

## The complaint

Mr S is unhappy that Bank of Scotland plc trading as Halifax (Halifax) hasn't refunded his credit card, following a dispute he raised. In bringing this complaint Mr S is represented by his wife Mrs S. But for ease of reading, I'll refer to Mr S throughout this decision.

## What happened

In April 2022, Mr S reserved a rental car from a company I shall refer to as 'T'. The rental car was for a trip in Costa Rica. As part of the rental Mr S also purchased the additional Loss Damage Waiver (LDW).

On 12 July 2022, Mr S picked up the car. On 15 July Mr S was involved in an incident where the rental car became stuck on a rock in water. Mr S contacted T and the car was recovered and taken away. Mr S tried to contact T to arrange a replacement over the next few days but says T didn't help and then stopped being contactable.

Mr S says he then noticed that T had three pending transactions on his account. He contacted Halifax to advise these transactions hadn't been authorised. Halifax said once the charges had been applied and were no longer pending it could raise a dispute. However, the three pending transactions were never applied and disappeared.

On 20 July 2022 Mr S has explained that he received an invoice from T that detailed a cost for a 'combination of charges' and indicated that the rental agreement had been ended. Mr S therefore arranged for another rental car from a different company.

After returning from Costa Rica, Mr S contacted Halifax again re the pending charges and says it was confirmed by Halifax no charges were showing. But in any event the credit card was cancelled, and a replacement ordered. On 18 August 2022 Mr S has advised he received a text message from Halifax saying he had exceeded his credit limit. A charge for £6,788.67 had been applied to his credit card.

Mr S contacted Halifax and was told that MasterCard would've provided the new card details to T when the transaction was requested from the old now cancelled card. Following this, a dispute was raised with Halifax. A chargeback was raised on 29 September 2022 and Mr S was provided with a temporary credit of £6,000.

On 3 November 2022, T defended the chargeback and said Mr S had breached the rental terms and conditions and voided all protection Mr S had purchased. Mr S was therefore liable for all damage costs. T also said Mr S had signed to accept responsibility for the damage and provided an invoice to show what the costs were.

Mr S explained that he signed the document T had provided to show the acceptance of the damage costs before the incident and that the damage section had therefore been filled in and added afterwards. Halifax advised that given the evidence it was unable to proceed further with the chargeback and removed the temporary credit it had previously applied.

Unhappy with this Mr S raised a complaint. Halifax issued its final response on 6 December 2022. In this it said the evidence T provided showed Mr S had invalidated the LDW by driving on unpaved roads. Halifax also acknowledged that Mr S disputed T's claim that he signed to accept responsibility for the damage but said it would be unable to prove or disprove whether that was the case.

The complaint was therefore referred to our service. One of our investigators considered the complaint and initially recommended that Halifax refund Mr S. He said the terms and conditions didn't explain that the LDW Mr S purchased would be voided in the circumstances that occurred here. Therefore, the LDW should have relieved Mr S of the financial responsibility of paying for the damage. The investigator said that had Halifax pursued the chargeback, it would likely have been successful. He also explained that under section 75 (s.75) there had been a breach of contract, as no clause was present in the terms and conditions that voided the LDW in these circumstances.

Halifax responded and provided T's terms and conditions that explained that the LDW would be voided where the car was driven on unpaved roads. In response Mr S again provide the terms and conditions from the website when he first made the reservation, and no such term was present. Mr S said he was handed a leaflet when he initially picked up the rental car which contained in the small print a link to a website, which detailed the term. But that this wasn't made clear or explained at the time of booking.

After seeking further clarification from Halifax re the terms and conditions, specifically if these were the correct ones that applied, Halifax said they were and also provided the FAQ's from T's Costa Rica website. Under the FAQ's it said that none of T's rental cars are allowed to be driven through rivers, ponds, flooded roads, or similar environments. If this did happen then as per the rental contract, the renter will be financially responsible for all repairs caused by water damage or misuse.

Following this, the investigator concluded that Halifax had correctly rejected Mr S' dispute. he said the terms and conditions did confirm that the renter would be liable for full damage costs where the car was driven in violation of the rental agreement terms and conditions.

