

The complaint

Mrs E complains Bank of Scotland plc trading as Halifax hasn't treated her fairly in connection with disputed card payments to a holiday park.

What happened

I issued a provisional decision on Mrs E's case on 4 August 2023 which outlined the background to the complaint in full, so there is no need for me to repeat all the details here. However, in brief:

- Mrs E used her Halifax debit card to make payments totalling £1,123 to a holiday park ("B"), of which £1,008 was for accommodation, £100 was for specific extras and £15 was for a charge which was refunded.
- Mrs E was due to stay for seven nights but she left after five nights due to problems with the accommodation. She had complained to B but the complaint was unresolved.
- On her return home, Mrs E complained to B's head office. B accepted some of her complaints and offered what it said was a 50% refund of the accommodation, but this was only £168. Mrs E disagreed with this and asked Halifax to help her get a refund.
- Mrs E provided a lot of information to Halifax about what had happened. The bank gave her a temporary refund of £1,108 while it pursued a dispute with B via the "chargeback" process.
- The bank mistakenly told Mrs E, verbally and in writing, that the chargeback had been successful and she could keep the temporary refund, but this wasn't true: the chargeback had been disputed by B. Halifax informed Mrs E of this the day after it had told her in writing that the chargeback had been successful. In the end, Halifax accepted B's arguments and decided not to take the chargeback further.
- Halifax intended to take back the temporary refund, but Mrs E closed her bank account before it could do this. The bank still insisted however, that Mrs E needed to pay the money back. It offered Mrs E £100 compensation for its errors.

Mrs E brought her complaint about what had happened to the Financial Ombudsman Service. In my provisional decision I made the following findings:

- I observed that chargebacks were a way of claiming a refund of money paid using a card, and that the types of dispute which could be pursued, the evidence required and the time limits to submit information were all subject to complex rules set by the card scheme (Visa in Mrs E's case). Chargebacks were not a consumer right and would not always be successful, but I'd expect a bank to conduct the process in a competent way, without making mistakes.
- Halifax had made multiple errors in relation to the chargebacks. It had delayed in

submitting them, probably submitted them under the wrong “reason code”, and had accepted B’s defence to the chargebacks uncritically. B’s defence had not been a valid one according to the Visa rules, and in fact undermined its position as it showed a 50% refund of the accommodation would have been £554, not £168.

- Mrs E would have been entitled to a refund of £288 via the chargeback process. This was because the Visa rules said she could only be refunded for “the unused portion of the cancelled service”. She had stayed five nights out of seven so she could only be refunded for the two unused nights. Had Halifax conducted the chargebacks properly, I thought a £288 refund was the most likely outcome.
- It was disappointing that the bank had told Mrs E multiple times that the chargebacks had been successful, *and* for the whole amount she’d disputed, when this was not the case. Although it was not entirely clear why incorrect information was given, it seemed most likely staff had not checked the situation properly before answering Mrs E’s questions.
- Mrs E should receive a total of £300 compensation to reflect the shock and distress caused by discovering that she still owed the money after being told she could spend it, and the ongoing inconvenience the situation may cause her. However, I didn’t think she had ever been entitled to keep the whole refund. I thought she should be allowed the opportunity to repay (minus the £288 she should have received via the chargebacks) the amount in a flexible way which accounted for her financial circumstances and without reporting negative information on her credit file.

I invited Mrs E and Halifax to respond to my provisional decision. Halifax said it didn’t have anything to add. Mrs E made a number of comments which I think could be summarised as follows:

- She had informed Halifax she was being tested for a specific neurodiverse condition at the same time as the chargeback claim was ongoing, and she has now received her diagnosis. When the bank told her she could spend the money, to her that had been final, and the stress and anxiety caused by the error had been greatly magnified due to her condition. She had been discriminated against.
- She had done nothing wrong and she wouldn’t be paying a penny to the bank.
- On the day she’d left B she had left very early so had effectively missed that day as well. She’d also not been able to access the accommodation on the first day until 4pm.

Mrs E said she considered more than £300 compensation would be appropriate, plus Halifax should foot the bill for their mistakes (by writing off the temporary refund) and have more training in dealing with these situations.

The case has now been returned to me to review once again.

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 thank Mrs E for her further submissions.

The remaining points of dispute in this case are whether Halifax should write off more than I

indicated in my provisional decision, and whether the bank should pay more compensation for the non-financial impact of its errors.

I don't doubt that Mrs E informed Halifax that she was being tested for the condition she mentioned. I also don't doubt that she feels as though the bank's treatment of her was discriminatory. I haven't seen evidence in this case that Halifax *was* discriminatory in the way it treated Mrs E. It seemed to me that members of staff had been careless and not properly checked the status of the dispute with B before giving Mrs E information, causing her to be treated unfairly. I do acknowledge Mrs E's point that, for her, the bank's errors had a particularly significant non-financial impact.

However, these were all things that I thought about when I stated Halifax should increase the amount of compensation it paid Mrs E. Having considered everything again, I remain of the view that £300 is a fair compensation figure in all the circumstances of the case.

Regarding the refund she should have received in the dispute with B, Mrs E has noted that she departed early on the day she decided to leave and hadn't been able to access the accommodation on the first day until late afternoon. I understand her to be making the point that there were two more days of the holiday which had effectively been "lost" and the amount she ought to have received via the chargeback process should reflect that.

While I can understand where Mrs E is coming from, in my experience I do not think the card scheme would have taken the same view. I think it is more likely that, when calculating the "unused proportion of the service", it would base this on the number of nights stayed, which is consistent with how accommodation is normally charged. Mrs E hasn't disputed staying five nights and so I think she'd have been entitled via the chargeback process to a refund for the two nights she didn't stay – which comes to £288.

Finally, Mrs E has said Halifax should ensure its staff receive better training, and that it should write off the rest of the temporary refund in light of its mistakes.

I can't direct Halifax on how it should train its staff, as training is a general matter which goes beyond individual complaints. However, I note the bank is expected to learn from the decisions of the Financial Ombudsman Service, and this could include making changes to its training or procedures where these have been identified as a cause of justified complaints.

I do not think the bank needs to write off the rest of the temporary refund. In the end, this is money which Mrs E was not entitled to. While it is right that the figure is reduced to reflect the fact a partial refund should have been achieved via the chargeback process, and that Mrs E is given compensation for being given incorrect information, and time to repay the balance without penalty, I do not think it would be fair and reasonable to write off the remaining amount. This doesn't prevent Halifax from taking its *own* decision to write it off, if it considers that to be appropriate either now or in the future, but it is not something which I think it would be right for me to tell the bank to do.

My final decision

For the reasons explained above, including the summary of my provisional findings, I uphold Mrs E's complaint in part and direct Bank of Scotland plc trading as Halifax to take the following actions:

- A) Reduce the outstanding balance on Mrs E's closed account by £288, this being the amount she could have received had the chargebacks been pursued as they should.

- B) Pay Mrs E £300 compensation, to the extent it hasn't already done so.¹
- C) Allow Mrs E to repay any outstanding balance on the account in a flexible way that takes into account her financial circumstances, and without recording of arrears or a default on her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 4 October 2023.

Will Culley
Ombudsman

¹ Halifax says it sent Mrs E a cheque for £100 but it appears this wasn't banked. If the cheque was not banked then it would be sensible of the bank to cancel the cheque and either raise another for £300, or arrange a bank transfer.