

## The complaint

Mr G complains about the quality of a car which he purchased using his debit card supplied by Bank of Scotland plc trading as Halifax ("Halifax").

## What happened

In September 2023, Mr G purchased a car from a supplier I'll refer to as "S" for £8,700. Mr G paid £1,000 as a deposit on a card provided by a different bank, contributed £100 in part exchange value and paid £7,600 using his Halifax debit card.

Mr G complained to S in October 2023 and said a couple of days after he acquired the car, he noticed the car was shuddering when he went uphill in it. He said he didn't complain at the time because he thought he was simply getting used to it. However, he said he had noticed the car shuddering when he was reversing on a flat road too. Mr G said S told him to contact the warranty provider. But Mr G says the warranty provider told him to go to a local garage, which he did. He says he was told the car's clutch needed replacing. Mr G said he contacted S and it told him to book the car in with its service team, however the earliest appointment it had was on 30 November 2023. He said waiting until then could exacerbate the problem. Mr G said he was led to believe there was a money back guarantee, but as he had taken out a warranty, this didn't apply. Mr G also said S agreed to provide a spare key, but it didn't do so. Mr G said he wanted S to book in the car as a priority repair and he gave S a choice of two branches. He said if it didn't do this, he wanted to return the car and receive a full refund.

In November 2023, Mr G contacted Halifax and it raised a chargeback claim. As part of the chargeback claim, Halifax credited Mr G's account with £7,600. Mr G had a number of calls with Halifax and says he was provided with a number of different dates that S would be expected to respond by. During one of the calls, Mr G says Halifax told him that S hadn't replied and so, the refund it had provided to him would be his to keep. However, following this in December 2023, Halifax sent Mr G an email explaining that it couldn't continue with his dispute. It asked Mr G to get in touch if he had any new information for it to consider. As it didn't hear from Mr G, it re-debited the £7,600 from Mr G's account. Mr G said he didn't receive this email. Mr G was unhappy that Halifax took £7,600 from his account, despite being told he could keep this amount. So he complained to Halifax.

Halifax issued its response to Mr G's complaint in February 2024. It said S didn't agree with its refund request and so, it asked Mr G if he had any other information to provide. It said as it didn't hear from Mr G, it took the money back from his account. Halifax acknowledged that it didn't provide excellent service. So it agreed to pay Mr G £150 compensation.

Unhappy, Mr G referred his complaint to this service. He said Halifax had told him he could keep the money in his account and that it wouldn't ask for it back. However, following this, it took the money out of his account. As a result of this, Mr G said this made him ill with stress and he found it difficult to pay his outstanding bills. To put things right, Mr G said he wanted Halifax to repay him the £7,600 it had taken out of his account and pay him compensation for the cost of his calls, time, money spent going to branch and the impact to his health.

Our investigator looked into the complaint and said he didn't think Halifax did anything incorrectly in the way it processed and progressed the chargeback claim. However, he said he thought Halifax could have managed Mr G's expectations better and acknowledged that it

provided him with incorrect information during calls that he had with them. Our investigator said Halifax should pay Mr G a further £100 in addition to the £150 it had already paid him for any distress and inconvenience caused. He also said Halifax should reimburse Mr G the cost of the calls he made to it.

Halifax offered to pay Mr G £120 for the cost of the calls. Mr G said he felt £150 was more acceptable. Halifax agreed to pay Mr G £150 for the cost of calls. Mr G agreed with this amount to compensate him for the cost of the calls.

Halifax also agreed to pay Mr G a further £100. Mr G disagreed. He said he hadn't received Halifax's email asking him to provide further information and he couldn't dispute any of the information provided by S to Halifax, as it didn't send him this information. Mr G also said he contacted S in October 2023 and S told him to bring the car back. He said S didn't say anything about a repair and neither did it mention anything about paying for all of the costs. Mr G said £250 compensation wasn't sufficient for the distress, inconvenience and time spent over four to five months. He said compensation of £1,000 would be acceptable and a full refund of the £7,600 he paid for the car.

As Mr G remains unhappy, the complaint has been passed to me to decide.

### **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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr G has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether Halifax correctly raised a chargeback and whether it acted unfairly in any other way. If I think it has acted unfairly, I'll need to decide what's fair, if anything, to put things right.

