

## **The complaint**

Mr T complains that Bank of Scotland plc, trading as Halifax, won't refund him all his money for a package holiday.

## **What happened**

In August 2023 Mr T used his Bank of Scotland plc, trading as Halifax, credit card (BOS for short) to pay for a package holiday to Greece. This was for seven nights including flights and bed and breakfast. Mr T was disappointed with the holiday for two main reasons, he says the beach was misrepresented and that a fair description of the hilliness of the resort wasn't made in the advertising or the discussions he had with the package supplier. He also points to a number of issues with the rooms and services he encountered. He wasn't able to get a satisfactory resolution with the package supplier so he took this dispute to BOS.

BOS considered his dispute with the supplier. It concluded that it didn't have to do anything further for Mr T. Feeling that BOS position to be unfair, Mr T brought his complaint to this service.

Our investigator looked into the matter. Overall she felt that BOS had unfairly treated Mr T. She set out in her discussions with BOS that the picture of the beach on the supplier's advert for the accommodation wasn't local to the accommodation by some distance. And the actual beach local to the accommodation was a significantly different type of beach and which had limited access via steep steps. She also pointed out that Mr T had made specific enquiries before booking about the geography of the accommodation as he was concerned about any hills due to his difficulties with hills. She pointed to the differences between the advertising and what Mr T was told and the reality of the surrounds of the accommodation. She also provided her position on the matter as whole and indicated she felt BOS had more to do here. In response BOS made an offer to Mr T of £834 which represents half the cost of the package holiday.

The investigator put this offer to Mr T and he didn't agree. He remains of the view that he should receive a 100% refund. So the complaint has been passed to me to decide.

## **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 should make very clear that this decision is not about the package supplier which isn't a financial services provider and doesn't fall within my remit regarding complaints such as this. Whatever the issues there maybe with the package supplier here, and just because Mr T says he has lost out, it doesn't necessarily follow that BOS has treated Mr T unfairly in making this offer or that it should refund him the full amount. And this decision is solely about how BOS treated Mr T. I hope this point is clear.

*The CCA*

The CCA introduced a regime of connected lender liability under S75 that afforded consumers (“debtors”) a right of recourse against lenders (“creditors”) that provide the finance for the acquisition of goods or services from a third-party merchant (the “supplier”). I’m satisfied the financial limits and Debtor Creditor Supplier requirements of the CCA are made out here.

So that leaves for consideration whether BOS considered Mr T’s S75 claim to it fairly, or in other words is there a breach of contract or material misrepresentation made out here against the holiday company that BOS should fairly be held responsible for. And if it has made an offer to remedy the matter, is that offer fair in the circumstances. It is of note that breach of contract and misrepresentation is all that BOS can be accountable for. It is not responsible issues outside of breach and misrepresentation such as the holiday not meeting Mr T’s expectations, as is clearly the case.

I should start by noting that Mr T accepts the flights booked were used and he stayed at the accommodation as planned for the entire duration of the booking. Bearing in mind that Mr T hasn’t commented significantly on the flights in his complaint and that he accepts he stayed for the entire time it would be clearly unfair on BOS for Mr T to get a full refund as he requests. This is because clearly the benefit of those flights and meals and other services were had by Mr T. He has continued to make clear he wants a 100% refund. But he clearly received significant benefit from this holiday in terms of the flights and other elements of the holiday which he hasn’t complained about (and indeed but to a lesser extent those elements has received the benefit of which he has complained about). So a 100% would be clearly unfair.

It is also of note that the flights would have made a significant proportion of the total cost Mr T paid. So the amount of price reduction down from 100% to be fair here would be significant just to cover the cost of the flights.

Mr T points to the image of the beach on the advert not being anywhere close to the accommodation. I agree it wasn’t. But this beach wasn’t the sole reason he chose the package he chose. He wanted to go to Greece, he wanted to go at short notice and he wanted accommodation badged as five-star within the budget he had for such a package. It is also clear from the advertising that the accommodation provides a number of services and benefits which he was happy to purchase clearly. Because had the rest of the accommodation services been wholly unattractive to Mr T he wouldn’t have gone on the package simply for the beach.

Mr T says he wouldn’t have gone to on this holiday had he known the truth. But for misrepresentation to be made out there has to be false statements of fact which induced the consumer into a course of action which otherwise wouldn’t have been taken and which has led to loss. Mr T has explained he booked at short notice and wanted a hotel rated five-star. This is what he got at such short notice. And although there were statements made about the hills which weren’t wholly accurate the photo of the accommodation makes clear that the hotel complex was higher than sea level on an elevated location set on the side of a hill. Mr T made clear that he booked online and the package supplier’s website makes clear that anyone with *‘reduced mobility or other access needs, we recommend getting in touch with the hotel directly before booking to check that it’s suitable for you’*. This was part of the sales process available before he committed to payment. And it is evident that Mr T didn’t do this from what he has said.

Even if I was persuaded that Mr T wouldn’t have booked this package save for the failings in what he was told (which I’m not), it remains the fact that Mr T had significant benefit from the flights and other services on this holiday, which must be considered in the assessment of a

fair and reasonable remedy in these circumstances. So in any event it is my position in this matter that Mr T shouldn't get a 100% refund.

Mr T has pointed to various pieces of law and regulation. I've considered these arguments. Nevertheless his claim for a full refund and expenses is to my mind unfair due to the evident benefit he had from going on the holiday. Similarly he's claim for expenses such as parking shouldn't be covered by BOS because he'd have incurred these costs in any event wherever he went during that period of time and however good or bad such a holiday was. These costs do not flow from what happened here.

I appreciate Mr T is disappointed in the handling of his S75 claim by BOS. And I note a number of comments it has made which Mr T points to as being either irrelevant or indicative of it not considering the matter as well as it could have. And it clearly didn't consider the matter properly originally which is disappointing. However once the evident issues here were put to it clearly and straightforwardly, it did at that point make a fair offer. It is not for this service to make punitive awards in such matters despite Mr T's evident feeling that BOS should pay substantially more than the offer made.

I do appreciate that this isn't the decision Mr T wants to read. And that it leaves him disappointed. But that doesn't make it necessarily fair for BOS to cover this disappointment regarding his holiday through refunding him the whole cost of the holiday, which would lead to him, in essence, profiting from what happened via having all his money back and having had a free holiday. And although BOS hasn't considered the matter particularly well I'm not persuaded that Mr T has lost out as a result of this once it made a fair offer.

Mr T has made clear he's very invested in the outcome of this matter. He's at liberty to not accept my decision and continue his dispute with BOS through other avenues. However this decision does bring to an end this services' involvement in this dispute between Mr T and BOS. So it is my decision this complaint is upheld and that BOS should pay Mr T the amount it has offered namely £834.

### **Putting things right**

Mr T has made clear he's very invested in the outcome of this matter. He's at liberty to not accept my decision and continue his dispute with BOS through other avenues. However this decision does bring to an end this services' involvement in this dispute between Mr T and BOS. So it is my decision this complaint is upheld and that BOS should pay Mr T the amount it has offered namely £834 as that's a fair and reasonable conclusion to this dispute.

### **My final decision**

For the reasons set out above, I uphold this complaint against Bank of Scotland plc trading as Halifax. Once it has redressed the matter as I've described it has nothing further to do in this dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 September 2024.

Rod Glyn-Thomas  
**Ombudsman**