

The complaint

Mrs P complains that Bank of Scotland plc, trading as Halifax, won't refund her for a hotel stay.

What happened

In April 2022 Mrs P used her Bank of Scotland Plc, trading as Halifax, credit card (BOS for short) to make a booking for just over £1248 for a hotel (including meals) abroad. She and her family stayed at the hotel for the entire booking, but on the fourth day of the week's stay they were all sick. Mrs P says it was the hotel food that caused this sickness and that it ruined their stay. After they returned home they had medical tests, and those tests showed they'd had food poisoning. Mrs P complained to the hotel, but it wouldn't refund her. So she complained to BOS.

BOS looked into the matter and has said there's no evidence that the hotel food caused the sickness. But it offered Mrs P 20% of the cost of the booking (£249.65) as a gesture of goodwill. But Mrs P thought she should get more. So she brought her complaint to this service.

Our investigator looked into the matter. Overall, he thought BOS' offer was fair. Mrs P didn't agree. So the complaint was passed to me to decide. Earlier this month I issued a provisional decision saying I felt the offer made was fair. Both Mrs P and BOS have received my provisional decision.

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.

Both BOS and Mrs P have acknowledged receipt of my provisional decision. BOS has said it has nothing further to add. Mrs P has said she'd like to accept the offer made and commented that all that has happened here has been a learning experience.

As there have been no arguments put forward in relation to my provisional decision I see no reason to deviate from the rationale I've set out previously. Accordingly I find BOS' offered gesture of goodwill fair and it should pay that to Mrs P promptly.

I shall now set out my final thinking on the matter which reflects the provisional decision I issued. I should start by saying I'm very sorry to hear about Mrs P's family's sickness issues. These are serious and I've kept them at the forefront of my thinking throughout the consideration of this dispute.

I should make very clear that this decision is not about the hotel, but rather how BOS dealt with Mrs P's dispute when she took it to BOS. Whatever the issues there maybe with the hotel and just because Mrs P says she has lost out here, it doesn't necessarily follow that BOS has treated Mrs P unfairly or that it should refund her. And this decision is solely about how BOS treated Mrs P.

I should also make very clear this wasn't a package holiday but rather a stand alone hotel booking made directly with the hotel in Morocco. So the Package Travel Regulations do not apply. There's no dispute that Mrs P used her BOS card to make the booking. She's said "*I made the booking directly on the hotel's website with my Halifax credit card.*" So, I don't think BOS did anything wrong by charging it to her account.

BOS considered what happened here and said there was no persuasive evidence to show the hotel caused the sickness. It also noted that Mrs P and family stayed throughout the booking so in essence they got everything they paid for. So it considered chargeback wouldn't have been successful and that it didn't feel a s75 claim under the Consumer Credit Act 1974 should be successful either. So it didn't feel it had to provide any remedy contractually, but decided as a gesture of goodwill to offer a 20% refund to Mrs P.

A section 75 claim as per the legislation is a 'like claim' as to that which Mrs P would have against the hotel. BOS has to treat such a claim fairly but there is also an onus on Mrs P to show her case would be successful as she would in a like claim. So in essence Mrs P has to show that her legal claim would be successful. And from what I can see from the hotel company terms and conditions it would be Moroccan Law which would apply. So Mrs P has to show what her legal claim would be and BOS has to consider whether it thinks Mrs P's claim against the supplier would be successful under Moroccan law. I should make clear that normally had she booked through a UK based company (such as a travel company) which then had supplied the hotel stay here then it would normally be English law that would apply. But as Mrs P makes clear she booked the stay with the hotel directly and thus its Moroccan law that applies. I say this because although the website for the hotel doesn't have detailed terms and conditions I can see reference to "*aux peines pénales et civiles prévues par la loi marocaine*" which roughly translates as "*to the criminal and civil penalties provided for by Moroccan law.*" So although this reference is to use of the website and its booking facility, bearing in mind this wording and that it's a Moroccan hotel run by a north African company, I think it's likely that her booking was made under a contract which if claimed against would have been decided under the auspices of Moroccan law.

I appreciate Mrs P would prefer English law to apply here through the application of the 'like claim'. But it would be unfair on BOS for it to be held to a different and possibly more complex legal requirements (such as the implied terms which the Consumer Rights Act 2015 implies into contracts) than to what Mrs P would be able to action against the hotel under Moroccan law. It would be unfair to hold BOS to higher requirements than the hotel would be held to.

I've seen negligible argument from Mrs P about which particular laws in the Moroccan legal system (particularly its civil code which seems to embody a fair degree of arbitration from what I can see) she's making her claim under (which I can understand). I appreciate she probably didn't appreciate this when making her booking or in her claim to BOS, but ultimately it is the basis under which a section 75 claim would be made. Having set out the legal basis of any such claim I'll now consider the offer made by BOS.

Mrs P and family stayed for the entire duration of the booking and so the entire service paid for was available to her. There is no dispute that Mrs P and family were sick but it's clear that the hotel refused to refund Mrs P. So it's clear that it doesn't accept it caused the sickness. Mrs P says they didn't eat anywhere else so it must have been the food at the hotel. And Mrs P says they were ill for some days including after leaving the hotel. However the test here is whether BOS treated Mrs P fairly in its consideration of the claim and then her complaint. And it should be remembered that as Mrs P has explained, they'd had almost half the term of the stay before sickness struck. So for half the period they'd the full enjoyment of what was purchased. It is also of note that whilst sick they were provided with the accommodation

which makes up a significant amount of the cost of the stay. And food was available, albeit from what Mrs P says not fully utilised (understandably). So clearly Mrs P's suggestion of 50% would be unfair on BOS.

That isn't to say that her and her family's sickness isn't important, which clearly it is. However it is of note that the hotel did dispute responsibility and although there is circumstantial evidence and Mrs P's testimony there is no scientific analysis of the food provided showing persuasively that it caused the sicknesses demonstrated. Although I fully appreciate the practicalities and foresight required to have collected such. Nevertheless it would seem likely the hotel would rely on that lack of causal evidence as part of its defence to any such claim to it. And thus BOS is entitled to do so also.

I also should consider that although BOS didn't accept liability it did make an offer promptly. And there is benefit to this for Mrs P because there was an offer made early by BOS which meant that Mrs P hasn't had to go to the effort of setting out her legal claim to BOS under Moroccan Law which would appear to not be straightforward or practical from my brief researches into the Moroccan Legal system. But like any court claim there is nothing to stop Mrs P now putting together a fuller legal claim for BOS to consider in future on these matters. Which could include support from independent experts in Moroccan law. However the test to be applied here is did BOS treat the claim Mrs P did put to it fairly and based on the evidence and the arguments available I'm not persuaded it treated her unfairly by making the offer under a gesture of goodwill that it did.

And although BOS has to consider claims made to it fairly, this doesn't extend to putting a legal claim together on behalf of Mrs P, in essence acting against itself. Rather it just needs to consider the claim that was actually put to it fairly. And considering the circumstances of this claim and the nature of what a 'like claim' means in this particular and rare context, I can well understand the benefits to both parties of BOS putting forward such a gesture of goodwill promptly. And I think it is in the round fair.

So I think BOS treated her fairly considering the circumstances. And as Mrs P has accepted the offer made BOS should now pay it to bring this matter to a close.

My final decision

I do not uphold this complaint against Bank of Scotland plc, trading as Halifax. Once it has honoured the payment it has offered here it has nothing further to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 13 May 2024.

Rod Glyn-Thomas
Ombudsman