

The complaint

Mrs P has complained about how Bank of Scotland plc trading as Halifax (Halifax) handled a refund claim she made.

What happened

As all parties are familiar with this complaint, I'll only summarise the key background where necessary within my findings below.

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 evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Halifax aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mrs P paid for this transaction using a Halifax credit card, both chargeback and a Consumer Credit Act 1974 Section 75 (S75) claim could possibly help her. So in deciding what is fair and reasonable I've focused on this.

As a summary, Mrs P booked a 14 night holiday with a supplier I shall call 'J' using her Halifax credit card for £8,546.00. Unfortunately the holiday was not to the quality expected and she therefore raised a refund claim with Halifax for these costs and any consequential expenses.

As J had already offered £1,434.00 to Mrs P to address what had happened, Halifax didn't think anything more was due.

Chargeback

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants. A consumer isn't entitled to chargeback by right. But where there are grounds to raise one and it has reasonable grounds for success, it is good practice for one to be raised by the card issuer.

However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules. I've considered whether a chargeback claim would've been appropriate in this case.

I recognise that chargebacks can, in some circumstances, be used to recover part of a payment where only some of the services paid for weren't provided as agreed.

But in this case, Mrs P stayed at the hotel for the full duration of the booking and the core service – the hotel accommodation – was provided. The concerns raised relate mainly to the quality of the stay and the surrounding conditions, rather than an identifiable and quantifiable part of the service not being provided at all. Given that, I don't think there was a clear basis on which a partial chargeback would likely have succeeded under the scheme. So I'm satisfied Halifax didn't act unfairly in not progressing this claim.

I consider this complaint is more appropriate under S75, which allows for a broader assessment of whether there's been a breach of contract or misrepresentation, including where the issues relate to the overall quality of enjoyment of the service provided.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, Halifax would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

I've considered Mrs P's complaint points and note these include but are not limited to:

- Building works in the vicinity
- The use of an ozone machine in her hotel room while she was present
- The cleanliness of their original room
- Further issues in their replacement Penthouse suite
- Quality of the food during their stay along with the customer service provided
- Safety concerns such as loose uncovered wiring in the general hotel property

I won't be discussing the background of these complaint points as all parties are aware of these but I'll focus on Halifax's consideration of the S75 claim with mind to the available evidence. In addition, while I've noted all of Mrs P's submissions regarding the stay overall, I'll only be commenting on what I consider most relevant here.

When considering this, I've also had regards to the implied terms of the Consumer Rights Act 2015 (CRA) and particularly Section 49 (S49) which states that *'every contract to supply a service is to be treated to include a term that the trader must perform the service with reasonable care and skill'*.

From the outset, I must state that any considerations of the quality of the food are likely to be subjective and I've not seen enough evidence to reasonably conclude this was below the standard expected. While I note Mrs P chose to eat elsewhere, I won't be commenting on this further as I don't think there's enough here to say that the hotel food wasn't of a reasonable quality.

Likewise. I appreciate Mrs P was unhappy with the service provided by the staff. But there is limited further evidence to substantiate this so I don't think there's enough to conclude this amounted to a breach of contract in terms of reasonable care and skill.

I also note Mrs P's comments about the building works in the vicinity and appreciate she has said this negatively impacted her holiday. In addition, I do agree that there was a failing in using the ozone machine in her room while it was occupied, although I haven't seen enough evidence that the subsequent throat issues suffered were a direct result of this. Even so, it shouldn't have been used while the room was occupied.

I also understand Mrs P was moved into a Penthouse suite three nights into her stay due to her concerns about the cleanliness of her original room. The jacuzzi wasn't working in this suite and she was only provided access to another working jacuzzi much later in her stay. While this would've been frustrating, a jacuzzi wasn't part of her original booking. She did later have access to this so with all of this in mind, I don't think this amounts to a breach of contract.

I do appreciate though that she says there were other issues with that suite, such as a broken telephone and a broken bedroom door latch as well as a water leak. To remedy this, the door latch was subsequently fixed and a cleaner later placed a towel to address the water ingress. I don't think the steps taken here were enough to put things right overall, particularly as the telephone issues appear not to have been remedied.

