

The complaint

Mrs H complained about the way Bank of Scotland plc trading as Halifax dealt with her request for a refund.

What happened

Mrs H paid around £1,100 using her Halifax credit card for a stay at a hotel I'll call "C" for four nights' accommodation in June 2022. Mrs H was unhappy with the room provided as the bed made loud noises when moving, this meant Mrs H and her husband were unable to sleep comfortably. They informed C the next day and the mattress was changed but the bedframe continued to make noise. Mrs H said she was told there were no alternative rooms available until the third night of their stay. So she arranged to check out of the hotel the day after she arrived. C was able to resell the room for the last two nights of Mrs H's stay, so it gave her a refund of around £550.

Mrs H booked alternative hotel accommodation for three nights and paid around £800 for this. Mrs H contacted Halifax around July 2022 to raise a dispute as she wanted a refund in full for the original booking with C or to be reimbursed the cost for the alternative accommodation she booked. She was unhappy that the room wasn't as described as she booked it on the basis that it was a luxury retreat. She said she experienced significant stress and upset finding alternative accommodation.

Halifax didn't progress her dispute under the relevant chargeback scheme rules, as it didn't think it had prospect of success. It declined to refund her as it thought C acted in line with the terms and conditions of the booking. It also declined to refund her under a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

Our investigator reviewed the complaint but didn't uphold it. She didn't think that the chargeback would have been successful. She also considered if Halifax was liable under Section 75 and found there was no breach of contract or misrepresentation.

Mrs H didn't agree. She questioned why Halifax didn't raise a chargeback for a partial refund and why it didn't consider a Section 75 claim. She was unhappy she paid for a night of the stay which she didn't use. She reiterated she didn't get what she had paid for – a luxury retreat - where she expected to be able to sleep on a bed which didn't make any noise. She asked for an ombudsman's review.

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.

Although I may not comment on each and every point Mrs H has raised, this doesn't mean I have not read and considered everything she's provided. Instead, I have focussed on what I consider to be the key points. This is not intended as a discourtesy – it simply reflects the

informal nature of this service. I'm considering Halifax's responsibilities as the finance provider and the actions it took in considering Mrs H's chargeback and Section 75 claim. It's important to note, I'm not considering a complaint against C.

Chargeback

Chargeback is based on the relevant card scheme rules. In this case it's the Mastercard scheme rules. A card issuer can attempt a chargeback on behalf of a cardholder where they dispute a transaction with a merchant, if they meet the criteria of the rules. A chargeback is not guaranteed to succeed and a card issuer does not have to raise one.

However, it would be considered good practice to pursue a chargeback where there is a reasonable prospect of success. Although not all circumstances where something has gone wrong with the merchant, will mean the claim is successful. Halifax didn't progress the chargeback claim because it didn't think there was a reasonable prospect of success, and I don't think based on the circumstances it acted unfairly.

The most relevant chargeback condition would have been for services not as described or defective.

Mrs H needed to provide compelling evidence to show that the bed was unreasonably noisy which demonstrated that the services were defective or not as described. I appreciate this may have been difficult for Mrs H to provide. I can see Mrs H provided pictures and emails from the hotel to Halifax. But I don't think the pictures, in isolation, do enough to show the overall service was defective or not as described. And while I can see C changed the mattress and acknowledged Mrs H was unhappy, I can't see C accepted the services weren't as described including that the bed was defective. Based on the evidence presented, I think it's likely C would have defended a chargeback. I don't think Halifax acted unfairly by not taking any further action in pursuing a chargeback because I don't think Mrs H supplied sufficient evidence for there to have been a reasonable prospect of success.

I've also considered Halifax's referral to the terms and conditions of the booking and that's something that may have been considered as part of another condition like credit not processed, or cancelled services. But here Mrs H didn't have a right to a refund when she cancelled. So, there are no other grounds to have raised the chargeback under a different chargeback condition. Finally, Mrs H mentioned Halifax raising a chargeback for a partial refund, but this would have only been possible under the chargeback conditions I've mentioned above, with sufficient supporting evidence, so I don't think Halifax could have pursued this either.

Section 75

Under Section 75, Halifax is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is C in this case. In order for there to be a valid claim under Section 75, there needs to be a debtor-creditor-supplier ('DCS') agreement in place and the transaction needs to be within certain financial limits. I'm satisfied the criteria has been met for a claim to be considered.

I've also considered that services ought to have been carried out with reasonable care and skill. And if they weren't, it could lead to a breach of contract.

Mrs H explained she was unsure how her dispute was considered by Halifax. I can see in the system notes that Halifax did consider a Section 75 claim. It appears Halifax explained to Mrs H that under Section 75 there was no evidence to demonstrate that a breach of contract or misrepresentation occurred and declined the claim.

I'm afraid I can't say that Halifax is responsible for a misrepresentation or a breach of contract for the same reasons I don't think it was unfair for it to decline the chargeback claim. I can't say that C accepted there was a breach of contract or misrepresentation just because it replaced the mattress and offered to move Mrs H. I've not seen enough evidence to conclude there was a misrepresentation or that the service wasn't provided with reasonable care and skill. On this basis I don't think Halifax acted unfairly by not refunding Mrs H under its Section 75 liability.

I appreciate Halifax could have been clearer in its communication, particularly around what method it considered the claim under. It could have been more informative for Mrs H. I can see Mrs H feels strongly about this matter and I understand this was frustrating for her during a time of celebration, however based on the information presented to Halifax I don't think there is enough evidence to show that its ultimate answer was unfair.

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 Mrs H to accept or reject my decision before 15 November 2024.

Amina Rashid
Ombudsman