

The complaint

Mr C says Bank of Scotland Plc, trading as Halifax, has treated him unfairly in relation to a transaction on his credit card which paid for flights.

What happened

In January 2023 Mr C used his Bank of Scotland Plc credit card (BOS for short) to make payment for international flights for a relative which were supplied by an airline's (the 'Airline') website. He says before he authorised the transaction he received an error message on the airline website. So he went to a different flight provider and bought essentially identical flights for the relative. He says he then realised he'd received an email from the Airline including the tickets for the flights. This meant he then had two sets of flight tickets for the relative for the same time. So he contacted the Airline in order to cancel the flights with it and get a refund. But he says the Airline stopped talking to him when it realised he wasn't a passenger on the flight. So he complained to BOS.

BOS considered what happened. And asked Mr C for further information. Mr C couldn't provide the evidence further evidence as the Airline wouldn't talk to him because of what it said were data protection issues and he didn't have any evidence of the error message on the Airline website. So it didn't refund him. Mr C wasn't happy with BOS' position, so he brought his complaint to this service.

Our Investigator felt BOS didn't have to do anymore. And Mr C remains unhappy and so this complaint comes to me for a 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.

Mr C used his BOS credit card to pay for these international flights (this was flights only-not a package holiday). This meant that if certain criteria were met, BOS can have certain responsibilities to Mr C which arise from the relevant law, specifically, Section 75 of the Consumer Credit Act 1974 ('the CCA'). In summary, in certain circumstances, Section 75 has the effect of allowing Mr C to hold BOS liable for breaches of contract, or misrepresentations made in relation to the agreement made. In essence BOS can be held responsible for a 'like claim' as that which Mr C would have against the Airline.

Mr C's BOS credit card is also part of a card scheme run by a separate company. And this scheme has rules which includes giving BOS a route for card transactions to be disputed with Merchants such as the Airline, namely through the Chargeback process. This isn't a right for consumers, and it is possible that chargeback could be ultimately unsuccessful without BOS having done anything wrong.

I should also add at this juncture that this decision is solely about BOS and whether it did what it should have and whether it treated Mr C fairly. This decision isn't about the Airline,

which isn't within this Service's remit for complaints about Chargeback and S75. I hope this crucial distinction is clear to Mr C.

authorisation

Mr C says he didn't authorise the transaction as it didn't appear on his BOS Application on his phone for him to authorise. I'm sorry to say that authorising the merchant to make a charge to his credit card doesn't happen when you agree to such a request on a banking app. You authorise the transaction with the merchant when you enter your card details and press the 'make payment', 'pay', 'place order' or similar type button on the merchant website. I can see from the ticket confirmation that Mr C provided personal information for himself and his relative when making the booking. I can also see that he entered his card details. Bearing in mind what we know about this process and considering Mr C's comments on the matter I'm satisfied on balance he authorised this transaction for the Airline to book the ticket and take the money from Mr C's BOS account.

The process to which Mr C references on his banking application is a post authorisation process which some banks have in place, and which operates based on the banks commercial and risk-based decision making. Such a request is in essence a post authorisation confirmation of the transaction or a post authorisation challenge to the transaction. It is not the authorisation by the card holder (here Mr C) for the merchant being able to request the money from the bank for the transaction authorised.

could BOS challenge the transaction through a Chargeback?

I don't think BOS could've challenged the payment on the basis Mr C didn't properly authorise the transaction, given what I've just set out.

BOS is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the Chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it doesn't think there is any longer a reasonable prospect of success.

BOS spoke to Mr C and explained its position and asked for evidence of the error message. Mr C, understandably, couldn't provide that. It also suggested Mr C got his relative to make a call to the Airline to get the refund. Mr C has explained his relative doesn't speak English and the phone line the relative could have used was outside the 24-hour period to get a full refund.

The test here is has BOS treated Mr C unfairly by not initiating a chargeback. I think it treated Mr C fairly with regard to chargeback as it didn't have any persuasive evidence that the Merchant had done something wrong. After all it was Mr C who booked two sets of tickets. And Mr C couldn't get further supporting evidence because the Airline wouldn't speak to him because he wasn't the named traveller. Even if BOS had raised a chargeback I don't think it would have been successful. I say this because there's no evidence the Merchant did anything wrong. Mr C accepts he completed the information required to make the booking. And I've already described that I'm satisfied on balance the transaction was authorised. And I've seen no evidence of the Airline cancelling the ticket within the 24-hour period and failing to refund Mr C for such a cancellation. I say this because Mr C explains that the Airline wouldn't talk to him and his relative couldn't make contact within that timeline.

So there is no persuasive reason for a chargeback to be successful to my mind. And thus BOS hasn't treated him unfairly by not refunding the transaction.

Section 75

There are some requirements set out in the CCA which have to be met before deciding whether there was a breach of contract or misrepresentation by the Airline.

For BOS to be held accountable under a 'like claim' under s75 it has to be shown that the Airline either breached the contract or materially misrepresented something to Mr C which was untrue and that led to loss.

The investigator explained that he didn't think the required relationship was in place for a Section 75 claim. I'm not necessarily persuaded by this, but I don't think it makes a difference here.

It is clear the tickets Mr C booked were issued to him. And there is no persuasive evidence that the Airline were provided with a cancellation request by the passenger (not Mr C) within the cancellation time limit. And it's clear that the flights took place. So there is no persuasive evidence of a breach of contract or a misrepresentation here which would mean that BOS should refund Mr C.

It is clear that the Airline has to follow data protection rules which are agreed in its terms and conditions. So I appreciate that Mr C found himself, and indeed his relative, found themselves in a position where they couldn't cancel in the specified timeframe. But that is not the fault of BOS or the Airline here. And it's clear that the Airline hasn't breached the contract or misrepresented the matter to Mr C. So I'm not persuaded BOS should refund Mr C for his loss.

For completeness I shall now turn to some of Mr C's arguments. He says the calls he had with the Airline are paramount. I don't agree. I don't dispute he tried to cancel the flights, but he was never able to do so as he wasn't a passenger. Which is in line with the terms and policies of the Airline.

Mr C points to what BOS said in its letters and calls and it could have explained things better. However for me to uphold this complaint so that Mr C gets his money back I need to be persuaded that its approach to chargeback, authorisation or Section 75 are wrong or unfair. And for the reasons given already I'm not persuaded that's the case. So I don't think Mr C's complaint should succeed.

I appreciate that this isn't a decision which Mr C wishes to read. And I appreciate that this decision will mean Mr C's avenues for recouping the cost of the flights will be significantly limited. But this does not mean that BOS has done anything wrong in dealing with the issues arising from this transaction. Or that it should refund him. And after all this decision is about BOS did or didn't do and not about the Airline.

So all in all having considered the matter and everything Mr C has said, I'm not persuaded BOS has treated Mr C unfairly. So unfortunately for Mr C his complaint does not succeed.

My final decision

For the reasons set out above, I do not uphold the complaint against Bank of Scotland Plc, trading as Halifax. It has nothing further to do in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 November 2023.

Rod Glyn-Thomas

Ombudsman