Mrs P also mentioned several safety hazards such as exposed wiring and sent photos of these. While I appreciate this, I've not seen any documentary evidence confirming these were safety breaches for hotel residents.

In summary, I think there should've been compensation awarded for the following as I do think it likely that there was a breach of contract here with mind to the CRA:

- Cleanliness of the original room and issues with the Penthouse Suite

The initial cleanliness issues were addressed by a move to a Penthouse suite and while the jacuzzi wasn't working in this room, this amenity wasn't a part of the original booking. However, I've noted the further issues mentioned in the Penthouse suite and the level of service provided to address these issues. I don't think this was sufficient in the circumstances and consider there should be compensation awarded to address what happened here.

- Use of the ozone machine in the original booked room.

While I've insufficient evidence that the symptoms suffered by Mr and Mrs P later was a direct result of the machine, I agree this shouldn't have been used under the circumstances and so I think compensation should also be awarded for this.

- Building works adjacent

While I appreciate that the resort couldn't control building works adjacent to the property, I don't think the impact of these works was reasonably managed or communicated, and so I think this forms part of the overall failure to provide the service with reasonable care and skill.

I don't agree though that there is sufficient evidence to say the same for the quality of the food, the conduct of the staff or the health and safety concerns raised by Mrs P. I also don't think that any of the consequential losses listed by Mrs P would be covered by the S75 claim either.

Putting things right

Halifax has said that J acknowledged there were shortcomings during the stay and offered £1,434.00 to Mrs P to address this.

I see that this would be around 17% of the total package cost. While the package holiday booking doesn't break down the flight costs, I note the flights were via a premium economy cabin and a conservative estimate for two return tickets for those flight dates would be £2,300.00 in total.

This means that the remaining costs would be approximately £6,250.00. I've considered the refund in mind to this and this is around 23% of the non-flight costs. In addition there was also an upgrade to the Penthouse and while I note there were some issues with the room, Mrs P would've had benefit of the rest of the upgrade - so having access to the amenities in the Penthouse. Halifax has said Mrs P was also offered a private dining experience for the initial issues with that stay.

Considering this as well, I think this represents reasonable compensation for the issues I've identified. So I don't think Halifax acted unfairly in relying on J's offer to resolve the claim.

I'm aware however that J has now closed their complaint file. As Halifax is jointly liable for any breach of contract by the supplier here, they should pay £1,434.00 to Mrs P, if J is not willing to do so, as the fairest outcome to her S75 claim.

I also want to add that while the above forms part of a breach of contract by J, I've also thought about whether the building works could amount to a misrepresentation if they weren't made clear before the booking.

But even if I accept there may have been a lack of information at the point of sale, I don't think misrepresentation is the most appropriate framework for resolving this complaint. Mrs P went ahead with the holiday and stayed for the full duration, which means the contract was performed in substance. In these circumstances, it's more appropriate to consider whether the overall service fell short and, if so, what level of compensation fairly reflects any loss of enjoyment, rather than treating the contract as one that should be unwound.

Taking everything into account, I'm satisfied the offer of £1,434.00 fairly reflects the impact of the issues identified. As a result, if Mrs P accepts my decision, Halifax should check if J's offer of £1,434.00 compensation is still valid. If so, they should facilitate the payment to her. As Halifax is jointly liable for any breach of contract it's responsible for ensuring Mrs P receives the £1,434.00 if J doesn't make this payment.

And in any event. Halifax should see that Mrs P has the £1,434.00 paid to her within 30 days of accepting my decision. For clarity, my direction isn't that Mrs P receives £1,434.00 from both Halifax and from J. Halifax will be free to inform J if it ends up paying Mrs P directly in order to avoid double recovery

My final decision

I direct Bank of Scotland plc (trading as Halifax) to pay £1,434.00 compensation to Mrs P in accordance with my direction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 20 May 2026.

Viral Patel
Ombudsman