

The complaint

Mr N complains about how Bank of Scotland plc trading as Halifax ("Halifax") handled a claim he made in relation to a transaction on his credit card.

What happened

Mr N purchased a flight, through a company I'll refer to as "F", through his Halifax credit card in November 2023 for £118.88. The flight was due to take place from the original country on 31 December 2023 at 3pm, it included a stop of 40 minutes in a different country and was due to reach the UK at 6:10pm the same day.

Mr N says on the day of the flight, he was informed by text message by F that the original flight was delayed until 3:25pm. He said due to the stopover of only 40 minutes, it would mean he only had 15 minutes to transfer to the last flight. He asked F to book him on an alternate flight with a different flight provider later that day. However Mr F says this was rejected and he was told to take the delayed flight and if he didn't make his connecting flight, he should speak to F's check in desk. Mr N didn't make his connecting flight and he says the gate was closed two minutes before the original departure time of 5:20pm and the flight didn't depart until 5:43pm. Mr N says he contacted F's check in desk and he was booked on a flight to a different country that night and then booked on a flight to the UK the following day. However, Mr N says F could have booked him on a flight departing from the airport he was at to the UK the following day. He said he landed in the UK at 12:52pm the following day and so suffered a delay of 18 hours and 42 minutes. Mr N said he was seeking compensation of £350 under EC Regulation 261/2004.

In April 2024, Mr N complained to Halifax and said that F hadn't responded to his claim. Mr N made a claim under section 75 of the Consumer Credit Act 1974 ("s75").

Halifax issued its response to Mr N's complaint in May 2024. It said Mr N was provided with an alternative flight and provided accommodation for the night at no cost to him. So, it said the service Mr N paid for had been received. It said it would need proof of any consequential losses Mr N had suffered. Halifax apologised and provided Mr N £60 by way of cheque to recognise the poor service it provided him during a call with a staff member in May 2024.

Unhappy, Mr N referred a complaint to this service. He reiterated his complaint and said he was unhappy with the obstacles put in place by Halifax to try and prevent him from making a complaint. He said it should pay him £250 for the distress and inconvenience of the phone call he had with it and £350 for the flight delay caused by F's breach of contract.

Our investigator looked into the complaint but didn't think Halifax had acted unfairly. She said a claim under s75 would be declined as there was no breach of contract. She directed Mr N to complain to F directly. She also said she thought the compensation of £60 was fair and reasonable in the circumstances.

Mr N disagreed. He queried the decline of his s75 claim, queried whether our investigator had listened to the call in question and said he hadn't asked this service to punish Halifax for its poor service.

Our investigator said the difficulty in the call arose because the agent wasn't trained in s75 cases and maybe due to a lack of knowledge, they continued to reiterate information they were reading. She said Halifax acknowledged their agent spoke over Mr N and that they

could have been more helpful. She also said that the £60 Halifax had paid to Mr N was fair. She said that the activity related to complaint handling. She said this wasn't a regulated activity and so it wasn't something she could consider. She also said she couldn't award any further compensation for this matter. She listened to the call and reiterated this.

Mr N disagreed with this. He said this service could consider the complaint if it was ancillary to a regulated activity. He said the s75 claim was a regulated activity and queried whether Halifax had raised a claim under the chargeback scheme.

Our investigator reconsidered the complaint and agreed that the call could be interpreted as complaint handling that was ancillary to a regulated activity. She said she felt the £60 already paid by Halifax was fair as it was a single instance of call handling where the service didn't meet the expected standards.

Mr N said that Halifax was able to make a payment of £350 for the breach of contract. He said he provided F with a clear alternative route so he could return to the UK and if it had accepted this, the delay would have been minimal.

As Mr N remains in disagreement, 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've read and considered the whole file and acknowledge that Mr N has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

To make it clear, this complaint is about Halifax, as Mr N's credit card account provider. It's not about F, who isn't a financial service provider and so, doesn't fall within the remit of the Financial Ombudsman Service.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – s75 and chargeback.

Halifax hasn't considered a claim under a chargeback scheme and Mr N hasn't made a complaint to Halifax about this. So, this decision won't comment on a potential claim under the chargeback scheme. If Mr N remains unhappy about this, he will need to complain to Halifax in the first instance.

S75

I've considered whether I think it was fair and reasonable for Halifax to decline Mr N's s75 claim.

Under s75, Halifax are jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is F in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mr N made the purchase on his credit card which was supplied by Halifax. I can see the invoice from F is in Mr N's name. Halifax have shown the credit card transaction was in Mr N's name to F. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid s75 claim. Mr N needed to have purchased a single item with a cash price of over £100, but no more than £30,000. I can see from the invoice that the amount is within the financial limits. So, it follows this that I'm satisfied the financial limits have been met for a valid claim.

Overall, I'm satisfied Mr N has a like claim against Halifax, as he does against F. And that F were acting as an agent of Halifax.

There's no dispute that Mr N received the service he was due to receive under the contract. This was to be flown from the original country to the UK.

The complaint surrounds the delays Mr N suffered and Mr N seeking compensation of £350 under EC Regulation 261/2004 ("EC Regs"). The original flight was due to reach the UK at 6:10pm on 31 December 2023. However, due to delays, Mr N says it reached the UK on 1 January 2024 at 12:52pm.