#### *Chargeback*

A card issuer can attempt a chargeback in certain circumstances when a cardholder has a dispute with a merchant – for example where goods never arrived or where goods are faulty and not as described. Before a chargeback can be initiated by a card issuer, like Halifax, it's generally expected that the cardholder has attempted to resolve matters with the merchant first.

Chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, but rather they're decided on the relevant card scheme's rules. Chargeback isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. In this case, the guidelines are set by VISA and Halifax has no power to change them.

When there is a dispute about goods not being as described or defective, generally the rules of the VISA chargeback scheme require the cardholder to return the goods to the merchant. But the rules do allow for circumstances where the cardholder has attempted to return the goods to the merchant, but has been unable to.

When Mr G raised a claim to Halifax, he explained why he thought the car wasn't as described. He also told Halifax he had contacted S, but said S told him to go through its service department. Mr G also said he was told if something was wrong with the car he could take it back for a full refund or a repair. He said S told him it had one attempt to repair the

car within 30 days, but the earliest it could check the car was two months after the purchase date. He said as S hadn't replied to his email he wanted a refund. He also told Halifax that when he pressed the accelerator in the car, it was making a loud noise and this was another fault.

I've looked at the actions Halifax took. I can see that Halifax correctly raised a chargeback claim under the reason of the car not being as described or defective. However, S provided a response and defended the chargeback claim. S said the email Mr G had sent it went to its junk email inbox. It said it only became aware of the dispute when his other card provider – who I'll refer to as "M", which Mr G had used to make the deposit payment, contacted it. S said when it called Mr G, he told it that he didn't want to deal with it and he would be dealing with M to resolve this. S provided confirmation that it had told M that it wanted to resolve the issue and wanted to have diagnostics carried out on the car. It said it made an appointment with Mr G to take the car to it in November 2023, but M let it know Mr G wouldn't be attending and since then, no further contact had been made to reschedule the appointment. It said Mr G had continued to use the car and it felt the car was fit for purpose.

Following this, Halifax wrote to Mr G to let it know that S had defended the chargeback. It asked Mr G to provide it with information within 10 days. As Mr G didn't respond, the chargeback claim was closed and it re-debited Mr G's account for the £7,600.

Having thought about this carefully, there are two very conflicting versions of events from Mr G and S. The rules say that to raise a chargeback, Mr G needed to provide certification to show that S refused the return of the car or instructed Mr G not to return the car. However, Mr G provided an email he had sent to S. He also provided an auto acknowledgement from S. But S has said it told Mr G through M, that it had tried to resolve the situation with Mr G and that it wanted Mr G to return the car to it so it could carry out diagnostics on it.

I've seen a copy of the email that S sent to M in November 2023. It told M to communicate to Mr G that it wanted to conduct its own diagnosis, but it was also happy to review any reports or quotes that Mr G had obtained for the repair of the car. It also said it was happy to accommodate Mr G's schedule for the assessment. Whilst Mr G provided Halifax with emails to suggest that S didn't get back to him, there is an email from M to S which states that Mr G was no longer able to attend his appointment with S two days later. So on balance, I'm satisfied that it's more likely than not that S did attempt to resolve the situation, it did agree to take the car back for diagnosis, that Mr G was aware of this and that Mr G through M cancelled his appointment with S. So, I'm satisfied that S didn't refuse to take the car back for diagnosis and that it attempted to resolve the matter with Mr G.

For a valid refusal of the claim, S needed to provide evidence that the car wasn't defective. It did this through providing a copy of its terms and conditions which state that if the goods are used then the car is roadworthy at the time of supply. They go on to say for used goods, "*all statements, conditions, or warranties as to the quality of the goods or their fitness for purpose, whether express or implied by law or otherwise are hereby expressly excluded.*" S provided a copy of a signed agreement which confirmed that Mr G agreed to these terms. Also, importantly, S can't evidence that the car wasn't defective until Mr G returns the car to it for diagnosis. I also understand that Mr G didn't provide any independent information to dispute the car provided to him was defective.

