

The complaint

With the assistance of Mrs W, a family member, Mr S complains about the service they received from Bank of Scotland plc (trading as Halifax) following a debit card payment.

What happened

Mr S made an online booking with a travel company "E". The booking comprised flights, accommodation and travel insurance, arranged with different providers. He authorised what appears to be a part-payment of £929.51 to be taken from his Halifax account using what I understand to be Mrs W's debit card.

After the booking was made, Mrs W read some unfavourable online reviews of E and became concerned about whether the booking would be fulfilled. She says she contacted E that evening but made no headway. The following day she visited Halifax seeking its assistance to prevent the payment.

Mrs W says the Halifax representative raised the issue with the card disputes team, who said to cancel the booking via E's phone app. She adds that at the time the transaction was 'pending' and the bank said it would block payment. However, the money was subsequently debited. Mrs W sought Halifax's assistance in recovering the payment, but the bank said its attempt to do so had been unsuccessful as E had said the flights were non-refundable.

Halifax says Mrs W and Mr S came into its branch seeking assistance in the belief they had been scammed. It says its representative spoke with E, who explained that the flight booking was non-refundable. Halifax says that during the branch visit its card disputes team said it couldn't assist, as the flights were still due to go ahead. Halifax says it suggested not cancelling the flights, as if these didn't go ahead there would be grounds to make a claim. However, it says Mrs W didn't want to do this and wanted to book new flights.

Our investigator wasn't minded to uphold Mr S's complaint. She didn't think there was sufficient evidence to demonstrate that the booking was cancelled by Halifax or that it had suggested this course of action, which Mrs W appeared to have already decided upon. Noting that E had said the booking was non-refundable (which was supported by a screenshot message from E), our investigator didn't consider it unreasonable that Halifax didn't pursue a refund on Mr S's behalf.

Mrs W responded on Mr S's behalf. She didn't agree with our investigator's conclusions and the complaint has now been passed to me for review.

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 aware that Mrs W has made certain comments in her response to our initial assessment that are perhaps a little unfair, albeit that they probably flow from a sense of frustration at the outcome reached. She has questioned the investigator's use of opinion in reaching her

conclusions. That is ultimately part of our role – we receive complaints, consider them, and express our views on how they are best resolved. That will sometimes require that we offer an opinion based on the facts of a case, and on occasion, where there are differing accounts of those facts.

Where – as here – there's a dispute about what happened, we have to base our conclusions on the balance of probabilities; in other words, on what we consider is most likely to have happened in the light of the evidence.

I'll deal first with the branch visit. Mrs W's evidence is that she became concerned when reading reviews about E on the evening of making the booking. She attempted to deal with those concerns by calling E. When this proved unsuccessful, she visited the Halifax branch, having clearly formed the intention to try to prevent payment. Whether she or the Halifax representative cancelled the booking on the phone app is not in my view material to the complaint outcome. On balance, I find that the booking was cancelled because that's what Mrs W wanted to do. I'm satisfied that this was not because Halifax undertook the role of her advisor in this respect.

Whether the transaction was pending also makes no real difference to the situation. Unlike, say, a cheque payment, once authorised a card payment cannot be stopped. This is perhaps to be expected; retailers accept card payments on the basis they will be honoured. The system would very quickly break down if one could simply cancel the payment at the bank after paying with a card for goods or services.

This is recognised in the Payment Services Regulations 2017 ("PSR"). Regulation 83(2) of the PSR says that a payment order initiated through the payee (which is what a card payment is) can't be revoked after the payer gives consent to the payee to execute the payment. As consent was given to E when the booking was made, Halifax wouldn't have been able to prevent payment at the point Mrs W sought its assistance.

Instead, the available mechanism for dealing with debit card payments where there's a dispute between a cardholder and a merchant is for the card issuer to see if it can raise a chargeback through the card scheme. This brings me to the second aspect – whether the bank dealt with Mr S fairly in trying to recover the payment once it had gone out.

Where there are grounds under the card scheme to make a chargeback claim, and that claim has a reasonable prospect of success, I'd expect Halifax to attempt recovery by this means. It should be noted that this doesn't in itself make Halifax liable to refund the money.

Mr S's booking with E appears to constitute a 'Linked Travel Arrangement' as defined in the Package Travel and Linked Travel Arrangement Regulations 2018 ("the Regulations"). Under linked travel arrangements, it is generally the travel service provider – the individual airline and/or accommodation provider – that is responsible for performance of the contract. The Regulations don't confer an absolute right to a full refund on cancellation of the travel arrangements. This is consistent with the response received from E that the flights could be cancelled but weren't refundable. Like our investigator, I don't consider it likely that any attempt by Halifax to pursue a refund via chargeback would have been successful.

Further, I don't see there was much basis on which Halifax was in a position to successfully pursue a dispute simply on the grounds that Mrs W believed the flights wouldn't go ahead. There's no chargeback reason that provides for this. As Halifax has said, the card scheme rules do provide for chargeback to be attempted in the event that goods or services aren't as described, or that they haven't been provided. But once the booking was cancelled, the obligation to provide the flights no longer existed, and a chargeback raised on this basis would have been bound to fail.

My final decision

I understand Mr S and Mrs W's strength of feeling here. The amount paid is a lot to lose and I can see why they've done as much as they have to try and recover the money. But for the reasons I've set out here, my final decision is that I can't fairly require the bank to reimburse or otherwise compensate Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 November 2023.

Niall Taylor
Ombudsman