

The complaint

Mr A complains that Bank of Scotland plc, trading as Halifax, declined to raise a chargeback dispute in relation to a package holiday (actually a religious pilgrimage).

What happened

In June 2022 Mr A bought a premium package tour for himself and his wife to go on their *hajj* (pilgrimage). He paid for it with his Halifax debit card. On arrival and throughout the pilgrimage, he found that many of the services which had been advertised were not provided or were sub-standard. On returning home he complained to the merchant and asked for a partial refund. The merchant apologised and told him it would refund him, but it never did, despite Mr A chasing it repeatedly. Eventually, in September, Mr A asked Halifax to raise a chargeback claim for 35% of what he had paid. He provided a detailed list of the services which had not been provided or had not been as described.

Halifax declined to raise a chargeback. It told Mr A that this was because he had stayed for the full duration of the tour, and he had not provided a costed breakdown of the services not provided. Mr A replied to say that these were unreasonable objections. The trip had been a religious pilgrimage, and so he could not have just left. And it was not possible for him to provide the costs of the undelivered services because he had bought them as part of a package, not as bolt-on extras, so their prices had not been separately itemised; but the merchant could provide this information, and so the bank should ask it instead.

The bank did not change its stance, and so Mr A brought this complaint to our service. Our investigator did not uphold it. He said that Halifax had complied with Visa's chargeback rules, and that Mr A's claim would have been unlikely to succeed, so the bank didn't have to raise one.

Mr A was not satisfied with that decision. He argued that the bank should raise a chargeback dispute whether the service was cancelled by him or was not provided by the merchant, as the latter was effectively another kind of cancellation, and so it should not make a difference who cancels the service. He pointed out that the chargeback rules do not explicitly require a detailed breakdown of the costs of the services he was claiming for, as required by the bank (and he re-iterated that only the merchant could realistically provide that information). He said that as it did not become apparent that the services would not be provided, or would be sub-standard, until the various days when they were due to be provided, he would not have had a reason to cancel his trip at the start or early on, as the full extent of how far the merchant had fallen short of what it had contracted to do could not have been known until the end. He made detailed reference to the Visa chargeback rules to support his case, and asked for an ombudsman's decision.

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 considerable sympathy for Mr A and his wife regarding the situation in which they found themselves as their pilgrimage went on and each day brought new problems. In his original claim to the merchant – which he later included in his chargeback claim to the bank – he put together a detailed and credible account of all of the deficient or absent services over the course of the tour. I believe him, not least because at no point did the merchant ever deny any of the allegations made; indeed, it apologised and offered him a refund instead (although the refund never materialised). So, while keeping in mind my duty to be impartial and fair to both parties, I regret that I am not in a position to help him with this complaint. That is because I do not think that a chargeback dispute would have succeeded. I will explain why.

I think that the most relevant chargeback reason in this case is dispute condition 13.3, which is “not as described or defective merchandise / services.” I accept that the services were not as described or defective (and indeed the chargeback rules put the onus on the merchant to prove otherwise). And I accept that Mr A’s dispute was brought in time, and it did not fall into the category of invalid disputes. But one of the rules that had to be satisfied was “Before the Issuer may initiate a Dispute, the Cardholder must return the merchandise or cancel the services.” Because that rule explicitly identifies the cardholder as the party who must cancel the services, I am unable to accept that it does not matter which party cancels the service.

There is a footnote to that rule which says “For Disputes related to services that *cannot* be cancelled, the Cardholder must request a credit from the Merchant” (emphasis added). I have considered that exception, because Mr A did request a credit from the merchant, and he has given a reasonable and sensible explanation for why he did not cancel the service. But I am afraid that I do not think that the tour was a service which *cannot* be cancelled. So I do not think that this exception applies.

(Halifax took into account the fact that the merchant had offered Mr A a refund, but as the merchant had not specified a particular amount, the bank thought this was too vague for it to rely on. I don’t think that alone should have been an obstacle to raising a chargeback dispute, because the rules put the onus on the merchant to either provide evidence that the service was as described or that a refund has already been issued. But before the merchant can be required to prove anything, it must first be established that the cardholder cancelled the service.)

I have thought about two other chargeback reasons which might have been relevant to Mr A’s claim. Dispute condition 13.1 is “merchandise / services not received.” But the rules for that one exclude disputes about the quality of service. Since the tour was provided to Mr A, and his complaint is really about certain parts of it not being provided, I think that is more suitable for the “not as described or defective” reason. I think the same thing about dispute condition 13.7, “cancelled merchandise / services.” (Mr A conceded this point in his reply to the investigator’s view, but I have still considered it anyway in case he had conceded too much.)

For the above reasons, I conclude that a chargeback dispute would not have succeeded, and so the bank was under no obligation to raise one. (That is not to say that the bank got everything right – I do not think it was Mr A’s responsibility to provide a costed breakdown of the relevant problems and how much each was worth; he had provided an estimate of 35% which was based on comparing the difference between the price of the platinum package he had bought and the price of the gold package. And he had given a detailed account of what the platinum package was supposed to include and which parts he didn’t get, or which were otherwise not adequate. I think that is as much as could reasonably be expected of him. But this was not the sole reason why a chargeback dispute was not raised by the bank.)

I am sorry that this decision will come as a disappointment to Mr A. He clearly received poor

service from the merchant, and he had good reasons for choosing to persevere with the pilgrimage to the end. I think that this case illustrates that sometimes the chargeback scheme is too inflexible to avail every consumer, and that a card issuer cannot always assist. Mr A will have to pursue the merchant directly for his refund. (For future reference, if he uses a credit card for important purchases then he may be able to obtain compensation from his card issuer for a breach of contract or misrepresentation by a merchant under section 75 of the Consumer Credit Act 1974.)

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 August 2023.

Richard Wood
Ombudsman