Overall, I've reviewed the actions of Halifax when it raised the chargeback and the documents sent to Halifax by S. Having done so, I'm satisfied the chargeback claim was raised correctly by Halifax and that it was disputed by S. Because Mr G didn't provide any information to Halifax by the date it requested, Halifax decided not to pursue the chargeback claim. I'm satisfied it acted reasonably in doing this and that it did this in accordance with the scheme's rules. I don't think the chargeback claim would have had a reasonable prospect of success had Halifax pursued it. So, I don't think it needs to do anything further here.

I note that as part of Mr G's complaint, he has mentioned that he had a short term right to reject the car within 30 days of being supplied it. However, Mr G is referring to rights that are afforded under the Consumer Rights Act 2015. These rights aren't implied into disputes made under the chargeback scheme. Mr G may wish to obtain independent legal advice if he wishes to pursue S directly.

*Did Halifax act unfairly or unreasonably in any other way?*

I've gone on to consider whether Halifax acted unfairly or unreasonably in any other way.

I can see that Halifax emailed Mr G on 14 November 2023. It explained that it had initiated a chargeback claim and it had returned the funds to Mr G's account. It explained the process to Mr G and said that S, *"have up to 30 days from the date we raise this with them to either give you a refund or challenge the claim. If they want to challenge it, we'll get in touch with you to talk through the next steps."*

In December 2023, Mr G called Halifax and asked for an update. Mr G asked Halifax if it meant 30 working days or calendar days when it said S had 30 days to challenge the chargeback claim. Halifax said it thought this was 30 working days and the date hadn't passed yet. Halifax said it wanted to put Mr G on hold to ensure it was providing the correct information. But Mr G said he didn't want it to do this, as he was worried the call would cut off. During the call Halifax also mentioned 45 days for S to finish its investigation. Mr G also said he was previously told a date of 28 days.

Around a week later, Mr G called Halifax again to obtain an update from it. During this call he was told the deadline had passed for S to defend the chargeback claim and so, Mr G would be able to keep the money.

Having considered this carefully, I'm not satisfied that Halifax provided Mr G with accurate information during the calls it had with him. I also don't think the email it sent Mr G in November 2023 was clear as it mentioned 30 days, but didn't confirm whether this was working or calendar days. It provided a number of incorrect dates and when Mr G called Halifax on 20 December 2023, Halifax provided incorrect information when it said that the claim had been resolved, as it emailed him the following day asking him to provide any further information he had. This was incorrect information as the claim hadn't been resolved by this point.

Mr G says he didn't receive the email dated 21 December 2023. However, the email is correctly addressed to Mr G and as our investigator has pointed out, the email address is the same as the one that Mr G has provided this service. It is also the same email address that Halifax emailed Mr G on in November 2023. On balance, I think it's more likely than not that Halifax sent the email to Mr G on 21 December 2023.

Mr G has said as a result of Halifax incorrectly telling him the chargeback claim had been resolved, when it did re-debit the payment, his account fell into arrears. I've seen a copy of his bank statement and can see the account went into overdraft and Direct Debits were returned. I appreciate this would have caused Mr G stress and he has explained the impact of Halifax re-debiting the amount from him. I'm sorry to hear about the impact to Mr G and his health. In light of all this, I think Halifax should pay Mr G £100 in addition to the £150 it has already paid Mr G. Halifax has also agreed to pay Mr G £150 for his call costs.

I appreciate this is likely to come as a disappointment to Mr G. However, the service Halifax provided is separate to the chargeback claim which isn't a legal right. In this case, I'm satisfied that Halifax correctly raised the chargeback claim and that it didn't act unfairly or unreasonably when it decided not to pursue the chargeback claim further through the scheme. So it follows that Halifax do not need to do anything further in respect of the chargeback claim.

## **My final decision**

I uphold Mr G's complaint. Bank of Scotland plc trading as Halifax should do the following to put things right:

- Pay Mr G £100 in addition to the £150 it has already paid Mr G for the distress and inconvenience caused, if it hasn't already done so; and
- Pay Mr G £150 for the call costs, if it hasn't already done so.

If Bank of Scotland plc trading as Halifax does not pay this compensation for distress and inconvenience within 28 days of the date on which we tell it Mr G accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 November 2024.

Sonia Ahmed  
**Ombudsman**