

The complaint

Ms C complains that Bank of Scotland plc trading as Halifax (“Halifax”) hasn’t refunded her for costs levied by a third party in respect of a car hire.

What happened

In October 2022, Ms C purchased car rental services from a company I’ll call ‘C’, who are based in the USA. Ms C paid C a \$1000 deposit (which equated to £899.94) and a further payment of £268.90, both of which she made with her Halifax credit card.

C then billed Ms C \$5,000 for damages they say she caused to the car during the period of hire and charged this to her card (which equated to £4,508.97). Ms C says she didn’t cause this damage and it was agreed when she handed the car back, that the only damage noted was scratches to two doors.

Ms C contacted Halifax about what had happened. Halifax raised a chargeback to try to recover the money Ms C had been charged, but this was defended by the merchant. Halifax then raised a pre-arbitration claim, but this was again defended.

Halifax then considered Ms C’s claim under section 75 of the Consumer Credit Act 1974 (“section 75”). They said though that the necessary criteria for a claim hadn’t been met.

Ms C referred the matter to us. Our investigator didn’t recommend that the complaint should be upheld. She felt that Halifax hadn’t acted unfairly by not taking the chargeback any further and that the criteria for a section 75 claim hadn’t been met.

Ms C didn’t agree and asked for an ombudsman’s 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.

There are typically two avenues here that Halifax as the provider of credit could have considered.

Chargeback

In certain circumstances, when a cardholder has a dispute with a merchant, as Ms C does here, Halifax (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks.

There first must be a right to apply for a chargeback under the card scheme rules. And I’d consider it to be good practice for Halifax to raise a chargeback if it has a good chance of being successful.

It's important to note that chargebacks are decided based on the card scheme's rules, not the relative merits of a cardholder/merchant dispute. So, it's not for Halifax – or me – to decide whether Ms C should have got her money back via this mechanism. Halifax should raise the appropriate chargeback and consider whether any filed defence complies with the relevant chargeback rules. From what I've seen, that's what Halifax likely did here. I'll explain why.

Halifax raised a chargeback based on what Ms C told them about the transaction, which was that C charged for damage she didn't cause. C defended the chargeback on the basis that Ms C had agreed to pay an excess of \$5,000 for any damage caused to the car that needed repairing during the period of hire. Halifax then put in a pre-arbitration claim in a further attempt to recover Ms C's money. But C defended the claim again.

Where the merchant challenges a chargeback, as happened here, a bank doesn't have to carry out a detailed investigation into what actually happened to decide which party deserves the money. In fact, most banks won't take a chargeback any further if it's defended. In this case, Halifax did take this further, but the claim was defended for a second time. As C's defence hinged on Ms C being liable for the excess, and because C provided Halifax evidence of that, they decided not to take the dispute any further via arbitration.

I don't think Halifax acted unfairly in not taking the claim further. I realise Ms C disputes that she agreed to any excess and has said that C fraudulently added her initials to a section in the contract between her and C relating to this. But, as I've mentioned above, Halifax's role wasn't to determine the merits of the dispute and I think it would have been unreasonable to expect them to have scrutinised the initials and then decided C's defence was so weak that arbitration was a reasonable avenue to take.

So, for the reasons set out above, I don't find that Halifax acted unreasonably in respect of the chargeback.

Section 75

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is section 75 which says that, in certain circumstances, if Ms C paid for goods and services, in part or whole, on her Halifax credit card, and there was a breach of contract or misrepresentation by the supplier, Halifax can be held responsible.

For a valid claim under section 75 there must be a debtor-creditor-supplier relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card. Both Halifax and our investigator said that the above criteria hadn't been met.

The claim Ms C is making is that C have charged her for something she didn't cause. As I've mentioned above, a section 75 claim refers only to a breach of contract or a misrepresentation by the supplier. Here, a misrepresentation means something done or said that was wrong and which induced Ms C into the contract with C. From what I've seen, her contract with C was for them to allow her to hire the car with payments made to them to secure this. C hasn't misrepresented the contract prior to Ms C entering into it as no representation was made by them that C wouldn't be liable for any damage that C felt was chargeable and caused by Ms C. The fact C then billed Ms C doesn't make this a misrepresentation.

I also can't see how C breached their contract to do what they contracted to do, which was provide Ms C with a car for hire. I would probably take a different view if C also provided the insurance cover, in that the excess payable (for which Ms C was charged) under an insurance claim to determine fault and liability may have been misrepresented. But from what I've seen, Ms C didn't take the cover out with C.

I'm not saying that Ms C doesn't have a legal right to challenge C about the charge they've levied. But her rights to claim that back from Halifax are limited in scope. And, for the reasons I've set out, I don't find that Halifax were wrong to decline Ms C's claim.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 March 2024.

Daniel Picken
Ombudsman