

The complaint

Mr T says Bank of Scotland plc, trading as Halifax ('Halifax'), didn't do enough to help recover his money when he says he fell victim to a scam.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr T says he fell victim to a scam. Mr T was abroad and made two card payments while in a gentlemen's club. Mr T says he initially paid £630.57 (€720) for the use of a jacuzzi with a hostess. Mr T was then persuaded to make a further payment of £634.95 (€725) so that an additional hostess could join. Mr T says there were delays and excuses given to him that the jacuzzi wasn't ready. And he says he was then also pressured to make further payments. Mr T says he felt uncomfortable and chose to leave. Mr T subsequently contacted Halifax to report the matter and to try and recover the money he had paid by card to the merchant.

Halifax attempted a chargeback which the merchant defended, providing evidence that the payments Mr T had made were for beverages, not services, which had been provided. Halifax, in light of the merchant's response and without further evidence to dispute the matter, advised it was unable to proceed to pre-arbitration with Mastercard. Halifax offered and paid £60 for the trouble and upset it caused Mr T regarding the information provided around the chargeback process.

Unhappy with Halifax's response, Mr T brought his complaint to this service. Our Investigator reviewed the matter and didn't recommend the complaint be upheld. They were satisfied Mr T had authorised the payments. And with regards to the recovery of any funds and the chargeback Halifax initiated, it was the Investigator's opinion that they didn't think it was unreasonable for Halifax not to pursue the matter to pre-arbitration. The Investigator considered Halifax's offer of compensation was fair also.

Mr T disagreed with the Investigator's opinion, and as the matter hasn't been resolved, it's 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Halifax should have done more to prevent, or recover, Mr T's loss. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having thought very carefully about Halifax's actions, I'm not upholding Mr T's complaint. I do appreciate how disappointing and unsatisfactory this will be for him. Mr T is fully convinced that he was duped into parting with money with there being no intent for any services to be provided. And I can empathise with how strongly he feels about why he should be reimbursed.

But I have to consider whether there was any wrongdoing on Halifax's part, or whether it acted unreasonably in not pursuing the chargeback further – to pre-arbitration with Mastercard.

And in weighing everything up, I don't think I can fairly say Halifax was unfair in its actions or answering of the complaint. And I don't consider that it is liable to reimburse Mr T. I'll explain why.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

It is agreed by all parties that Mr T made the card payments. So, it is the case that Mr T authorised the payments that are in dispute. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr T is responsible for the payments. And that remains the case even though Mr T may have been the unfortunate victim of a scam or duped into parting with the funds.

However, there are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms (like Halifax) should fairly and reasonably have been on the lookout for the possibility of fraud in order to protect its customers from the possible risk of financial harm as a result of fraud and scams.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr T when he made the payments, or whether it should have done more than it did.

I've thought about this carefully. Having done so, I can't fairly say the payments Mr T made would (or should) have alerted Halifax that Mr T was potentially at risk of financial harm, to an extent whereby it should have carried out some additional checks before processing the payments. Mr T had authorised the payments, through chip and pin, they were around an hour apart, and the value of the payments weren't so remarkable that I would have expected Halifax to have been concerned Mr T was potentially at risk. So, I don't consider Halifax could have prevented the loss and therefore aren't liable for the losses Mr T incurred.

Recovery of the funds – Chargeback and Section 75 of Consumer Credit Act

I have also considered whether Halifax did all it could to try and recover the money Mr T lost. Where a dispute exists between a customer and a merchant, there are avenues for that customer to have their money refunded to them. However, these will only be successful if certain conditions can be met.

Here, Halifax did raise a chargeback – which the merchant ultimately defended within the applicable timeframe. The merchant provided evidence to show that the purchases Mr T had made were for beverages. I know that Mr T believes that the merchant has fabricated the invoices, post the event, as they are handwritten, and that the beverages the merchant claims he purchased (champagne) wouldn't cost the amounts he was charged. And he paid for the use of a jacuzzi with a hostess, not beverages.

However, the chargeback scheme is voluntary – and while Halifax did raise it initially, it then took into consideration the merchant's response alongside what evidence there was available, on Mr T's side, to challenge it and whether to take the matter to pre-arbitration. Halifax, as there was no evidence to show the payments weren't for beverages, didn't consider there was any reasonable prospect of success in attempting to pursue the matter through to pre-arbitration. Without further evidence, Halifax considered that Mastercard would have ruled in the merchants favour due to the lack of evidence on its side. And that is sadly, the likely case. So, while I can understand Mr T's frustration about the matter, I can't fairly say Halifax acted unreasonably or unfairly in not pursuing the matter further.

Mr T also has the right to potentially claim a refund from Halifax under Section 75 of the Consumer Credit Act 1974. But this is only where he can demonstrate that there was either a breach of contract or a misrepresentation by the supplier of the services.

For the reasons I have already touched upon above, I don't find Mr T would have been able to demonstrate that there has been either a breach of contract or a misrepresentation by the merchant given the evidence available. So, I don't consider it was unreasonable for Halifax to have not pursued a Section 75 claim either.

Distress and inconvenience

I note that Halifax offered and paid £60 for the distress and inconvenience caused to Mr T around its explanation of the chargeback process and applicable timeframes. I'm pleased to see Halifax acknowledged it could have been clearer with Mr T, and I consider the amount offered and paid is fair.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 May 2025.

Matthew Horner
Ombudsman