

## **The complaint**

Mr S 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 September 2022 Mr S used his Bank of Scotland Plc credit card (BOS for short) to make payment to an intermediary (the 'Intermediary') for long distance international flights for his two sons which were supplied by an airline (the 'Airline') which is a separate entity to the Intermediary. Mr S says one of his sons wasn't allowed to fly and was told this at the airport. Mr S says he cancelled that flight for that son at that time. His other son took the flight as planned. Mr S was told he was eligible for a limited refund on the flights not taken but he wanted a full refund.

So Mr S wasn't happy. So he complained to BOS. BOS considered what happened. It raised a chargeback with the Intermediary and later decided that such a chargeback no longer had a reasonable prospect of success. It also considered Section 75 of the Consumer Credit Act 1974 but concluded that the Intermediary had fulfilled its part of the contract and that there wasn't sufficient evidence of a breach of contract or a misrepresentation by the Intermediary. It also said that the required relationship for S75 to apply wasn't in place, so in any event it couldn't be held liable under Section 75. Mr S 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 S 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 S 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 S 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 S 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 S would have against the Intermediary.

Mr S's BOS credit card is also part of a card scheme. And this scheme has rules which includes giving BOS a route for card transactions to be disputed with Merchants such as the Intermediary, 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 S fairly. This decision isn't about the

Intermediary or the Airline, which aren't within this Service's remit for complaints about Chargeback and S75. I hope this crucial distinction is clear to Mr S.

*could BOS challenge the transaction through a Chargeback?*

Mr S has been clear that he used the Intermediary to purchase the flights and doesn't dispute the amount charged, when it was charged, or whether it was applied correctly to his account. So I don't think BOS could've challenged the payment on the basis Mr S 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 raised a chargeback with the Intermediary. So it clearly supported Mr S in his dispute with the Intermediary. The Intermediary responded by explaining it had provided the service agreed between the parties (that is booking the tickets) and that Mr S had cancelled the tickets in question on the date of the flight leaving the UK.

I've considered the evidence and I agree with Mr S that he cancelled the flights for one of his sons. I say this because I can see an email from the Intermediary to Mr S dated stamped before the flight was due to take off referring to an earlier call with Mr S where it's clear Mr S cancelled the flights. In that email it also makes clear that there is a small refund due, which is in relation to air taxes. It also makes clear he's not getting a full refund.

Mr S says his son was denied boarding by the Airline. Mr S says that's in relation to his vaccination status. In the terms and conditions Mr S agreed to when making the booking it's made clear that passengers and not the Intermediary are responsible for their passports, Visas and "*health requirements*". So if Mr S' son didn't have the requisite health requirements to fly I can understand why the Airline didn't let him board. And in any event I note that such health requirements are solely the responsibility of passengers and not the responsibility of the Intermediary.

It's clear the flight flew. Indeed Mr S' other son was on it. So clearly the service was available. Accordingly I can see why the Intermediary defended the chargeback and indeed why BOS decided it no longer had a reasonable prospect of success. So I don't think Mr S lost out because the chargeback wasn't taken any further than it was by BOS. And in any event Mr S cancelled the booking. And it was explained to him the refund he would get in relation to taxes. So the contract operated as it should in the event of cancellation. So there is no persuasive reason for a chargeback to be successful to my mind.

And as an aside Mr S has provided his son's vaccination status at the time. This shows he'd had one dose of vaccine but at that time most countries required at least two doses to be allowed to fly. So I'm not surprised he wasn't allowed to fly. But as I've said, the health requirements of passengers was solely the responsibility of the passengers and not the Intermediary's. And Mr S agreed to this when buying the tickets.

## *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 Intermediary.

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

I can see from Mr S' arguments he's unhappy with the airline not letting his son on the flight. But this isn't the responsibility of the intermediary. This responsibility sits with Mr S' son who didn't satisfy the health requirements needed to board the flight. And Mr S agreed to the passengers having responsibility for meeting health requirements when he agreed the terms and conditions of the Intermediary. So Mr S' son not being able to board the flight wasn't the responsibility of the Intermediary.

Mr S then had a phone conversation with the Intermediary where he cancelled the booking for that son. And in the email sent to him before the flights were due to take off it explains he'll get a limited refund. So the contracted operated as it should under the agreed terms. So I'm satisfied that there is no breach of contract here or material misrepresentation by the Intermediary. So I'm satisfied that Mr S' section 75 claim to BOS should be unsuccessful.

For completeness I shall now turn to some of Mr S's arguments. He says the airline were unprofessional and should have tested his son for Covid or given him alternative options. But the Airline is responsible for boarding and supplying the flights not the Intermediary. And it's the intermediary that Mr S paid, not the airline. So I see no persuasive reason for BOS to refund him the remaining amount of the ticket cost as the issues here with boarding weren't the responsibility of the Intermediary.

Mr S says he's been successful in a complaint about Covid he had previously. This may well be the case, but we decide cases on their individual merits. And I'm satisfied this complaint should be unsuccessful.

Lastly I should add that although Mr S paid the Intermediary he wasn't due to be a passenger on the flights. And he didn't qualify as a party to the contract here as the parties are defined in the contract with the intermediary. And although he funded the contract he wasn't a party to the contract as the only parties defined in the contract were the passengers (Mr S' sons) and the intermediary. So in any event Mr S' section 75 claim to BOS couldn't be successful. However this point is not significant to my decision making as there was no breach of contract or misrepresentation by the Intermediary in any event.

I appreciate that this isn't a decision which Mr S wishes to read. And I appreciate that this decision will mean Mr S'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.

So all in all having considered the matter and everything Mr S has said, I'm not persuaded BOS has treated Mr S unfairly. So unfortunately for Mr S 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 S to accept or reject my decision before 3 August 2023.

Rod Glyn-Thomas  
**Ombudsman**

