

## **The complaint**

Ms H complains Bank of Scotland plc (BoS) unfairly declined her section 75 Consumer Credit Act 1974 (CCA) claim for wasted expenditure arising from cancelled flights.

## **What happened**

I issued my provisional decision on this complaint in May this year. An extract from that provisional decision is set out below.

*As the facts are well known to both parties, I've only summarised the main events below.*

*Ms H used her BoS credit card to pay about £1,500 for a holiday from an online travel agent (which I'll call "T") for her and her family, split across four payments. The final payment of £587.30 was made on or around 1 July 2024.*

*The holiday booking consisted of return flights and three nights at a hotel. Ms H and her family were due to fly out on 19 July 2024 and return on 22 July 2024. Ms H paid separately for airport parking, return transfers to the hotel, and amusement park tickets.*

*In the morning of 19 July 2024, a worldwide IT outage caused many flight delays. The outbound flight was eventually cancelled. Ms H says T referred her to the airline, which offered either a flight refund or one of its alternative flights.*

*She recollects the only available outbound flights were indirect ones that arrived the following afternoon, which would cut her holiday short. The most suitable alternative also departed from another airport that was around 400 miles away in another country, for which she said there were no flights to. She also said the airline told her she could claim consequential losses. She said she took all this into consideration before choosing the refund option and putting in a claim for her remaining costs.*

*T forwarded Ms H the airline's refund for the flights. She then got a further refund for the rest of her payment to T through a chargeback BoS helped arrange. This covered the flights and hotel in full. However, she was still out of pocket for parking, transfers, and park tickets. So she asked BoS to refund these remaining costs under section 75 CCA.*

*BoS rejected her section 75 CCA claim, saying the cancellation was due to extraordinary circumstances, so Ms H couldn't recover these extra costs. It also said it wasn't responsible for costs that weren't part of the original holiday booking.*

*Our investigator said that because Ms H's losses weren't foreseeable, BoS didn't have to refund them under section 75 CCA.*

*As Ms H disagreed, the complaint's come to me for a decision.*

## **What I've provisionally decided – and why**

*I've considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. This includes the relevant laws, regulations, guidance and standards, codes of practice and good industry practice. And where it's unclear what's happened, my conclusions are based on what I think is most likely to have happened given the information available.*

*While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including Ms H's further submissions following our investigator's assessment.*

*I think it's worth clarifying that I'm deciding whether BoS acted fairly in assisting Ms H with her dispute against T. I'm not making a finding on the underlying dispute Mr B has with T. BoS didn't supply the holiday, so when considering what's fair and reasonable, I'm only considering whether BoS acted in line with its obligations as a financial services provider.*

*Such obligations include handling Ms H's chargeback claim fairly. However, Ms H has effectively ended up with a full refund of her holiday booking following the chargeback, and Ms H hasn't specifically complained about BoS's handling of her chargeback claim. So I don't intend to address the chargeback BoS raised on Ms H's behalf any further.*

*Instead, I've focused on whether Ms H is due further compensation under section 75 CCA. As Ms H used her credit card to pay T, I need to consider how BoS could have reasonably assisted her through the protections offered by section 75 CCA – in particular, whether its reasons for declining her claim were fair.*

#### Section 75 Consumer Credit Act 1974

*If a consumer buys goods or services on credit, section 75 CCA can sometimes make the credit provider equally responsible for a breach of contract or misrepresentation by the supplier. Certain technical criteria must be met for section 75 CCA to apply, which are set out in law. One of the key requirements is there must be a valid "debtor-creditor-supplier" or "DCS" agreement in place.*

*It's clear Ms H had a contractual relationship with T, through which she made her booking arrangements. She also paid T with credit provided by BoS. In terms of the contractual arrangements between Ms H and T, there's no question these arrangements were funded by a DCS agreement involving Ms H, BoS and T. And as the contract was for services that fall within the financial limits applicable to section 75 CCA, I think Ms H is entitled to hold BoS responsible for any breach of contract or misrepresentation by T.*

*BoS appear to have accepted this as it went on to consider the merits of Ms H's section 75 CCA claim. So I won't explain further why I think section 75 applies here. And as Ms H is only alleging there's been a breach of contract, that's what I've focused on below.*

