

complaint

Mrs W complains Bank of Scotland pic trading as Halifax won't refund a payment made on her credit card to a secondary ticket selling website ("the Website") for event tickets.

background

In June 2017, Mrs W bought two event tickets on her Halifax credit card. In total, she paid £151.75.

Mrs W says once the tickets arrived, she found they had a face value of £30 each which was a lot less than what she paid. Mrs W says she also wasn't aware that tax was added on separately at the end of the purchase process and that the tickets would be in someone else's name. Mrs W has told us the transaction appeared in a foreign currency and the Website didn't give her a chance to stop this transaction. Instead, the transaction authorised itself.

Halifax looked into Mrs W's concerns, but they didn't think they could help. They said they didn't feel they had grounds to raise a chargeback claim because they didn't have a reasonable prospect of success. Halifax also thought a claim under Section 75 of the Consumer Credit Act 1974 (CCA) should be unsuccessful. They said there wasn't the necessary relationship between Mrs W, Halifax and the Website for a valid claim.

Unhappy with Halifax's response, Mrs W brought her complaint to our service. Our investigator looked into the matter. Ultimately, he didn't think Halifax had acted unfairly by declining Mrs W's request for a refund. He said Mrs W had entered her card details on the Website when purchasing the tickets, therefore, she'd authorised the transaction. Our investigator also thought the final amount of the tickets was made clear to Mrs W. So, he didn't think there had been a misrepresentation or breach of contract by the Website. Overall, our investigator didn't think Halifax needed to do anything else.

Mrs W disagreed. She reiterated her concerns about the price she paid for the tickets and also that the Website had changed the way the purchase process is now, due to the number of complaints they'd received in the past. Mrs W also reiterated that the tickets were in someone else's name and that she feels she's been a victim of fraud. So, the complaint has been passed to me.

I issued a provisional decision on this complaint setting out the below:

This complaint is about Halifax, as Mrs W's credit card account provider. It's not about the Website, which isn't a financial service provider and so doesn't fall within my remit. I'm only considering whether Mrs W authorised Halifax to debit the account with the value of the payment, and whether they should have helped with the dispute with the Website in any other way.

Mrs W knew the amount she was paying for the tickets at the time and was willing to purchase the tickets at that price. It was only upon receiving the tickets that Mrs W found out the face value of them (which she says was around £30 each). Mrs W doesn't argue she didn't buy the tickets on her credit card, she argues that she didn't pay the face value amount for the tickets. I note Mrs W says the transaction went through in a foreign currency and she had no opportunity to stop the transaction. However, Mrs W would have had to enter her card details on to the Website and she would have needed to place the order, to

be able to obtain the tickets. So, whilst the tickets may have had a foreign currency value on them, I can see the total amount charged to Mrs W's credit card was £151.75. Having carefully thought about this, I think Mrs W consented to and authorised the transaction.

Mrs W also says she wasn't aware of the tax that was charged and only became aware of this at the end of the purchase process. We've got screenshot evidence of the ticket buying process dating back to 2017 - where the 'total price' is displayed on the final page before the buyer is asked to enter their card details. I can see this section also includes an amount for tax. So, I think Mrs W would have been aware of any additional charges added before she entered her card details and proceeded to buy the tickets.

Having considered everything Mrs W has said (including that she made this purchase and paid for the tickets) and the evidence provided by Halifax, I'm satisfied the transaction was properly authorised and correctly applied to Mrs W's credit card account with Halifax.

I appreciate Mrs W has told us she's aware of some issues surrounding the Website in online forums. Whilst I understand Mrs W's frustrations and concerns about the Website, I'm unable to comment on this further. I'm only able to consider Mrs W's complaint about Halifax and the individual circumstances surrounding it.

could Halifax challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute with a merchant (as Mrs W does here), the card issuer (Halifax) can attempt a chargeback. Generally, we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods or services aren't received, or it appears that the payment wasn't properly authorised by the cardholder.

Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I don't think Halifax could have challenged the payment on the basis Mrs W didn't properly authorise the transaction, given the conclusions I've already set out.

Halifax said the Website displayed all their terms and conditions as well as full breakdowns of the costs, which are shown on the final page of the purchase process. Additionally, Halifax said Mrs W received the tickets she paid for and although the original purchaser is named on the tickets, this shouldn't have affected Mrs W's ability to attend the event. Whilst I understand Mrs W chose not to go to the event as she didn't think she'd be granted entry, I haven't seen anything to suggest this would have been the case. So, I don't think Halifax could challenge the Website on the basis that Mrs W didn't get what she ordered. Or that she wasn't able to use the tickets to gain entry to the event.

I note Mrs W says she was overcharged for the tickets because she later found out they had a face value of around £30 each. But I don't think there's a reason code Halifax could have used under the chargeback scheme rules to get Mrs W's money back on the basis that she was being charged more than a ticket's face value. As I've explained, Mrs W authorised the transaction and agreed to pay the amount. Halifax are required to consider whether there is a reasonable prospect of success when they are considering whether to go through the chargeback process or not. Bearing in mind Mrs W authorised the transaction and received the tickets, Halifax's decision that there wasn't a reasonable prospect of success in a chargeback is fair and reasonable in my opinion. So, I'm not currently persuaded they acted unfairly.

how about Section 75 of the Consumer Credit Act 1974?

As the payment was made using a credit card, I have also taken into account how Section 75 applies to the transaction. In certain circumstances, Mrs W has an equal right to claim against Halifax as she does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier if certain conditions are met.

My role isn't to decide Halifax's liability under Section 75. Instead, as statute requires me to, I need to decide what's fair and reasonable, taking into account any relevant law, such as the Consumer Credit Act 1974. For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions in this case say:

"1.2 Ticketing Exchange. [Website's name] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [Website's name] does not take title to the underlying ticket and the actual transactions are between the Buyers and Sellers."

