

The complaint

Mr S complains that Bank of Scotland plc ("BOS") declined his claim under section 75 of the Consumer Credit Act 1974.

What happened

In July 2021 Mr S booked a coach holiday with a merchant and paid using his BOS credit card.

Mr S experienced some issues with the holiday which he wasn't happy about. He first contacted BOS in October 2021 to raise a chargeback claim on the basis that the coach journey had taken significantly longer than expected because of the number of pick ups and travelling through large towns during rush hour. Mr S was also unhappy because there were issues with the ferry departure time and no entertainment at one of the hotels.

BOS declined the chargeback claim. It said there were no chargeback rights available because Mr S had used all the services.

In January 2023 Mr S contacted BOS again and raised a claim under section 75.

BOS investigated the claim but ultimately declined it. It said it hadn't been able to identify a breach of contract or a misrepresentation, save for the point which Mr S had made about entertainment. BOS refunded Mr S the sum of £80 in relation to this.

Mr S remained unhappy and complained to this service.

Our investigator didn't uphold the complaint. She said there was no evidence of a breach of contract or a misrepresentation because Mr S had received the travel and accommodation he'd paid for, with the exception of the entertainment in respect of which BOS had already refunded £80.

Mr S didn't agree. He said that the brochure stated that the main coach wouldn't pick up at all departure points and that feeder vehicles would be used to transfer customers to the main tour coach. Mr S said that no feeder vehicles had been used and this meant that because of the number of pickups, the journey time took longer than expected. Mr S also said that the terms and conditions stated that the merchant wouldn't ask customers to pay for upgrades, yet he'd been charged an additional £80 for the change of hotel from the Stromness Hotel to the Ayre Hotel. Mr S said he believed that both these issues amounted to a breach of contract.

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 sorry to hear that Mr S didn't have the holiday experience he was hoping for. I can see that both the outward and return journeys were lengthy and I understand how frustrating and tiring this must've been. That said, I'm not persuaded that there's been a breach of contract

or a misrepresentation here and for that reason I'm not upholding the complaint. I'll explain why.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation.

In order to uphold Mr S's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that BOS's response to the claim under section 75 wasn't fair or reasonable.

Mr S has said that there's been a breach of contract because:

1. The merchant didn't use a feeder vehicle to transfer customers to the main coach
2. He was charged £80 for an upgrade when the brochure stated that customers wouldn't be charged for upgrades
3. There was no entertainment at the hotel as advertised in the brochure

I've looked at all the available information when considering these points. In relation to the coach journey, Mr S has said that page 4 of the merchants' brochure states that the main tour coach will not pick up at all departure points on a route. During the investigation by BOS it was established that the coach didn't pick up at all of the departure points and that it only picked up at 6 departure points. I can see from the departure timetable that the coach could have stopped at other departure points but didn't.

In relation to the feeder vehicles, the brochure states that you **may** (my emphasis added) be picked up at your local point and transferred to the main tour coach by a feeder vehicle. This doesn't mean that the merchant was obliged to use feeder vehicles. So if feeder vehicles weren't used on the tour that Mr S joined, this doesn't mean that there's been a breach of contract.

I've reviewed the merchants' terms and conditions. Under the heading "Changes by us" the terms state that it may be necessary at short notice to make changes to an itinerary or a hotel. The terms state that if a hotel change is involved, the merchant will endeavour to offer a similar standard hotel and keep customers advised of any changes. I can't see anything in the terms and conditions which says that customers won't be charged for upgrades. I accept that the hotel was changed from The Stromness Hotel to the Ayre Hotel and I can see from the relevant documentation that Mr S paid an extra £40 per person in relation to this when he booked the tour. However, I'm unable to say that this amounts to a breach of contract.

Even if there is something in the brochure which states that customers won't be charged for upgrades, I can see that Mr S has been refunded the cost of the upgrade as part of the refund for the fact that there was no entertainment provided by that hotel, so I'm satisfied that he hasn't been left out of pocket.

I've reviewed the brochure and I can see that under the description of Day 3, the passage reads "explore the visitor centre before we return to the hotel in Stromness for dinner and entertainment". I've already accepted that the hotel was changed so it could be said that there wasn't a representation that there would be entertainment at The Ayre Hotel, only at The Stromness Hotel. However, I do agree that the brochure gives the customer an expectation that there would be entertainment at the hotel on Day 3 and Mr S has explained that this didn't happen. I can see that BOS has already accepted that this amounted to a breach of contract and has refunded the sum of £80 to Mr S. It isn't clear to me from the available documents why refund for the lack of entertainment was £80, but it seems likely

that this figure was determined based on the total sum that Mr S had paid to upgrade to that particular hotel. I think this was a fair and reasonable amount for BOS to refund.

Taking everything into consideration and whilst I appreciate that this isn't the outcome that Mr S was hoping for, I'm unable to say that there's been a breach of contract or a misrepresentation. I don't think BOS treated Mr S unfairly when it determined the section 75 claim.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 February 2024.

Emma Davy
Ombudsman