

## **The complaint**

Mrs M complains about the way Bank of Scotland plc trading as Halifax ('Halifax') responded to a claim she made about a transaction on her credit card.

## **What happened**

Mrs M paid a resort ('the supplier') for an August 2020 holiday booking using her Halifax credit card.

Because of travel restrictions coming about due to the global pandemic she agreed with the supplier to postpone the trip to August 2021. She says it told her on the phone that she could amend or transfer the booking in the future.

Nearer the time of the re-arranged trip Mrs M found out that if she travelled to the destination she would be subject to certain travel restrictions such as quarantine. She decided not to travel due to this and contacted the supplier to request a full refund. However, she says the supplier said the refund was subject to a 30% cancellation fee and would only move the booking again at an extra cost. Mrs M says she wasn't happy to move the booking at extra cost and is yet to receive the 70% refund for cancellation.

Mrs M contacted Halifax to help. It considered a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It didn't think the supplier had breached its contract – but as it appeared not to have paid Mrs M the 70% refund it offered to pay her this.

Our investigator thought that Halifax had acted fairly. Mrs M did not. She says in summary:

- Halifax took too long to resolve her Section 75 claim and this caused her to get a poorer outcome;
- the terms and conditions we have seen are not what she was advised on the phone by the supplier – and the relevant ones are when she originally changed the booking in 2020;
- the contract is potentially frustrated; and
- she was forced to cancel the contract due to unfair terms (and if the staff at the supplier were lying about the terms this is a misrepresentation).

The matter has come to me to make a final decision on.

## **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.

Mrs M has made several submissions but I am not going to comment on everything she has raised. This isn't intended as a discourtesy but reflects the informal nature of our service in

resolving disputes.

Where matters are unclear I make my findings on the balance of probabilities. I have considered the relevant law here including the Consumer Rights Act 2015.

It is important to note here that Halifax is not the supplier of holiday services and it isn't responsible for general customer service issues that Mrs M might have encountered. When considering if Halifax has acted fairly I consider the relevant ways it could have assisted her with the dispute – these are chargeback and Section 75.

I note that Halifax did accept it took too long to handle the claim and this appears to have been dealt with in a separate complaint where Mrs M was awarded compensation for the delay. I won't be considering this separate complaint or the compensation for delays here – but I will still keep in mind what Mrs M said about the impact of the delays on the eventual outcome of her claim.

## Section 75

Section 75 can in certain circumstances allow Mrs M to hold Halifax liable for a breach of contract or misrepresentation by the supplier she has an agreement with, and which she paid for using her credit card.

Section 75 has certain technical requirements for a claim to be valid – I am satisfied those requirements are met here. So I have gone on to consider if there has been a breach of contract or misrepresentation by the supplier.

The terms and conditions our investigator has located appear to be those that were in place at the time Mrs M contacted the supplier to cancel in August 2021. Mrs M has not been able to provide alternative terms from when she made the booking or otherwise. So overall, I consider it fair to rely on the terms we do have as a reflection of the likely policies and procedures the supplier had in place in respect of Mrs M's booking.

These terms outline that depending on when a booking is cancelled by the customer there will be a sliding scale of cancellation charges applied of at least 30% or £75. There is no entitlement to a full refund and in some cases the cancellation charge is more or even 100% of the booking cost. So in not offering to issue a full refund for a cancellation and in making a 30% deduction I don't think the supplier has done anything wrong. In fact it appears that because of when Mrs M cancelled (early August 2021) she was potentially subject to a greater cancellation charge than 30% but the supplier has potentially applied a more generous policy in the circumstances than it was contractually obliged to.

I also note that the terms explain that a change of date is possible – but this will likely involve a change in price and an amendment charge being payable. So in offering Mrs M to change the booking time at an increased price it doesn't appear there is a breach of contract.

I think it is important to note here that when Mrs M cancelled her August 2021 booking it appears the holiday was available and could be provided to her – it was the travel restrictions which meant she did not want to travel – but that isn't a breach of contract by the supplier.

I know Mrs M has said that when she changed her original travel date she did so without a charge and was told that she would be able to do so again. But while I accept there might have been some flexibility offered during the height of the pandemic I don't have persuasive information to show that she was promised future changes would be without charge in all circumstances. I also consider it unlikely that in the event that a customer changes their

mind about travel due to quarantine requirements (as opposed to being prevented from attending due to mandatory closures) the bank would offer such a policy.

So, all things considered I don't think the supplier has likely breached its contract with Mrs M by offering a 70% refund and not waiving additional charges for changes.

I know Mrs M has mentioned the contract being frustrated – this area is complicated and better suited to courts to determine but I don't think that is likely the case here as the supplier was able to provide the service. But even if the contract were frustrated this would not give rise to a claim against Halifax under Section 75 in any event.

In the interest of completeness I do not have persuasive evidence of the supplier misrepresenting the contract here as to price. Nor do I think the terms concerning charges for changes and cancellation would likely be considered unfair terms here as they do not appear to be disproportionate or unusual in contracts of this kind. But even if they were unfair this would not necessarily give rise to a breach of contract for the purposes of Section 75 in any event.

#### Chargeback

Mrs M has indicated that Halifax in delaying handling the claim lost out on the opportunity to raise a chargeback. It is arguable that is the case – and Mrs M if she had been promised a 70% refund by the supplier was potentially entitled to raise one to get this. It is not clear if this would have definitely succeeded – as it would have meant the supplier agreeing that it did offer to process this credit to Mrs M when she cancelled a few weeks before the trip.

However, I note that Halifax has offered to honour this in any event as part of its claim outcome. So I think any potential unfairness here has been remedied in any event.

Overall, in the circumstances, and with my comments above in mind I don't think that the outcome Halifax originally offered of a £371.39 refund to resolve the claim was unfair. Nor do I think the delays in the handling of the claim previously have likely led to a less favourable outcome here. So as long as Mrs M can confirm to Halifax that she still hasn't received the 70% refund from the supplier I think it fair that Halifax pay this to her. But in the circumstances and considering Halifax's original offer was to do this I don't think additional out of pocket interest is fair.

#### **My final decision**

Bank of Scotland plc trading as Halifax has already made an offer to pay Mrs M to settle the complaint and I think this offer is fair in all the circumstances. So (and on the basis Mrs M can still confirm she has not received this back from the supplier) my decision is that Bank of Scotland plc trading as Halifax should pay her a £371.39 refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 24 August 2023.

Mark Lancod  
**Ombudsman**