This satisfies me that the tickets aren't supplied by the Website. But that the Website does provide a service. And for this they charge buyers a fee. In regard to the fee, the Website says they:

"...charge a service fee on top of the ticket price. This fee is displayed in the check-out process and covers the cost of maintaining the [Website's name] platform, guaranteeing tickets and providing customer service."

In effect then, there is a debtor-creditor-supplier arrangement between Mrs W, Halifax and the Website, albeit not for the direct provision of the tickets themselves. Instead, the Website provides a service. The service consists of two main things - the platform and the guarantee.

So, I think the Website is responsible for how ticket information (such as venue, date, time, and the asking price) is displayed to buyers. And I think, under the guarantee, they're responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets.

Another condition necessary for a valid claim under Section 75 is that the service provided by the Website must have a cash price of more than £100 but less than £30,000. In this case, I haven't seen a breakdown of the amount Mrs W paid, but I can see from her credit card statement she was charged a total of £151.75. From our research, we've found that the Website's fee makes up about a third of the total cost. One third of £151.75 is around £50. So, I don't think this case meets the required financial limits to have a claim under Section 75. As such I do not have to consider whether there is a breach of contract or a misrepresentation here as Section 75 does not cover Mrs W for this particular transaction. was there anything else within the Consumer Credit Act 1974 that Halifax should have considered?

Even though I've made the finding that I don't think there is a valid claim under Section 75, I think Section 56 of the CCA could be of particular relevance to this complaint.

In summary, Section 56 has the effect of making the Website the agent of Halifax during the "antecedent negotiations" leading up to Mrs W entering into a transaction with them. So essentially, this means Halifax are responsible for the acts or omissions of the Website and

what was said or done before the transaction was entered in to and conducted by the Website, in other words, Halifax have to stand behind the things the Website said, did, didn't say, or didn't do during the sales process.

For a valid claim under Section 56, there has to be a valid debtor-creditor-supplier arrangement in place - which is satisfied for reasons I've already explained. However, unlike Section 75, there are no monetary limits attached to Section 56. So, I can consider the impact of Section 56 and whether Halifax ought to have considered this in Mrs W's case.

With this in mind, I've thought about whether the Website misrepresented the information, or the tickets Mrs W purchased. Mrs W has told us she didn't realise the tickets had someone else's name on them. And also, that she didn't realise the face value of the tickets were much less. Mrs W says she wouldn't have bought the tickets had she known this information. The Website offer a service whereby they provide a guarantee for the tickets. Under this guarantee, the Website say they will take action (either by sourcing replacement tickets or in some cases, offering a refund) if it is proven the tickets are invalid. The terms on the Website itself also confirm that in some instances the original purchaser's name may be printed on the tickets, it also explains the tickets are valid and that a customer's name doesn't need match the name printed on the ticket to gain entry to an event. Having CareFusion considered this, I'm not persuaded the Website misrepresented the tickets to Mrs W. As I've already explained, it was Mrs W's decision not to go to the event, rather than the tickets preventing her from going to the event, I haven't seen anything which persuades me that the tickets weren't valid.

In relation to the face value of the tickets, as I've explained, I'm satisfied the price of the tickets were made clear to Mrs W at the time of purchase. And she agreed to this price. So, I don't think the Website misrepresented this information.

Mrs W has told us she wasn't aware of the tax amount being charged and that this was added at the end of the purchase process. As previously explained, I've seen screenshot evidence of the buying process from 2017 - which I think is more likely than not, the same steps Mrs W followed when she purchased her tickets. And I can see the total price is displayed on the final page before Mrs W would have been asked to enter her card details. So, I think it's more likely than not Mrs W would have been aware of the price, inclusive of tax. Having thought about this carefully. I'm not persuaded the Website misrepresented the price information to Mrs W.

In summary, while I appreciate this will likely come as a disappointment to Mrs W, I think she authorised Halifax to debit her credit card account with the value of the transaction to the Website, so I think it was fair for them to do that. I also don't think Halifax acted unfairly in the handling of Mrs W's chargeback claim. And whilst I don't think the claim meets the financial limits under Section 75, had Halifax considered Mrs W's claim under Section 56, I don't think they would've acted unfairly by declining it. So, it's for these reasons, I currently don't think I can fairly require Halifax to refund Mrs W for the tickets.

Halifax responded to my provisional decision and said they accepted it. Mrs W responded saying she'd been in contact with other users of the Website and their chargeback and section 75 claims had been successful. Mrs W also reiterated the currency of the transaction at the time was a foreign currency and that the tickets were in someone else's names. Mrs W also questioned what necessary relationship Halifax referred to.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, I want to assure Mrs W that I've thought about everything she has told us in relation to her complaint. I understand Mrs W's concerns that other people have had successful claims against the Website. But each complaint is looked at on its own merits. Therefore, I'm unable to comment any further on this.

Whilst I appreciate the tickets may have shown in a foreign currency, as explained in my provisional decision, Mrs W authorised and consented to the transaction. I've also carefully considered what Mrs W has said about the price of the tickets changing at the end of the purchase process. However, I've seen the steps Mrs W likely would have taken at the time of buying the tickets. And I haven't seen anything to suggest the full ticket price (including any additional charges) wasn't displayed before Mrs W had to enter her card details at the end of the purchase process.

In relation to Mrs W's question about the necessary relationship that Halifax referred to - this is one of the conditions that needs to be satisfied for a valid claim under Section 75. As explained in my provisional decision, I thought there was the necessary relationship in place between Mrs W, Halifax and the Website, albeit not for the direct provision of the tickets themselves - my opinion on this remains the same.

my final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 13 September 2021.

Leanne McEvoy
ombudsman