

The complaint

Mr C complains about how Bank of Scotland plc trading as Halifax handled a claim he made to it.

What happened

The parties are familiar with the background of this complaint – so I will simply summarise it here. It reflects my informal remit.

Mr C is represented in this complaint – so any reference to comments he has made include those made on his behalf.

Mr C paid for holiday accommodation using his Halifax credit card. However, while he was there his son was injured in an accident at the hotel involving an item of furniture.

Mr C says that the hotel is at fault for the accident because the furniture was unstable and unsafe. He says that in addition to causing injury to his son the accident ruined the stay. He says that insurance covered the hospital bills, but he would like a refund for the accommodation.

Mr C was unable to get a refund from the supplier of the accommodation so he made a claim to Halifax. It considered a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') but didn't uphold it. It says it was unable to persuasively evidence that it was liable for a breach of contract as a result of the accident which happened to Mr C's son.

Mr C's complaint about the outcome of the claim was brought to this service. Our investigator didn't uphold the complaint, so Mr C has asked for the matter to be considered by an ombudsman. In summary, he says that the hotel did not offer a safe place to stay and the medical report is clear that an unstable table from the hotel fell onto his son's leg. And it is not fair to pay for the service in these circumstances which impacted his son and the whole family.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I am very sorry to hear about the accident Mr C's son was involved in, and how it impacted the holiday and I hope he is recovering well. It is important to note here that in deciding what is fair and reasonable I am looking at Halifax's role as a provider of financial services. In doing so I note Mr C paid for the hotel using his Halifax credit card, so the card protections of Section 75 and chargeback are relevant here. As a result, it is these I have focused on.

Section 75 can in certain circumstances make Halifax liable in respect of a '*like claim*' for breach of contract or misrepresentation in relation to an agreement Mr C has with a supplier of goods or services which he financed using his card.

I have not gone into misrepresentation here – as I consider the claim Mr C has raised is centred around breach of contract. Namely that the supplier has acted without reasonable '*care and skill*' as implied into consumer contracts by the Consumer Rights Act 2015. Although I recognise that the supplier is based abroad, the booking was made in the UK and I consider this legislation relevant in the absence of persuasive objection from either party.

There are certain requirements for a valid Section 75 claim to exist, relating to things like the cash price for the goods or services, and the parties to the agreement. In this case I think there are some question marks as to whether Mr C is contracting with the hotel which supplied the services here. There isn't any dispute that Mr C is a named guest, but it appears the booking invoice with the supplier is made out to another party.

Being a guest on a trip, or paying for the trip doesn't automatically make someone a contracting party with the supplier. And from what I can see of the supplier's terms and conditions it appears that the person making the booking is likely whom the contract is with. However, I have not looked at this in detail, nor do I see reason to. I say this because I think the Section 75 claim falls away for other reasons – namely that there isn't persuasive evidence of a breach of contract here. I will explain more about my reasoning for this.

I don't think there is any dispute that Mr C's son was involved in an unfortunate accident involving furniture. I note the following from the hospital report confirming this:

'during their stay at the hotel, a dresser fell on his right foot'

I presume the hospital meant the table when it referred to 'dresser' - although that is not clear. However, the medical report in itself does not establish that there has been a breach of contract by the hotel here in relation to the safety of furniture. Namely, that the hotel acted in such a way (in respect of guest safety) that this would be considered a lack of reasonable care and skill in that particular industry. To establish this is not straightforward, however, I expect there would need to be some kind of persuasive expert evidence or further expert investigation showing that the hotel failed to take proper precautions in respect of the facilities in the room and that this led to the accident.

And while I note that Mr C has provided photos and a video showing what he believes to be an unsafe table, I don't think this is sufficient to have reasonably expected Halifax to have accepted liability here. Particularly, as the hotel appears to have presented a robust denial of any wrongdoing stating that 'we categorically deny any merit to these allegations' and referring to them as 'false claims'.

I am not saying that what the supplier has said about Mr C's claim is right. I am simply looking at the information reasonably available to Halifax when it considered the matter. And considering the complexity of the issue and the lack of clear and persuasive evidence linking the accident with a lack of reasonable care and skill by the hotel I don't think Halifax would fairly have been expected to uphold the claim for breach of contract at the time. Noting here that it has no ability to cross examine witnesses or compel evidence from the hotel in the same way a court would. I also note that this matter is further complicated by any potential claim for ongoing injury (which is not something this service is able to make an award in respect of in any event).

Chargeback

Chargeback is another card protection but rather than set down in law it is run by the card schemes. In this case it appears the relevant card scheme is Mastercard.

It isn't clear what Halifax did in respect of considering or raising a chargeback. It appears that it focused on Section 75 instead. However, in the circumstances I don't think that was unreasonable. I say this because there isn't a chargeback reason code that fits a claim for compensation arising out of personal injury and an alleged breach of safety standards.

Even if there was a reason code suitable here (and I am not persuaded there is) I don't think the chargeback had a reasonable prospect of success in any event because:

- the evidence indicates that the hotel would have robustly defended it rather than accept liability; and
- this is a complex dispute and there are evidential challenges here in showing the hotel breached relevant standards – as I have already discussed in respect of the Section 75 claim (above).

All things considered I don't think Halifax made a mistake in not upholding the claim Mr C raised with it. I understand this will be disappointing to Mr C, and once again I am very sorry to hear that his child was injured – but my role is to look at things informally. Mr C does not have to accept my decision and may choose to pursue his dispute by other avenues, such as court, after taking relevant legal advice.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 June 2024.

Mark Lancod
Ombudsman