

The complaint

Mrs S complains that in failing to authorise a transaction she made on her credit card, Bank of Scotland plc trading as Halifax (Halifax) caused her financial loss.

What happened

On 10 February 2023, Mrs S made a booking to rent accommodation for an upcoming holiday. Mrs S paid a £656.20 deposit on her Halifax credit card and authorised an automatic payment of the remaining balance. The balance of £1080.80 was due to be paid on 18 February 2023 (the due date) and the terms of booking made clear that if payment was not received by the due date, the booking could be cancelled.

The merchant attempted to take the payment for the remaining balance on the due date and this attempt was unsuccessful. Mrs S has told us that the merchant say they attempted to contact her by phone and by letter, but she has not seen a call or received the letters. So, the merchant cancelled the booking.

On 10 March 2023, Mrs S contacted Halifax to raise a complaint. She said she had lost her deposit and was not sure what she was going to do next. Mrs S booked other accommodation with the same merchant on the same date, but this time the total cost of the booking was £2481.00.

At first Halifax told Mrs S her card had not been activated and this is why the payment did not go through. Mrs S disputed this as her first payment to the merchant had gone through. Halifax then referred the matter to their fraud team who said it couldn't provide a reason for the decline. Mrs S asked for an explanation of why the transaction had failed to go through and asked for a refund of her deposit if there was no explanation forthcoming.

Halifax reviewed Mrs S's complaint and issued a final response letter on 23 March 2023. It apologised for the payment having been declined and suggested she take up the loss of her deposit with the merchant. Halifax said the merchant were supposed to take payment within six weeks of the date of booking and as she was still within this time frame, it felt the merchant should have contacted her and arranged alternative payment.

Mrs S disputed this and said the merchant did make attempts to contact her, however she thought that Halifax's failure to process the transaction was the root cause of the issue. She further explained that her husband had passed away in January 2023 and she was preoccupied which is why she had authorised an automatic payment to complete her booking. As Halifax maintained that it had followed the correct procedures, Mrs S referred her complaint to our service.

In her complaint, Mrs S told us that as a result of Halifax's failure to process the transaction, she lost the deposit (£656.20) and had to book other accommodation, which was more expensive, so she would like a refund of the deposit and the difference between the two bookings (£744). She told us that she has been in financial difficulty since the loss of her husband and has been unable to clear this balance on her credit card. She mentioned section 75 (s75) of the Consumer Credit Act 1974, and that the credit card provider has joint

liability under this statute.

Our investigator reviewed the complaint and did not think that Halifax had done anything wrong. The investigator referred Mrs S to the terms and conditions of her credit card account which outline that banks can decline payments, and this is usually to protect its customers. Our investigator mentioned Mrs S's responsibility to check the payment went through. The investigator also said that as Mrs S had not raised a s75 claim previously, she would need to go back to Halifax to raise this if she wished it to be looked in to.

Mrs S disagreed and asked for an Ombudsman to review the complaint. She said she cannot see that Halifax was prevented from authorising the payment and she has not been provided with a reason for the decline. Mrs S said she did not check that the payment went through but had legitimate other preoccupations at the time. She further said that she did not cite s75 in her complaint to Halifax, but we cannot ignore the law and her fundamental rights. Mrs S's interpretation of the law is that Halifax was in breach of contract.

My provisional findings

I recently issued a provisional decision (which forms part of this decision) in which I set out my findings and how I was inclined to conclude the complaint be resolved. My findings in the provisional decision were as follows:

"Mrs S had used her card without difficulty to pay the deposit. In authorising an automatic payment for the remaining balance, she had effectively provided Halifax with an instruction to make a payment from her account. Halifax has a system in place which works to safeguard the accounts of its customers. This can include declining transactions for a security check. I would expect a responsible bank to have measures such as these in place. So, there is no issue with this, and I will focus on what should have happened afterwards.

Halifax has upheld the complaint in part as it cannot provide a reason for the decline of the transaction. But it says it is not responsible for the cancelled booking. It pushes responsibility for Mrs S not being aware of the declined payment back on the merchant. It also points to the terms and conditions on their credit card accounts which speaks to customers being made aware of a refused transaction through contact from the retailer.

I have considered section 82(1) of The Payment Service Regulations 2017. This deals with the refusal of payments and says:

"Subject to paragraph (4) where a payment service provider refuses to execute a payment order or to initiate a payment transaction, it must notify the payment service user of –

- (a) the refusal;*
- (b) if possible, the reasons for such refusal; and*
- (c) where it is possible to provide reasons for the refusal and those reasons relate to factual matters, the procedure for rectifying any factual errors that led to the refusal.*

(2) Any notification under paragraph (1) must be given or made available in an agreed manner and at the earliest opportunity..."

