DRN-5539070

Financial Ombudsman Service

The complaint

Mr H has complained that Capital One (Europe) plc trading as Capital One declined his claim for a refund of a payment made using his credit card account.

What happened

Mr H went on holiday in April 2024. He'd booked a hire car for a week with a rental company I'll refer to as X. When Mr H collected the car from X, it provided a 'check-out' sheet that listed pre-existing damage to the driver's side of the car. Mr H says the car had other damage, including chips and scratches to the paintwork, that weren't listed on the check-in sheet. Mr H says he took photos of the car before driving off.

Mr H returned the car at the end of the rental period – he said there had been no collisions or accidents, and the car was returned in the same condition he had found it. However, X's representative identified 'new' damage next to the fog light. Mr H felt X chose to identify this damage knowing he hadn't taken photos of this area before renting the car a week earlier. X provided an invoice showing it charged Mr H €112 for the car rental, €30 for an out of hours drop-off/collection and €406.52 for the 'new' damage. Mr H said he agreed to pay the €406.52 "under protest".

Shortly afterwards, Mr H emailed X to say he didn't cause the damage, asked for details of how much the damage cost to repair and a copy of its rental logs to prove the damage was not pre-existing. X replied only to say the car was returned with new damage and provided a copy of its invoice. So, Mr H disputed his €406.52 payment to X with Capital One.

In response, Capital One said it couldn't pursue Mr H's claim through a chargeback and didn't accept he had a valid claim under sections 56, 75 and 140A of the Consumer Credit Act 1974. Mr H complained to Capital One but it didn't uphold his complaint, so he referred it to our service.

One of our Investigators reviewed the complaint but didn't uphold it. The Investigator said Capital One was right to say a chargeback wouldn't have succeeded and its decision to decline Mr H's Section 75 claim was reasonable. Mr H remained unhappy, so his complaint ware referred to me for a decision. I issued a provisional decision on 18 August 2025, which set out my provisional findings:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I won't be commenting on all the evidence and arguments presented by both parties – only what I consider to be crucial to the outcome of this complaint. This isn't intended as a discourtesy to either party but reflects the informal nature of our service.

<u>Chargeback</u>

In certain circumstances, chargeback provides a way for Capital One to ask for the payments Mr H made to X to be refunded. There is no requirement to raise a chargeback,

but it's often good practice to do so if it has a reasonable prospect of success. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard).

Under Mastercard's rules, which Capital One has no power to change, the deadline for raising a chargeback has now passed, but I've considered whether Capital One should have raised a chargeback when Mr H first contacted them. There are a limited number of chargeback codes and so it isn't suitable for every dispute. Under MasterCard's rules, it is possible to raise a chargeback for addendum charges. A chargeback can be raised under this code if the cardholder engaged in a valid transaction with the merchant, but a subsequent transaction occurs without the card holder's consent. However, given the terms of the agreement set out that the client agrees to pay damage charges, Mr H has said he agreed to the charge (under protest) and authorised the transaction, I don't think it's likely a chargeback would have succeeded on the grounds he didn't consent to the damage charge. So, I think Capital One's decision not to raise a chargeback was reasonable.

Section 75

Under certain conditions, Section 75 allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services.

I'm satisfied there was a valid Debtor-Creditor-Supplier Agreement here. However, for Section 75 to apply to a transaction it must also be shown that the claim relates to an item, or service, with a cash price of over £100 and no more than £30,000. I note the rental charge was €112 and that is the important figure here – the disputed damage amount is an ancillary charge to the service X contracted to provide. It's not clear that, with the exchange rate used at the time of the transaction, that the cost of the rental was more than £100. However, as I don't think it makes a difference to the outcome of this complaint, I have considered it as if the technical conditions for a claim have been met.