F's terms and conditions state:

"Delays

According to Regulation (EC) 261/2004, a delay is deemed to have occurred if the scheduled departure time is delayed by at least four hours for flights of more than 3,500 km, by at least three hours for flights between 1,500 and 3,500 km and for flights of more than 1,500 km within the EU, and by two hours for flights of up to 1,500 km. If your flight is likely to be significantly delayed, you have the right to receive care from the airline.

This includes: Meals and refreshments (in reasonable proportion to the waiting time), potentially hotel accommodation including transport costs and the opportunity to make two short telephone calls or send two faxes or emails. The airline is not obliged to do this if you are responsible for a further delay to your departure. In the event of delays of more than five hours, you are entitled, within seven days, to a refund of the price of the ticket in the amount of the tour not taken or in the amount of the tour already taken if the purpose of the tour could not be achieved due to the delay and, if applicable, to a return flight to the first departure location at the earliest possible time.

You are entitled to compensation if your arrival at your destination airport is delayed by more than three hours and the delay cannot be attributed to extraordinary circumstances that could not have been avoided by taking all reasonable measures. Such circumstances include poor weather conditions, political instability, strikes, security risks and unexpected deficiencies in flight safety."

This means any compensation for delays that Mr N may be able to claim for would be claimed under the EC Regs and it would not be considered a breach of contract. Seeking compensation under the EC Regs isn't a claim that Mr N can make against Halifax under s75. This is because Halifax has no contractual obligation to pay Mr N any amounts for breaches of EC Regs and neither are the EC Regs implied into this contract. The compensation of £350 is a right Mr N may be entitled to under EC Regs, not as a result of his contract with Halifax. The failure to provide compensation under these EC Regs is a failure of a statutory right rather than a breach of contract.

In addition, Mr N hasn't suffered any financial loss. When his flight was delayed and missed, he was booked onto an alternative flight and provided with accommodation free of charge. If F hadn't arranged/paid for alternative flights and accommodation then I would have expected Halifax to pay for the consequential losses that Mr N suffered whilst returning to the UK, such as the cost of alternative flights and possibly accommodation. I acknowledge that Mr N says that F could have booked him onto an earlier flight which allowed him to return to the UK at an earlier time and would avoid him travelling to another country, however this isn't something Halifax is liable for.

I've also considered what Mr N has said about F not holding the flight he missed due to the original delay. F's terms and conditions of travel state:

"Missing a connecting flight is unfortunate for everyone concerned. That is why, with every affected connection, our operations managers check very carefully whether and for how long

a flight can be held locally. However, our room for manoeuvre in such situations is limited by 'slot times'. These are the arrival and departure times, and approach times in other countries' airspace, which are laid down by Air Traffic Control and which must be strictly adhered to by all airlines. The loss of such a slot usually means a wait of several hours. Against this background, waiting for transit passengers is often only possible to a very limited extent.

Additionally, our passengers in the waiting aircraft also often have connections which they would miss if departure were to be delayed. In most cases, therefore, it is more sensible to ensure the punctual arrival of a large number of passengers and to carry a few delayed passengers on a later flight."

So, it seems that whilst Mr N says he was told his second flight would be held due to the original delay, F's terms and conditions confirm that waiting for transit passengers is only possible to a limited extent.

Overall, whilst I understand why Mr N would like Halifax to pay the £350 compensation he says he is due under the EC Regs, Mr N will need to pursue a complaint about this against F directly.

Service provided

Mr N says he is unhappy that Halifax didn't respond to two emails and Halifax's conduct during a call in May 2024 was less than appropriate. He says the agent refused to register a complaint and this was a breach of regulatory rules. Mr N says the call was distressing and due to his medical issues, this had a significant impact on him.

I've listened to the call between Mr N and Halifax in May 2024. Having done so, I agree that the call could and should have been handled better. The agent wasn't from the s75 team and agreed to arrange for someone to call Mr N. He said he couldn't comment on s75 as he wasn't trained and following this the agent spoke over Mr N and the relationship broke down. The agent explained he had certain medical issues, apologised and didn't intend to say certain things. I think at a certain point, the call became unproductive.

In relation to the two emails Mr N says Halifax didn't respond to, I can see that Halifax agrees that it didn't respond to Mr N's emails. System notes show that a call appears to have been attempted and a follow up email sent, but it is unclear when and if this took place. In any event, Halifax accepts that it provided poor service to Mr N for both the calls and the email.

Halifax has made an offer to pay Mr N £60 for the poor service it provided. Halifax has apologised to Mr N and accepted it could have provided better service. It accepts that during one call the service provided could have been better and following this it addressed Mr N's concerns. I think this amount is fair and reasonable in the circumstances. Overall, I think Halifax's offer to pay Mr N £60 is fair and reasonable in the circumstances. So, it follows that I'm not asking Halifax to take any further action.

My final decision

I do not uphold Mr N's complaint.

Bank of Scotland plc trading as Halifax has already made an offer to pay Mr N £60 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Bank of Scotland plc trading as Halifax should pay Mr N £60, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 February 2025.

Sonia Ahmed
Ombudsman