Mr S still disagreed and said that Halifax should never have handed over details of the new card and that T made it look like he had agreed to the damage charges by being underhand with the document provided. Mr S again said this document was signed on 12 July 2022 with the damage section blank and the additions of the damage that occurred on 15 July 2022 was added after.

The investigator said that it was MasterCard that provided the new credit card details to T. And that despite Mr S' concerns around the acceptance of the damage charges document, the LDW was correctly voided and therefore Mr S was responsible for the costs.

As Mr S still disagrees, 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.

I would also like to point out I've read and considered the whole file, but I'll concentrate my comments 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.

Halifax initially looked to see if it could assist Mr S in retrieving a refund via the chargeback process. Chargeback is the process by which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. For Mr S' credit card the relevant card scheme is MasterCard.

A consumer is not entitled to chargeback by right. But where there are grounds to raise one and it has a reasonable prospect of success, it is good practice for one to be raised by the card issuer. Once a refund is requested by a consumer the card issuer will usually look at the card scheme rules to see if the nature of the dispute is covered under the list of possible chargeback reasons. If so, relevant evidence might be requested to back up the claim and the chargeback is raised.

Halifax did raise a chargeback for Mr S and did so under the “*Addendum Dispute*” reason code. This reason code is used for a dispute of a separate transaction that occurs after a valid transaction involving the same merchant and cardholder.

Looking at the circumstances of Mr S’ dispute with T, and MasterCard’s chargeback rules that applied at the time, I’m satisfied this was the most appropriate reason code for Halifax to raise the chargeback under.

However, after the chargeback was raised T defended it. T provided evidence to support its position that the charge was correct. Following this Halifax didn’t believe it could pursue the chargeback further. I’ve therefore considered whether I agree with that position.

Mr S has provided the car rental confirmation from the time of booking. This has a link to terms and conditions. Having reviewed these, they state the following with regards to the LDW optional policy:

*“Loss Damage Waiver (LDW) is optional and relieves customers financial responsibility for damage to or loss of the (T’s) vehicle as a result of an accident or theft. Theft protection is included in the purchase of LDW. This coverage does not include loss of license plates, accessories, tow service, fines and loss of keys, nor windshield/tires/rims damage. (protection for windshield/tires/rims damage may be purchased at the rental counter).”*

There isn’t any reference to circumstances here where the LDW will be voided. However, when Mr S picked the car up, he signed the rental agreement. This advised that by doing so he agreed to all terms in the separate rental terms and conditions document. These would be provided to him at the counter and could be reviewed at T’s website that was detailed on the agreement.

I’m satisfied that these terms and conditions are therefore the ones that applied to the car rental after Mr S collected it on 12 July 2022. Even if they were different to the terms Mr S agreed to at the time he made his booking, these are the terms he subsequently agreed to bound by when he signed the rental agreement. Section 14 of these says the following, in bold, in relation to prohibited use of the car:

*“A violation of this paragraph, will automatically terminate your rental and is an exclusion to and voids all liability protection and any option services that you have accepted, including but not limited to supplemental liability insurance, personal accident insurance, personal effects insurance, any roadside assistance plan, emergency sickness protection and loss damage waiver (LDW) or partial damage waiver...”*

*It is a violation of this paragraph if any of the following occurs*

*A. You use or permit the car to be used:*

*4) to be operated in a test, race or contest or on unpaved roads;”*

The terms say the following with regards to damage to the car:

*“if you do not accept Loss Damage Waiver, or if the car is lost or damaged as a direct or indirect result of a violation of paragraph 14, or is damaged as a result of an act of nature, you are responsible and will pay us for all loss or damage to the car regardless of cause, or who, or what caused it. If the car is damaged, you will pay our estimated repair cost”*

Having looked at the pictures of where the car got stuck on a rock, it’s clear this was an unpaved road. I’m therefore satisfied that the LDW policy Mr S purchased was correctly voided by him using the rental car in a way that was prohibited. Therefore, in these circumstances T hasn’t acted outside the terms and conditions that Mr S agreed to by charging him for the estimated repair costs.

