

The complaint

Mr R has complained about the way Bank of Scotland plc trading as Halifax dealt with his claim for money back in relation to a purchase he'd made using his credit card.

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But to summarise, Mr R paid £8,000 in November 2022 to a company I'll call "H" towards the cost of a holiday. The total cost was around £11,000 and it was for two people. The holiday was organised by a separate company I'll call "G". It took place in February 2023 for just over two weeks.

Mr R was unhappy with elements of the holiday and complained to G in February 2023. He said the experience wasn't anything like it should have been. He specifically asked for the cost of a train journey that was part of the holiday to be refunded because it wasn't satisfactory. He also said the hotels in two of the locations were substandard. I understand G responded to Mr R to apologise for some of the problems. It said there was an issue with the train which was beyond its control. It referred to a replacement coach that was provided for part of the journey, and it offered £500 cash and £500 holiday vouchers. Mr R contacted H to say he thought a 25% refund would've been fairer. G increased the offer to £700 cash and £700 holiday vouchers, but Mr R wasn't happy with this either. He thought £2,000 cash would've been fairer.

Mr R decided to contact Halifax to put in a claim under section 75 of the Consumer Credit Act 1974. Halifax declined this claim on the basis the necessary conditions didn't exist for a claim to be considered. Mr R complained but Halifax didn't change its position. Mr R referred his complaint to our service to consider.

One of our investigators looked into things but didn't uphold it. She agreed the necessary conditions didn't exist for a claim to be considered under section 75. She said while H sold the package holiday, it did so as a retailer. She said G was the organiser, and therefore responsible for any problems with it. And so Halifax's response to the claim was broadly fair.

Mr R didn't agree. He said the only reason he used his Halifax credit card was because of the protection it would offer under section 75. He said it's not reasonable to expect him to be aware that certain conditions need to be met in order for a valid claim to be raised under section 75.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr R and Halifax that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Mr R was unhappy with the trip. I appreciate it cost a significant sum, and I can't imagine how he must've felt.

What I need to consider is whether Halifax – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr R's request for getting money back. It's important to note Halifax isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Halifax can consider assessing a claim under section 75 or raising a chargeback.

Section 75 is a statutory protection that enables Mr R 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 had with him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. But there also needs to be a debtor-creditor-supplier (DCS) agreement in place. Having multiple parties involved can impact the arrangement.

In this case, I note H received the payment from Mr R, marketed the holiday and carried out administration in relation to the booking. But it was G that organised the package holiday. And any claim Mr R has against Halifax would not be in respect of G. This is because he paid H. I note the booking for the holiday is with G, and G sent the booking details to H.

With package holidays, the agent is responsible for the performance of the package. And in this case, although the booking was a package holiday, I do not consider the implied terms regarding refunds in the Package Travel and Linked Travel Arrangements Regulations 2018 apply here as I am satisfied the supplier (H) was not the 'organiser' of the package (as defined by the regulations) but the 'retailer'. H simply marketed the holiday but did not combine the elements of the package. G is the organiser. Therefore, as the 'retailer', H's responsibilities are more limited when it comes to any implied terms brought about by the regulations.

Mr R has complained about the performance of elements of the package holiday organised by G. I therefore don't consider Halifax can be held liable for any alleged breach of contract because the required DCS agreement isn't in place. I appreciate this is complicated, and that Mr R wasn't aware of it, and wasn't notified about it before making the booking. But that's not something Halifax is responsible for. So I don't have the grounds to say that Halifax's decision to decline the claim was unfair.

For completeness, I've also thought about chargeback. The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim. Halifax didn't think a chargeback would've had a reasonable prospect of success. I agree and will explain why.

I think Mr R may say part of the holiday wasn't provided because he had to accept alternative transport for a part of the journey. And he might also argue that the service was either defective or not as described because he was unhappy with the train journey and some of the accommodation. There are chargeback rights for services not provided, not as described, or defective. But, from looking at the G's terms and conditions, it doesn't accept liability for events outside of its control. And it also sets out that there could be occasions it

has to make changes to the plans with little or no notice. It provided alternative transport for Mr R when there was a problem with the train, which seems to be in line with its terms and conditions. For the change in transport, I think the associated chargeback would have been defended on that basis. And I don't think a chargeback would've succeeded based on the evidence supplied for the train journey or accommodation being defective.

Taking all this into account, even if there may have been grounds to raise a chargeback, I think there would've had been a valid defence because Mr R went on the holiday, he used the services and accepted alternatives when required in line with G's terms and conditions. Moreover, I'm conscious that Mr R was also offered cash and holiday vouchers when he complained to G. While I appreciate Mr R doesn't agree with the amount offered, considering everything that'd been paid for – the rail journeys, several flights, several accommodation bookings and so on, the offer isn't clearly unreasonable. Taking all this into account, I don't consider there'd have been a reasonable prospect of success through Halifax's pursuit of chargeback either, based on what I've seen.

Therefore, while I sympathise with the situation, I'm not intending to direct Halifax to compensate Mr R anything further. I think it broadly handled the claim fairly based on the evidence it had.

Mr R responded to say he understood Halifax wasn't the supplier but thought that it should take the same responsibility as the supplier under section 75. He said it's not fair there's a loophole that allows a creditor to divest itself of its responsibility. He said Halifax should have let him know about the 'loophole' when he entered into the agreement with it. And as he wasn't told, it shouldn't apply. He said he's arguably been mis-sold the credit agreement. He said he disagrees that Halifax isn't responsible for informing him about the DCS agreement. As the expert, he thinks it should have done so.

I can't see we received a response from Halifax.

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'd like to thank Mr R for his response. While I can understand Mr R's arguments, I still don't have the grounds to say that Halifax handled the claim unfairly when taking the law and chargeback conditions into account. Mr R would have protection under section 75 if the necessary conditions are met. Having multiple parties involved can impact the arrangements. But I'd not expect Halifax to go through all the different nuances of the law that may apply to transactions when entering into the credit agreement with Mr R. Nor would I expect it to go through all the chargeback dispute conditions either, for example. It would not be practicable, and nor is it something that's required when opening a credit card account.

While I sympathise with the situation, I'm not going to direct Halifax to take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 March 2024.

Simon Wingfield
Ombudsman