DRN-5752185

The complaint

Mr S complains that Bank of Scotland plc, trading as Halifax, won't refund to him the money that he paid for some flights.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

> *"Mr S used his Halifax credit card in June 2024 to pay £13,539.50 for a package holiday for him, his wife and their two children. The package included business class flights and allocated seats. The booking company contacted Mr S because the allocated seats weren't available. It said that it had refunded the charge for the seat selection service and he should contact the airline to request different seats.*
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> *Mr S booked an alternative holiday and cancelled his first booking. The booking company had already refunded £624.02 to Mr S and it then refunded £6,980.82 to him but said that the flights booked were non-refundable. Mr S claimed a refund of the cost of the flights from Halifax. It made a chargeback claim to the booking company but it was defended on the basis that the flights were non-refundable. Halifax declined Mr S's claim and didn't uphold his complaint. It said that it couldn't find evidence to support a breach of contract or misrepresentation by the booking company under section 75 of the Consumer Credit Act 1974 and that its claim for a refund had been rejected by the booking company.*
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> *Mr S wasn't satisfied with its response so complained to this service. His complaint was looked at by one of this service's investigators who initially said that he was satisfied that Halifax had handled the chargeback and section 75 claim fairly and reasonably. Mr S said that if he'd been informed that there were no suitable seats in business class as required he would've asked for an alternative flight to accommodate his essential requirement of him and his wife being seated next to their two children and that not doing so jeopardised their safety. Having considered everything, the investigator then said that Halifax didn't reach a fair outcome on Mr S's section 75 claim and he recommended that it should refund the remaining balance to Mr S's account.*

Halifax didn't accept the investigator's recommendation and has asked for Mr S's complaint to be referred to an ombudsman. It has provided detailed reasons why it considers that there has been no breach of contract or misrepresentation by the booking company. It says that Mr S actively cancelled the holiday with the knowledge that the flights were non-refundable and there's no responsibility for it to refund the cost of the flights".

Provisional decision

I set out my provisional findings in that provisional decision. I said:

> *"If a consumer disputes a credit card payment, there are two main ways for the dispute to be dealt with. They are a chargeback claim and a claim under section 75. Mr S disputed the payment that he'd made to the booking company for the flights and Halifax made a chargeback claim to the booking company. The chargeback claim was defended by the booking company and I consider that it was reasonable for Halifax to then conclude that there was no reasonable prospect of the chargeback claim being successful and to decide not to take that claim any further.*
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> *Halifax also considered Mr S's claim under section 75. In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr S's complaint about Halifax, I must be satisfied that there's been a breach of contract or misrepresentation by the booking company and that Halifax's response to his claim under section 75 wasn't fair or reasonable (but I'm not determining the outcome of Mr S's claim under section 75 as only a court would be able to do that).*
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> *Halifax said that it couldn't find evidence to support a breach of contract or misrepresentation by the booking company under section 75, and in response to the investigator's recommendation it says that the booking company's terms and conditions say:*
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>> "Please note that for each ticket there are additional terms which are specific to that fare. They may, for example, state that the ticket is non-cancellable or non-refundable, and have other information relating to itinerary and refunds. You must read the flight rules for each ticket. You can find the relevant flight rules on the [booking company's] website when you progress through the purchase path"; "Please note that some tickets are non-refundable and/or do not allow changes"; and "In the case it is not possible to complete the purchase of the selected seat on your behalf due to reasons not attributable to you and/or the Company, you will be notified before your flight departs and the unprovided service will be refunded. In such case, the Company shall not be held responsible for not having been able to provide the service of seat selection".

The booking that Mr S made in June 2024 included business class flights and a seat allocation. The booking company contacted Mr S after he'd made the booking and said:

> "We're sorry to inform you that we have been unable to reserve the seat(s) you wanted due to an unforeseen technical issue. We kindly ask that you contact the airline directly to request different seats. We sincerely apologise for any inconvenience this may cause. We have, of course processed your refund of the seat selection service you bought, and you'll be credited via the same payment method you booked with …".

Mr S's account statement shows that the booking company refunded £624.02 to Mr S's Halifax credit card account in June 2024 and that the booking company also refunded £6,980.82 to that account in July 2024.

In his complaint form to this service Mr S says: "We waited 3 days with no alternatives [and the booking company] then refunded 55% and … kept 45% ie all the business class costs of £5,900"*. In his complaint summary he says that he didn't cancel the holiday as it was cancelled by the booking company due to its internal errors and:* "No alternatives were offered by [the booking company], we waited three days and when they began to refund we looked for a new holiday". *He also says*: "We emailed them asking for [a] full refund … We called the airline on 5 occasions [and were] on hold for over 45 mins [with] no callback or message service … As [the] cost of holiday were going up we decided to book another holiday".

