

The complaint

Mr L has complained about the way Bank of Scotland plc trading as Halifax dealt with his claim for money back in relation to flights he bought using his credit card.

What happened

To summarise, in August 2022 Mr L paid around £700 to a company I'll call "T" to arrange flights for him in January 2023 using his Halifax credit card. In December 2022 he contacted T because he wanted to obtain a quote to change one of the flights.

Mr L says he spent a lot of time trying to amend the flight with T without success. I can see it initially told him it couldn't change the flight because re-routing wasn't an option on his booking. Mr L responded to say he'd spoken to the airline, and it was possible – although the airline needed the request to go through T. It looks like T sent Mr L details of the amended flights but there was a penalty fee of around £150 per person to be paid.

Mr L says he'd booked a certain ticket type where he could amend the ticket for free but pay a fare difference. He was unhappy T was trying to charge him a penalty fee, so he wanted to escalate it to a manager. Mr L says T didn't reply to emails or phone calls. Mr L contacted Halifax and explained to it that he'd bought the top tier ticket that could be amended, and that he'd been having a lot of difficulties doing that with T. He said he'd been on hold for a long time and that T wasn't returning his calls. Halifax explained that if the ticket was able to be amended and T was refusing there might be grounds for a chargeback. It said he may be able to claim under chargeback after the flights departed. Mr L asked if he should book other flights, but Halifax said it couldn't advise on this.

Mr L made other arrangements and put in the claim with Halifax. Halifax raised the chargeback claim but it was defended. Halifax pursued it further, but I understand the card scheme ruled that Mr L had failed to show the relevant terms and conditions allowing him to amend flight dates, so the claim wasn't successful. Mr L decided to refer his complaint to our service to consider. I understand Halifax also since declined the claim under section 75 of the Consumer Credit Act 1974 (CCA).

One of our investigators looked into things. She thought Halifax had broadly acted fairly by pursuing the chargeback as far as it could. She said Halifax declined the section 75 claim and if Mr L was unhappy about that he could raise another complaint and the complaint she was considering only related to the chargeback.

Mr L didn't agree with the response. He said he thought the section 75 claim was closed without Halifax attempting to do anything. He said he thought the claim was valid because of the issues with T. He said Halifax didn't request evidence which he thought contradicted T's view. He said the case was closed and decided before he had a chance to defend it.

As things weren't resolved, the complaint was passed to me to decide.

I asked our investigator to contact Mr L to explain the card scheme was only going to take T's terms and conditions into account so if there was any further evidence relating to those,

he should let us know. I asked him to send us a copy of the booking confirmation or terms and conditions showing he had a flexible fare. I asked why that wasn't supplied to Halifax. I also asked for details of what happened after T sent him a quote for new flights. And I asked if he used any of the flights on the original itinerary and asked for reasons why if he didn't. I also asked for details of other tickets bought and asked for details of why he thought T breached the contract.

Mr L responded to say Halifax told him it didn't need further evidence and that it didn't contact him during the dispute. He said he wasn't told why the chargeback was defended which would've enabled him to provide evidence during the claim. He reiterated T had said it could change the ticket. Mr L said he didn't accept the penalty for changing the fare because it was applied incorrectly, which is why he wanted to speak to a manager. He said T didn't respond to him. He said Halifax told him to raise a chargeback and book a new flight, which he did. Mr L showed us copies of a ticket he bought from another firm. And he explained he thought there was a breach of contract because T failed to engage with him.

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 L 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 about the problems Mr L had with the trip. I appreciate it cost a significant sum, and I can't imagine how he must've felt.

What I first need to consider is whether Halifax – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr L'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.

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.

The problem with the complaint about the chargeback handling from what I can see is that the card scheme set out findings that T had shown that generally flights are non-refundable and non-changeable. It said Mr L had failed to provide the required information showing terms and conditions allowing him to amend flight dates. While I appreciate Mr L says the airline had told him he could amend the flights, and he's shown us that it looks like T was willing to do that, albeit for a fee, I've not seen evidence that I think could have led to a successful chargeback given what I've seen from the card scheme. Mr L hasn't been able to supply the terms and conditions from T that showed he could change his flight, which is what the card scheme required. I don't find I have the grounds to say Halifax should have done more.

While the complaint referred to the Financial Ombudsman was mainly focussed on how the chargeback was handled, I'm conscious a section 75 claim has now been considered and declined by Halifax as well. It looks like Halifax has declined it on the basis of there not being a direct link between Mr L, Halifax, and the airline because there was another party involved – T. Given Mr L contacted Halifax to ask for help getting money back, and Halifax is the expert here, I think it could have considered the claim under section 75 sooner. But from looking at its notes, I think it didn't deal with it when the chargeback was declined because it didn't think there was a valid claim. However, I think it makes sense to deal with this aspect of the complaint within this decision. It would save both parties from having to deal with another complaint referral. If there are any strong objections to that, either party should let me know in response to this provisional decision.

Section 75 is a statutory protection that enables Mr L 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. Mr L's contract is with T. There's an airline involved. As well as another passenger. Halifax has said the DCS is broken. But I think Mr L is saying T has breached the contract rather than the airline. I'm not persuaded Halifax's reasoning is quite right.