Mr S says that that due to travel fatigue and not being able to use his mobile phone for internet access in Costa Rica, he didn’t/couldn’t check the rental terms and conditions. He

also says that T didn't explain this term and given lots of the tourist attractions in Costa Rica are on unpaved roads, it should've.

I appreciate that Mr S feels T should've made the term about the LDW being voided if the rental car was driven on unpaved roads clear. However, by signing the rental agreement Mr S has agreed to be bound by the terms and conditions when he signed the rental agreement in Costa Rica. It's not clear whether the rental terms and conditions document was provided to Mr S at the time he collected the car, as he does mention being provided a leaflet, but in any event the agreement does provide a link to the website that details the terms, and these are clearly laid out.

It does seem to be the case that the document T says Mr S signed to agree to the damage was amended afterward. But regardless of whether Mr S signed this before or after the damage section was completed, he is liable for the damage to the car after the LDW was correctly voided.

I've also considered the damage to the car that T is charging Mr S for. I appreciate this is a significant sum. Here I'm looking at Halifax's actions in the dispute and whether it has acted fairly in deciding to not pursue the matter further for Mr S. In its chargeback defence, T provided an invoice from what appears to be a car bodywork company in Costa Rica. I don't think that as part of assessing this dispute, Halifax has acted incorrectly in accepting the evidence of the estimated damage costs Mr S was liable for.

The car was stuck in water, on rocks, for an extended amount of time. It isn't unreasonable to conclude that the car would've been damaged as a result, and that the damage could've been significant in the circumstances. Halifax also wouldn't be expected to know the exact cost of the individual car parts in Costa Rica, needed to repair the make and model of the car Mr S rented.

Taking everything into consideration, I'm satisfied that Halifax correctly assessed Mr S' dispute and hasn't acted unfairly in declining to refund him. A chargeback was raised and after this was defended by T, Halifax didn't feel it had grounds for success. Based on the evidence provided, I agree with the decision Halifax made in the circumstances.

I've considered whether Mr S has any possible route for a refund under s.75. To explain, section 75 is part of the Consumer Credit Act 1974 (CCA). It allows, in limited circumstances, someone buying goods and/or services on credit to claim for a breach of contract or a misrepresentation against their credit provider when there is a like claim against the supplier.

We can look at the issues here under s.75. But I'm not considering the disputed payment amount as the relevant transaction here, but rather the rental transaction itself which Mr S also paid for using his bank credit card.

Given the circumstances, I don't believe that a breach of contract or misrepresentation occurred. As I've said above, the contract says the LDW policy would be voided if the car driven in a prohibited way, as was the case here. It then says that T will charge for estimated costs to repair the car, which it did.

Mr S says that he asked when picking up the car whether the LDW would cover him for all costs should any event/accident/damage occur. He says he received confirmation this was the case. As I wasn't present at the time it's impossible for me to be certain of the details of the conversation that took place. But given the list of exclusion that relate to the policy, and how insurance operates in general, I think on balance it would be unlikely that Mr S would've received confirmation that all possible events that may cause damage to the car would be covered. Given this I'm satisfied that any s.75 claim would've been unsuccessful and therefore Halifax was correct in not considering s.75 further in this dispute.

Lastly, I've considered Mr S' point that Halifax shouldn't have provided the new credit card details to T. Halifax has said that where a merchant requests money that is owed, it can go

to the card scheme directly (Mastercard in this case) and may be given the new card details. In situations such as this Halifax wouldn't be aware of the transaction until after it's been debited, and the correct process would be for the transaction to be disputed, as happened here.

I do appreciate Mr S' frustrations with the situation he finds himself in, but my role is to consider how Halifax dealt with his dispute and I can't look at the actions of T. In doing so I don't believe that Halifax acted unfair in not pursuing the chargeback or a s.75 claim further than it did. So therefore, Mr S isn't entitled to a refund in this case.

### **My final decision**

I don't uphold Mr S' complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2023.

Paul Blower  
**Ombudsman**