

The complaint

Mr H complains about the way Bank of Scotland plc ('BOS') handled his dispute.

What happened

The facts of this case are well known to the parties – so I will simply summarise them briefly.

Mr H paid for a holiday using his BOS debit card. However, he was not happy with the holiday and wants a refund. In summary, he says he did not enjoy the holiday as there were loud parties going on in the hotel. He says he was not told this was the sort of hotel he was booking.

BOS raised a chargeback claim for Mr H and issued a temporary credit. But the claim was defended by the merchant and BOS took back the money and discontinued the dispute.

Mr H is unhappy that BOS told him he could keep the money then took it back. BOS apologised for incorrect information and paid Mr H £50 compensation. But it confirmed that it couldn't refund Mr H under the chargeback scheme.

Mr H complained to this service and the investigator didn't uphold his complaint. So he has asked for an ombudsman to look at things again.

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 have considered the information submitted by the parties – however, I won't comment on it all, only what I think key. This reflects my role resolving disputes informally.

I am very sorry to hear that Mr H was disappointed in his holiday. However, in deciding what is fair it is important to note that BOS is not the supplier of holidays here. So I am only considering its role as a provider of financial services. In that respect, as Mr H paid for the holiday on a debit card the chargeback dispute process is particularly relevant here.

Chargeback is not a legal right but a dispute resolution process set out in rules created by the card schemes. In this case it appears the relevant card scheme is Visa – however I don't consider the outcome of this complaint would be different under the other schemes in any event.

It will often be good practice to attempt a chargeback and I can see that BOS did raise one on behalf of Mr H to try and recover his money. This seems like a fair initial step to take.

I note that the merchant defended the chargeback and then BOS decided not to take the dispute process any further. I have thought about whether this was fair in the circumstances.

It appears that the relevant reason code here used to raise the dispute was that relating to services which are *not as described*. This seems to be an appropriate code to use here.

However, I note that the supplier raised a defence to the claim indicating that Mr H had received the service for the entire duration of his holiday and no refund was due.

It is arguable that BOS did not act unreasonably in deciding not to take the dispute further here as it appeared there was no reasonable prospect of success. I say this because

- The supplier denied any wrongdoing;
- Mr H's claim centres on his perception of the hotel as being a 'party' hotel – however, the chargeback scheme is focused on whether the service was not as described;
- Mr H's claim focuses on a claim for loss of enjoyment – and mentions law relating to package travel bookings – which chargeback doesn't take into account; and
- I don't think there was persuasive evidence presented at the time that Mr H's holiday was not as described in accordance with the relevant chargeback scheme rules (such as advertisements and other documentary evidence taken at the time of stay).

So I don't think BOS has acted unfairly in not continuing the dispute. But even if I think it should have, I consider it unlikely to have succeeded in any event (either on re-presentment or at arbitration) for similar reasons.

I note that during the dispute Mr H was given incorrect information which led him to believe he was able to keep the temporary credit he got during the dispute process. BOS accepts this mistake. I think this deserves compensation as it has clearly caused Mr H distress and disappointment. But I don't think it means that BOS should pay him the refund it took back for the reasons given above in respect of the decisions and prospects around the chargeback dispute process, and because ultimately there isn't persuasive evidence this mistake has caused Mr H a financial loss.

In considering what is a fair award for distress I have taken into account the approach as set out on our website. When deciding what is a fair I also note BOS apologised to Mr H about the mistake and it seemed sincere. I think the £50 which BOS paid Mr H is fair and reasonable in the circumstances for this mistake which caused understandable short term distress.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 January 2024.

Mark Lancod
Ombudsman