay Mr E £100 to reflect any distress and inconvenience caused.

I recognise that Mr E clearly believes that what he received wasn't what was represented to him by P. While I appreciated he will be very disappointed, I haven't found anything in the evidence provided to support any allegation of misrepresentation or breach of contract. Because of that, I don't think Halifax's decision to decline his S75 claim was ultimately unfair or unreasonable.

My final decision

For the reasons set out above, I uphold Mr E's complaint in part.

I require Bank of Scotland plc trading as Halifax to pay £100 to Mr E.

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

reject my decision before 21 December 2023.

Dave Morgan
Ombudsman