The regulation is clear in that the bank should contact its customer at the earliest opportunity to provide notification of a refusal to make a payment. Halifax did not contact Mrs S at all, and this had the effect of making her unaware and unable to use an alternative payment method to avoid losing her booking.

In addition to this, Halifax has been unable to provide a reason why the transaction was declined. From the information provided, it seems that Halifax's security system has isolated this payment, refused it automatically and there is no explanation as to why. Considering the same card was used to make a payment some days before to the same merchant, I don't see why this should have happened and, in these circumstances, I think Mrs S is due an explanation which Halifax has been unable to provide.

I will mention that Halifax's reasoning around the merchant taking payment and cancelling the booking too early is incorrect. The booking terms are clear that final payment is due six weeks before the booking start date and, in this case, that was 18 February, so the merchant attempted payment at the right time. So, for all the reasons mentioned above, I'm minded to think that Halifax's refusal to make payment caused Mrs S's losses.

Having said that, I will now move on to determine how much of the financial loss Halifax should be held liable for. In doing so, I've also considered Mrs S's circumstances and actions. Mrs S lives abroad. She has told us that the merchant attempted to contact her by telephone and by letter after the payment didn't go through, but she did not receive any of the contact attempts. It therefore seems to me that the difficulty in contacting Mrs S prevented her from finding out from the merchant that the transaction hadn't gone through. There is also no guarantee that even if Halifax did attempt contact, it would have been successful.

I have also taken into consideration that there was some responsibility on Mrs S to ensure that the payment went through. I empathise with her circumstances and understand why she didn't do so; however, I cannot hold Halifax entirely liable for Mrs S's failure to mitigate the situation.

It seems to me that Halifax made an error, both in failing to contact Mrs S after the refused transaction but also in being unable to provide her with a reason why the transaction was declined. However, there are some factors as outlined above which mean that Mrs S failed to mitigate the problem and so I intend to order that Halifax pay a portion of the losses Mrs S incurred. I consider it fair for Halifax to pay Mrs S £840.12. This is 60% of the losses Mrs S incurred.

For completeness, as Mrs S has made queries about our application of the law, I should explain that s75 has the effect that Halifax is jointly and severally liable for misrepresentation or a breach of contract by the merchant. As she has no concerns in either respect about the merchant, she would not be able to make a s75 claim about this matter."

Halifax responded to say it agrees with the provisional decision. Mrs S responded to raise two matters for my consideration as follows:

- Mrs S agrees that she didn't check whether payment had gone through in a timely manner, but she assumed that the automatic payment would go through so doesn't think this is the same as a 'failure to mitigate'; and
- Mrs S does have an issue with the conduct of the merchant. She states the merchant should be penalised as they refused to listen to her complaint and haven't provided proof that they tried to contact her.

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.

Neither party has sought to argue that Halifax should not be held liable for the losses Mrs S

incurred, so I find no reason to depart from my provisional decision that Halifax's refusal to make payment caused Mrs S's losses. This, in addition to its inability to provide a suitable explanation as to why this happened, means I conclude Halifax should reimburse Mrs S for the losses she incurred.

Mrs S says she doesn't think her failure to check the payment went through is the same as a failure to mitigate. As I explained in my provisional decision, I understand why she did not check that payment had gone through. However, not checking whether the payment went through meant she did not recognise there was an issue and salvage the situation with the merchant in time to avoid the booking being cancelled. It was incumbent upon her to do so and if she had done, this would have mitigated the situation. As it was not, it is indeed a failure to mitigate. And so, this comment has no bearing on my recommendation that Halifax pay Mrs S £840.12 (which is 60% of her losses).

Mrs S has said she thinks the merchant should also be held liable under s75. I think it might be helpful for me to explain how s75 operates in respect of Mrs S's claim. Under this statute, Mrs S is able to raise a claim against a merchant or finance provider (who are jointly and severally liable) in the event that her contract was misrepresented or there was a breach of contract. Mrs S tells us she is unhappy with the merchant because they did not listen to her complaint and haven't provided proof they tried to contact her. Neither of these arguments speak to misrepresentation of a contract or a breach of contract so there are no valid grounds under which she could raise such a claim.

Mrs S has never raised a claim under s75 to the merchant or the finance provider, so it is not a matter that has been considered in any depth, or at all. However, if she were to raise this claim I find it highly unlikely that it would be successful for the reasons provided. As such, this has no bearing on my provisional findings which remain the same.

My final decision

My final decision is that I direct Bank of Scotland plc trading as Halifax to pay Mrs S a total of £840.12 to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 10 October 2024.

Vanisha Patel
Ombudsman