#### Breach of contract

*On top of any direct breach by T of the holiday contract's terms, BoS can also be held responsible if T breaks a term that the law automatically includes. This includes terms implied into the contract by The Package Travel and Linked Travel Arrangement Regulations 2018 (PTRs) if H's contract meets the definition of a "package" in these regulations.*

*Ms H was quoted a "total price" for her holiday booking, which included flights and three nights at a hotel. It's clear to me her contract with T meets the definition of a "package" and includes certain extra protections implied into the contract by the PTRs.*

*Regulation 15(2) of the PTRs implies a term into the contract that T is liable for the performance of the travel services listed on Ms H's booking. In simple terms, T is responsible for ensuring both the airline and hotel perform the services as agreed.*

*Ms H had to let T know without undue delay about any improper or non-performance of the services, upon which T was obligated under regulation 15(4) to provide a suitable remedy. If T didn't and the holiday was still badly affected, regulation 15(11) says Ms H could get a price reduction and compensation for damages caused, in line with regulation 16.*

*Ms H says she called T on the morning of the delays and cancellation, but T wouldn't assist and told her to contact the airline. T's own chargeback defence confirms it took that position, stating it wasn't liable for flight changes or refunds. T was wrong here. On balance, I'm satisfied Ms H properly informed T, and T didn't give her a similar replacement flight or an appropriate price reduction as owed to her under the PTRs.*

*I'm mindful the airline offered Ms H alternative flights. If those flights were comparable, I'd have expected Ms H to mitigate her losses by accepting the alternative. As there's no direct evidence of what flights were available, I'm most persuaded by Ms H's account the best alternative flight available probably departed from an airport in a different country and arrived the next day. Considering Ms H's holiday was an extended weekend break, accepting the alternative flight would have likely resulted in Ms H missing out on a substantial portion of the holiday. In the circumstances, I don't find Ms H acted unreasonably by choosing the refund option and attempting to claim her remaining losses back through other means.*

*In short, T didn't deliver the booked flight and failed to offer a suitable replacement to allow Ms H to continue with the holiday or offer an appropriate price reduction. This amounted to a breach of contract and the effective loss of her whole holiday. The relevant remedies are set out in regulation 16.*

#### *Remedies for breach of contract*

*Under regulation 16(2) of the PTRs, Ms H is entitled to a price reduction for her booking. But as the booking's already been refunded in full, there's nothing more to consider on this point.*

*Regulation 16(3) may give Ms H the right to compensation for losses T caused by not providing the holiday. This can include expenses incurred in anticipation of the holiday. However, Ms H cannot claim these expenses if the flight cancellation was due to unavoidable and extraordinary circumstances, as outlined in regulation 16(4).*

*The onus is on T (and by extension BoS) to show the cancellation was due to unavoidable and extraordinary circumstances - which the PTRs effectively define as a situation that was beyond T's control, the consequences of which could not have been avoided even if all reasonable measures had been taken.*

*I appreciate the airline, T, and BoS, all claim the flight cancellation was due to extraordinary circumstances – specifically, the global IT outage. Ms H said the IT outage only delayed her flight, and the cancellation was due to the airline failing to replace the pilot, information that was relayed to her at the departure gate.*

*I've thought carefully about everything the parties sent. Having done so, I'm not persuaded any party has sufficiently demonstrated the flight cancellation was due to unavoidable and extraordinary circumstances for the following reasons:*

- *The flight was due to depart at 9:45am, but I understand the airline didn't cancel until*

*almost 12:30pm, around 7.5 hours after the global IT outage occurred according to news articles I found online. The delayed cancellation suggests there may have been an intervening reason for why the flight was cancelled.*

- *Another article confirmed 55 inbound and outbound flights from Edinburgh were cancelled on 19 July 2024, an airport that generally hosts more than 300 flights per day. So I think it's likely most flights proceeded despite the IT outage.*
- *The delayed cancellation also supports Ms H's account that she was initially told the flight wasn't affected and was still going ahead – until later being told the pilot had “worked too many hours” with a replacement pilot needed to continue the journey.*
- *In another news article, the airline published a statement confirming it wasn't directly affected by the IT outage. It said:*

