

The complaint

Miss S complains about the way Bank of Scotland plc (trading as Halifax) handled her request for help with a dispute she had about accommodation she paid for using her Halifax debit card.

What happened

In January 2023 Miss S bought accommodation from a hotel I'll call B using her Halifax debit card. She paid £2,779.13 for six nights in April 2023.

Miss S said that when she arrived at the hotel there were a number of problems. She said some of the facilities that B advertised on its website such as a spa and pool were not available, there was nowhere to park her car, there were no lifts, the hotel was not within walking distance to the beach and was in the mountains, and the bed was too small.

Miss S said she was unable to resolve things with B, so she left the hotel and paid for alternative accommodation.

Upon her return to the UK Miss S said she emailed B about all of her concerns, but it didn't provide a substantive response.

Miss S asked Halifax to step in and help her get a refund. Halifax temporarily refunded Miss S pending the outcome of an investigation.

Halifax said it tried to help Miss S by raising what is known as a chargeback (a method of recovering funds paid to a supplier in certain situations). It said B defended the chargeback and in support of its defence provided evidence the booking was non-refundable and that the service was as described.

Halifax didn't think this evidence rebutted Miss S's claims, so it re-attempted the chargeback. B defended it again, this time providing even more evidence and photographs. Based on that evidence, Halifax didn't think the chargeback would have succeeded if it had pursued it any further. So, it sent the evidence to Miss S, asked her for any further comments and explained it was going to end its pursuit of the refund from B and re-debit her account with the cost of the accommodation.

Dissatisfied with this position, Miss S referred her complaint to this service.

An investigator didn't think Halifax should pay the refund to Miss S. He said that based on the available evidence, he didn't think Halifax had treated Miss S unfairly by ending its pursuit of the chargeback.

Miss S disagreed and asked an ombudsman to review her complaint. She said in summary:

- The pictures B provided in its defence of the chargeback had been lifted from its website and didn't show what she actually received upon arrival at the hotel.

- Other guests at the hotel had contacted her to say they had been misled about the hotel also
- She had provided evidence she stayed at another hotel.

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'm looking here at the actions of Halifax and the way it handled Miss S's request for help getting her money back. Miss S paid for the accommodation using her debit card and there's no suggestion that payment was taken fraudulently (in the sense Miss S didn't consent to it). So, the only realistic way that Halifax could have got Miss S's money back from B was via a process known as chargeback.

In certain circumstances this process provides a way for a bank to ask for a payment its customer made to a supplier to be refunded. Where applicable, the bank raises a dispute with the supplier and effectively asks for the payment to be returned to the customer.

While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise one. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

Once a chargeback is raised the supplier is given an opportunity to defend it and provide evidence in support of its position. The bank can either accept the defence or continue to pursue the chargeback. If the parties cannot agree then the bank can ask the card scheme to decide who gets to keep the money.

An important consideration in this case therefore is whether Halifax's decision to end its pursuit of the chargeback once it had been defended by B for the second time was reasonable in the circumstances.

I've looked at the relevant dispute code for this situation which is 'not as described or defective goods/services'. This set out that a chargeback could be raised where the merchandise or services did not match what was described or where the cardholder disputes the quality of the merchandise or services received – as Miss S alleged was the case here.

It also set out that Miss S must provide, amongst other things an explanation of what was not as described or defective or information regarding the quality-related issue.

As far as I can see Miss S provided such an explanation when she contacted Halifax.

On the face of it Miss S met the conditions for a chargeback and Halifax rightly raised one. Whether it was appropriate to raise one for the entire amount Miss S paid to B is debatable if she made use of the services at all. However, I don't think this impacts matters in this case for reasons I'll go on to explain.

The rules set out that in response to a chargeback a supplier or its merchant acquirer was required to provide evidence that amongst other things, the merchandise or service matched what was described (including the description of the quality of the merchandise or service) or was not damaged or defective and, the supplier's rebuttal to Miss S's claims.

B's second defence to the chargeback contained a number of rebuttals to Miss S's claims. It

said the location of the hotel would have been clear on its website (which it provided a snapshot of), the room was as described on its website, and the spa and swimming pool were present. B included a number of photographs which it said supported its rebuttals including pictures of the spa, swimming pool and the view from one of its rooms.

I agree with Miss S that some of these appear to have been lifted from B's website, rather than depicting the actual room Miss S was staying in. However even if it could be argued that some of this evidence was weak, I remind myself that arbitration was the only stage of the process left for Halifax to pursue the case to. And I've not seen enough to make me think on the balance of probabilities that Miss S's description of the alleged defects/misdescriptions would have been more persuasive in the card scheme's eyes such that it would have found in her favour should the case have been pursued to that stage.

For example, although Miss S had provided evidence she purchased alternative accommodation, it doesn't appear that she had provided any photographs in support of her claims about her room – despite having been made aware of B's rebuttals by Halifax and having been provided the opportunity to submit further evidence. So, it seems unlikely she could have rebutted the defence B had provided.

And while she had been contacted by another guest to say the hotel wasn't as they expected either, again I'm not persuaded this would have carried sufficient weight with the card scheme such that it would have turned the case in Miss S's favour.

Overall, I've not seen enough to make me think that Halifax treated Miss S unfairly. It had re-attempted the chargeback when B originally defended it with weaker evidence. But once B defended the chargeback on the second attempt with more evidence (and having been armed with no further persuasive evidence to rebut that defence), I don't think it unreasonably concluded the chargeback had no further prospects of success. It's not clear enough the chargeback would have succeeded if Halifax had pursued it further and taken the case to the card scheme's arbitration process.

I know Miss S thinks this is unfair. I'm not saying that B didn't treat Miss S unfairly by not giving any of her money back. However, I don't think Halifax is responsible for paying the refund to Miss S in the circumstances of this complaint. Based on the available evidence, I'm not persuaded it would have been able to recover the money from B via chargeback. And this was the only realistic way that Halifax could have recovered it in this case.

Miss S has explained she will have difficulty repaying the sum now and is overdrawn by a considerable amount. Halifax should ensure it treats Miss S with forbearance and due consideration in respect of any problems she may have repaying the overdraft – keeping in mind also what she has told it about her health.

My final decision

For the reasons I have explained I do not uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 19 December 2023.

Michael Ball
Ombudsman