The key question here is whether it was reasonable for Capital One to conclude that the terms of X's contract allowed it to charge Mr H for the 'new' damage it claims he caused. Under the terms of the contract, X is entitled to impose a charge for any new damage caused up to the maximum 'deductible' or 'excess' being disclosed during the reservation process. The terms and conditions say that for car groups "A, B and C", the excess is €1,250. Having checked X's website, the car Mr H hired is classified as "group C" and this matches the €1,250 noted on Mr H's rental agreement. So, I think it's reasonable to conclude that the contract included a term that there was an excess of up to €1,250 if the car was damaged. The next question is whether it was reasonable for Capital One to conclude that X was entitled to charge Mr H for the 'new' damage it claimed he caused.

There are conflicting claims here – Mr H says he didn't cause the damage but X says he did. Mr H hasn't been able to show the 'new' damage' was pre-existing – his photos didn't cover the area that was damaged. Whilst Mr H wanted a copy of the rental logs, there's nothing to show X was contractually obliged to provide these. Mr H has suggested X may have claimed he caused this damage knowing he didn't have photos of the affected area but he hasn't provided any evidence to support such a claim.

X, on the other hand, has provided documentary evidence to support its claim that the damage was new. The checklist completed when the car was picked up doesn't list the 'new' damage, and the checklist completed on the car's return does. There is a photo of the damage that corresponds with the checklist. Mr H agreed to make a payment to cover it. Whilst Mr H says he signed the document to prevent costs escalating further, and verbally told X he didn't agree he caused the damage, his testimony is inconsistent with the

document he signed so I don't think his testimony is more persuasive than the evidence provided by X.

Mr H also said Capital One should have contracted X to obtain copies of its rental logs, the onus is on Mr H to show there was a breach of contract on X's part. It is not Capital One's role to investigate the veracity of the evidence supplied by X, particularly as Mr H has not submitted any evidence to support his inferences that X has falsely claimed the damage was new. Mr H also says X wouldn't provide paperwork until he'd made a payment, but there is nothing to show what X's process is here, so I can't conclude there was a breach of contract here, and he ultimately agreed to make the payment disputed. Overall, I'm satisfied it was reasonable for Capital One to conclude that X had shown there was new damage to the car.

Mr H is also unhappy X over-estimated the cost of the repair, but he hasn't provided any evidence to support his belief that he has been over-charged. There's nothing in the contract that says X must provide a breakdown of any charge for repairs. And as I said above, Mr H did sign to confirm the damage and the charge. So, I don't think he's provided sufficient evidence to show X was not entitled to charge €406.52 for the damage sustained.

Overall, I think it was reasonable for Capital One to conclude X was not in breach of its contract with Mr H by charging him €406.52.

Mr H has alleged that X failed to use reasonable care and skill in the performance of its service, referring to damage to the car that was not recorded on the check-out sheet when he picked the car up and the process X followed once it identified the new damage. However, some pre-existing damage was noted and Mr H hasn't shown, for example, that that any unrecorded damage has materially affected his use of the car or that the 'new' damage X recorded relates to this in any way. So, I don't think Mr H has shown that X failed to exercise reasonable care and skill in the performance of its contract.

I've considered whether there's any evidence to show that X provided Mr H with information that was untrue (a 'misrepresentation') that induced him to enter into the contract. However, there is little evidence to show what information was provided to Mr H during the reservation process. There's no evidence, for example, that X told Mr H he wouldn't be liable for any damage (contrary to the terms and conditions) prior to entering into the agreement. Overall, I've seen insufficient evidence of any misrepresentation on X's part.

For the reasons explained above, I think it was reasonable for Capital One to decline Mr H's claims. However, I understand Mr H is unhappy with the time Capital One's investigation took so I've reviewed its claims handling. Mr H first contacted Capital One on 13 April 2024. Capital One told Mr H it couldn't help with his dispute on 16 April 2024 by explaining he hadn't shown he had a valid claim against X. Whilst Capital One could have provided a more detailed explanation, it gave Mr H a reasonable outcome within a few days. After he complained on 27 April 2024, Capital One issued its final response within the eight weeks it was allowed to respond. So, I've not seen any unreasonable delays prior to Capital One issuing its final response to Mr H.