*“[The airline's] IT systems have not been directly affected by the Microsoft systems issues this morning (July 19) however we are aware that some airports' systems have been impacted across Europe. This has led to some disruption to flights this morning and we expect some further potential impact to flights today.”*

- *I think it's likely the global IT outage caused the initial delays and the pilot to work too many hours. But I'm not persuaded on the evidence available that it was the IT outage, rather than the airline's inadequate contingency planning, that caused the cancellation. Alternatively, I'm not persuaded the airline had taken all reasonable measures - such as having enough backup pilots – to avoid the flight cancellation.*
- *I cannot say for sure if staffing issues had caused the cancellation. However, crucially the onus is on T (and BoS) to show the cancellation was due to unavoidable and extraordinary circumstances, and neither party had obtained detailed reasons from the airline as to why the flight was cancelled at the last minute. So I'm not satisfied either party discharged their obligation to show the cancellation was unavoidable and due to a situation outside the airline's control.*

*As I don't think the flight cancellation was likely the result of unavoidable and extraordinary circumstances, I don't think BoS should have declined her claim for this reason. It follows Ms H can claim appropriate, additional losses under regulation 16(3) of the PTRs.*

#### *Additional losses*

*Where one party breaches an agreement (here, T failing to provide the holiday), the injured party can claim damages for losses that are not too remote. The classic rule from *Hadley v Baxendale* (1854) and subsequent legislation is that a breaching party is liable for losses arising naturally from the breach, or which were within the reasonable contemplation of the parties at the time of contracting as a probable result of the breach.*

*In simple terms, T is responsible for the reasonably foreseeable consequences of its breach. But T wouldn't be responsible for losses that are unusual, unexpected, or far-fetched (in other words, not foreseeable), unless T was aware before the contract was made of the circumstances that would naturally result in such losses following the breach.*

*I'm satisfied the airport parking and hotel transfers were reasonably foreseeable expenses as part of her holiday. Ms H would have likely had to pay for reasonable transportation costs in getting to and from both the airport and the hotel, to utilise the holiday. These are usual expenses a consumer would foreseeably incur on reliance of the holiday going ahead, for*

*which the benefit would be entirely wasted if the holiday isn't provided. I consider such losses to be within the reasonable contemplation of the parties at the time the contract was formed. As T's failure to provide the holiday resulted in these non-refundable expenses being wasted, BoS are liable for refunding these under section 75 CCA.*

*However, I don't think it was reasonably foreseeable that Ms H would buy prepaid tickets for the amusement park, despite its proximity to the hotel. Those tickets weren't part of the original booking, and they weren't essential for experiencing the booked holiday. After reaching the hotel, it would have been open-ended as to what Ms H and her family decided to do, with visiting the nearby amusement park but one of many options. Because this expense wasn't a usual or included part of the booked holiday, I don't think T (and therefore BoS) is obligated to cover the cost of the tickets under section 75 CCA.*

*In summary, I don't think it was fair that BoS declined Ms H's section 75 CCA claim on the grounds it did. To put things right, I'm recommending BoS refund Ms H the cost of her parking and transfers. Ms H provided receipts indicating the airport parking cost her £39.32, and her transfers had cost 172.36 euros. It appears Ms H negotiated some reduction in the cost of the transfer, presumably because they weren't used, as her statements show she paid the transfer company £76.80 on 22 July 2024. So I think BoS is liable for £116.12 total.*

### **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 objected to my recommendations for putting things right in my provisional decision, and I've received no further comments or evidence that would lead me to change my decision. So my provisional decision becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above, I uphold this complaint and direct Bank of Scotland plc to:

- Recalculate Ms H's credit card account by refunding her £116.12, backdated to 22 October 2024, the date I think the section 75 claim should have been upheld.
- If this payment would have resulted in a credit balance being owed to Ms H, this should be paid to her along with interest calculated at 8% simple per year, from that point up until this money is refunded.

If Bank of Scotland plc deducts tax from the interest element of my award, it should provide Ms H with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 7 July 2025.

Alex Watts  
**Ombudsman**