But for similar reasons to what I've said above, Mr L hasn't shown the flights could be amended through T, or that if it could, it wouldn't come with a penalty, so I can't see there's been a breach of contract. The terms I've seen from T's website say changes needed to be requested in writing; administration fees apply, along with any charges imposed by the supplier; and that not all arrangements can be amended. But I've not been supplied definitive terms and conditions indicating Mr L could change his flight without any fees (other than any fare difference he seems to accept in principle).

It seems like the problem Mr L had is mainly in relation to T's service when he asked for help in rebooking the flights. He was understandably unhappy it initially said it couldn't change the flight. He was unhappy it wanted to charge him a penalty fee. And he was unhappy he couldn't contact it. But, while I'm very sympathetic to the situation, I don't think I've seen enough to demonstrate this amounts to a breach of contract or misrepresentation that Halifax would be responsible for because I don't think he's shown us the relevant contract term that T has breached. We asked him to supply further supporting evidence, such as evidence the fare was flexible, and wouldn't come with a penalty, but we've not been supplied that. It looks like T did offer a flight change, but Mr L wasn't happy with the terms it offered. I think Mr L had difficulties resolving things off the back and I can empathise why Mr L was getting frustrated at the questions T was asking but given it did book the original flights, it offered replacements, and I've not seen the relevant terms that I think would be helpful, I don't think I've got the grounds to say there's been a breach of contract that Halifax is liable for. But that's not to say I don't understand why Mr L was very frustrated. I'd like to have been more certain but there's a lack of evidence.

Halifax has mentioned there not being a set timescale for dealing with a resolution under section 75. But I should point out the Financial Conduct Authority (FCA) set out guidance in 2021 titled: "Cancellations and refunds; helping consumers with rights and routes to refunds" that says We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay.

In all the circumstances, I think Halifax did what it could with the chargeback. And while I don't agree with all its reasoning, I'm not persuaded its overall answer to the section 75 claim was unfair. It arguably could have handled it sooner, but it looks like it wanted to deal with it through chargeback first and it didn't think there was a valid claim for section 75. So overall, I don't think the way it handled things has caused any significant detriment, so I'm not intending to direct it to take any action. I do sympathise with Mr L because he's losing out here. But even if I were to agree T's service was poor, I can only direct Halifax to refund Mr L where there are fair grounds for me to do so. And that liability only comes about where a breach of contract or misrepresentation has been evidenced, or where it could have done more via chargeback. For the reasons given above, I'm not intending to make any recommendations.

Halifax responded to say it had nothing further to add.

Mr L responded to say, in summary:

- He was unhappy to pay the penalty fee but as time went on and the event came closer, he would have paid it. He was unable to because he kept getting cut off, and T didn't return his calls or emails.
- He said he was reassured by Halifax that he'd be protected which was prior to him booking alternative flights.
- At no point did Halifax ask for further evidence to support the case, which was unfair.
- He asked if he should be raising another complaint.
- He asked whether Halifax should have explained what was required from him so he could provide evidence.
- He said he sent in the terms and conditions which indicates the fare was amendable, alongside the fact that T agreed later it could amend the flights.
- He said a phone call would have been easier for him to deal with because he found dealing with huge quantities of text difficult.

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 required to issue this decision in writing, but I'd like to thank the parties for their responses. Once again, I do want to point out I'm sorry to hear Mr L has lost out here. I issued a provisional decision for the reasons given above so that I could cover off complaints about Halifax's response to the chargeback as well as its answer to the section 75 claim. I'm not suggesting a further complaint is raised.

From listening to the call between Halifax and Mr L, I don't think it misadvised him. It responded to his questions based on the evidence he gave on the call. I don't think it promised to do something that it later reneged on.

Moreover, even if I were to find T's service was poor, I need to consider what Halifax can fairly be held liable for. As I've explained above, the grounds or dispute conditions for chargeback are very specific. And something going wrong with a merchant won't always lead to a successful claim. The chargeback was answered by the card scheme, so Halifax couldn't have done more. I take Mr L's point that he could have supplied further information. But even when considering Halifax's liability under section 75 (that doesn't have the same chargeback conditions) it's still not clear there's sufficient evidence of a breach of contract or misrepresentation that Halifax is liable for – even when taking into account everything that's later been supplied by Mr L.

I have to bear in mind that T made the initial booking for Mr L. We specifically asked for evidence such as a booking confirmation that showed the fare was flexible (with no fees), but Mr L hasn't supplied that. I understand what he's saying that T later said it could amend the flight and the airline said it could be amended. But from what I've seen, T did ultimately offer to amend the flight for Mr L, albeit for a fee. This was two weeks before the first flight was due to depart. I've not seen enough to know it was contractually obliged to do so without a fee. I've not seen Mr L accepted the amendment in writing, or that he told T he was willing to pay the associated fees. While I appreciate he was having a lot of difficulty phoning T it does look like it was responding to his emails within a day or two, and it offered to send him a link to pay the fees two weeks before the first flight. I don't think Halifax's view that there wasn't enough evidence to conclude T breached the contract was unfair.

All things considered, while I'm very sympathetic, I've not seen enough to determine Halifax's ultimate answer was unfair, either through the way it handled the chargeback claim or through its obligations under section 75.

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 L to accept or reject my decision before 10 May 2024.

Simon Wingfield

Ombudsman