After issuing its final response, Capital One wasn't obliged to consider Mr H's claim further, but it did go on to speak with him and consider his claim afresh. I'm only able to consider a complaint about Capital One's actions prior to its final response but as I don't think it makes a difference to the outcome here, I listened to Mr H's call with Capital One's agent that he referred to on his complaint form. I heard Capital One's agent acknowledge that Mr F was under pressure, but she explained he had authorised the transaction with X. Capital One's agent said, "yeah I know" in acknowledgment of Mr H's statement that he "paid [X] under protest" and said "they've not followed their process". I don't think Capital One's agent was

as precise as she could have been in her explanations, but I didn't hear anything that indicated she accepted Mr H had a valid chargeback or Section 75 claim. Overall, I thought the explanation was reasonable and the agent wasn't rude or unprofessional.

I realise my decision will disappoint Mr H, particularly as he says he's been left out of pocket for damage he didn't cause. But overall, I don't think Capital One has acted unfairly or unreasonably here so I've not upheld his complaint."

Capital One didn't respond to my provisional decision, and Mr H didn't accept it. In summary, Mr H said I had erred by accepting he'd been charged for "damage", as opposed to "wear and tear". X's terms and conditions didn't define "damage" or "wear and tear", so I should consider the standard industry approach, for which I should consider the definition set out by The British Vehicle Rental and Leasing Association ("BVRLA"). Mr H reiterated his previous arguments that X didn't record all the pre-existing damage on the car, out of line with industry practice and that it didn't provide its service with reasonable care and skill, as required by the Consumer Rights Act 2015. Finally, Mr H reiterated he didn't sign anything to confirm the damage he was charged for was new.

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.

Having done so, I've been provided with no new evidence to persuaded me to depart from my provisional decision. I'll briefly address Mr H's response to my provisional decision, in line with the informal nature of our service.

In deciding what is damage, or wear and tear, Mr H has suggested I refer to the guidance set out by the BVRLA, but this doesn't apply to his complaint. The guidance set out by the BVRLA is designed for leased cars in Britain, but Mr H has complained about the service provided by a hire company after his short-term rental of a car whilst on holiday abroad, which is a different service provided in a different country. So, I've not considered the BVRLA guidance as part of my assessment of this complaint.

Mr H's policy doesn't define what is wear and tear, but it isn't obliged to. Instead, the policy document sets out that any additional damages to the vehicle, beyond those recorded at the time of pick up, will be the customer's responsibility, subject to the terms of the damage coverage and the applicable deductible. So, the policy directs the customer to the damage recorded at the time of pick up.

As I said in my provisional decision, the checklist completed when the car was picked up doesn't list the 'new' damage, and the checklist completed on the car's return does. There is a photo of the damage that corresponds with the checklist. Mr H agreed to make a payment to cover it. In my provisional decision, I said Mr H said he signed the document to prevent costs escalating further, and verbally told X he didn't agree he caused the damage. However, Mr H had said before he hadn't signed anything, but he agreed to make the payment under protest. Mr H provided this testimony before my provisional decision and I apologise for the mistake in my provisional decision. However, I confirm I was aware Mr H had not signed the document, but this doesn't change the outcome of his complaint as he still agreed to make a payment for the damage which is consistent with the documentation provided by the business. Overall, I'm satisfied it was reasonable for Capital One to conclude that X had shown there was new damage to the car.

Mr H has reiterated his belief that X failed to exercise reasonable care and skill, as required by the Consumer Rights Act 2015. I addressed Mr H's comments in my provisional decision.

Mr H has alleged that X failed to use reasonable care and skill in the performance of its service, referring to damage to the car that was not recorded on the check-out sheet when he picked the car up and the process X followed once it identified the new damage. However, some pre-existing damage was noted and Mr H hasn't shown, for example, that that any unrecorded damage has materially affected his use of the car or that the 'new' damage X recorded relates to this in any way. So, I don't think Mr H has shown that X failed to exercise reasonable care and skill in the performance of its contract.

I realise my decision will disappoint Mr H, but I have not upheld his complaint for the reasons outlined above and in my provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 October 2025.

Victoria Blackwood
Ombudsman