In response to the investigator's recommendation, Mr S says that his wife did call the airline and was told that it had no seats in business class for their specific package dates so they couldn't have flown on those dates. But that's not consistent with what Mr S said in his complaint form or complaint summary. The booking company had said that he should contact the airline directly to request different seats and Mr S says that they called the airline on five occasions and were on hold for over 45 mins but didn't speak with the airline. In response to the investigator's recommendation, Halifax says that information around contacting the airline is made clear on the airline's website which includes an online chat feature and it's not plausible that Mr S wouldn't have been able to contact the airline in any format.

Halifax also says that in a recording of Mr S's call with the booking company he was made aware of free cancellation on the accommodation element of the package and that the flights were non-refundable and that he indicated that he was reading all the relevant terms and conditions before proceeding with the payment.

Mr S had booked non-refundable flights and had been allocated seats using a seat selection service for which he'd paid £624.02. There was an issue with the seat allocations so the booking company asked him to contact the airline directly to request different seats and it refunded £642.02 for the seat selection service to Mr S's credit card account. Mr S tried to contact the airline and I consider it to be more likely than not that neither he nor his wife spoke to the airline. Mr S then asked the booking company for a refund and booked another holiday. The booking company refunded £6,980.82 to Mr S's credit card account in July 2024 for the refundable parts of the holiday but the flights weren't refundable. I've seen no evidence to show that there were no seats in business class for the flights that Mr S had chosen or that he and his family wouldn't have been able to have seats together on those flights.

I'm not persuaded that there's enough evidence to show that there was a breach of contract by the booking company in these circumstances. Mr S decided to book an alternative holiday and the booking company refunded to him the refundable parts of the holiday. I consider that Halifax's response to Mr S's claim for a refund was fair and reasonable. I find that it wouldn't be fair or reasonable in these circumstances for me to require Halifax to refund to Mr S the amount that he paid for the flights, to pay him any compensation or to take any other action in response to his complaint".

Subject to any further comments or evidence that I received from Mr S and Halifax, my provisional decision was that I didn't intend to uphold this complaint. Halifax has accepted my provisional decision but Mr S says that he disagrees with my provisional findings. He's provided detailed responses to my provisional decision, including an impact summary and a more detailed explanation of his complaint. In a summary of his position he says: *"I maintain that Halifax is jointly and severally liable under section 75 of the Consumer Credit Act 1974 for the breach of contract and/or misrepresentation by [the booking company]. The failure to supply the specific, pre-agreed business-class seats — confirmed before payment was made — constituted a fundamental breach going to the root of the contract, entitling me to a full refund for the flight element"*.

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 carefully considered all that Mr S has said and provided in response to my provisional findings, but I'm not persuaded that his complaint should be upheld. Mr S says that the holiday booking was made by phone in June 2024 and he expressly required two adults seated adjacent to two children in business class for safety and the booking company confirmed specific seat numbers were available and allocated them. He says that he paid £13,539.50 within 20 minutes but shortly after that the booking company cancelled the allocated seats and offered only a refund of the seat selection fee of £624.02. He says that it retained the non-refundable flight cost and he was deprived of an essential element of the contract.

I don't consider that the booking company cancelled the seat allocations. It said*: "We're sorry to inform you that we have been unable to reserve the seat(s) you wanted due to an unforeseen technical issue. We kindly ask that you contact the airline directly to request different seats".* Even if that was a breach of contract by the holiday company, I consider that the refund of the charge for the seat selection service and the opportunity to contact the airline to request seats would have been an appropriate remedy for that breach of contract.

I don't consider that Mr S was deprived of an essential element of the contract and he says that he waited three days and, when the booking company began to refund payments to him, he booked for a new holiday. The booking company refunded £6,980.82 to Mr S's credit card account in July 2024 for the refundable parts of the holiday but the flights weren't refundable. I consider that Mr S knew, or ought reasonably to have known, at that time that the flights weren't refundable and I've seen no evidence to show that he was told that he'd receive a refund for the flights or that he had a reasonable expectation that he'd receive a full refund.

I've seen no evidence to show that there were no seats in business class for the flights that Mr S had chosen or that he and his family wouldn't have been able to have seats together on those flights. I'm not persuaded that there's enough evidence to show that there was a breach of contract by the booking company, for which Halifax would be liable under section 75 in these circumstances.

It's clear that Mr S feels strongly about his complaint and the actions of the booking company and I can understand his disappointment about the unavailability of the allocated seats, but I consider that Halifax’s response to his claim for a refund of the cost of the flights was fair and reasonable. I find that it wouldn’t be fair or reasonable in these circumstances for me to require Halifax to refund to Mr S the amount that he paid for the flights, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don’t uphold Mr S’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 25 September 2025.

Jarrod Hastings
Ombudsman