

The complaint

Mr P complains about a car purchased using his credit card account. The complaint is brought against Capital One (Europe) plc (Capital One) under Section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

Mr P raised a Section 75 claim against Capital One for breach of contract and misrepresentation with respect to a car purchase. Part of the purchase price was paid using the additional card assigned to Mr P's wife on Mr P's Capital One credit card account in January 2018.

Capital One refused to uphold Mr P's complaint. In summary, they said there was no valid 'debtor-creditor-supplier' relationship for a Section 75 claim.

Our investigator thought the complaint shouldn't be upheld, because she was of the opinion that there wasn't a valid 'debtor-creditor-supplier' link for a valid Section 75 claim. This is because she said it was Mr P's wife that had been the contracting party and had purchased the car and she wasn't Capital One's customer.

Mr P disagreed with the investigator. In summary, he thinks that there should be a valid Section 75 claim because he says that he bought the car together with his wife, he was the one dealing with the dealership, and his wife is a second (or additional) card holder on his Capital One card.

So, 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

The general effect of Section 75 makes the provider of credit (Capital One in this case) jointly and severally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit, provided certain conditions are met.

One of the conditions is that there is a direct relationship between the debtor, the creditor and the supplier. This is sometimes referred to as a debtor-creditor-supplier (D-C-S)

agreement, and the formal wording is set out in Section 12 of the Consumer Credit Act 1974. A D-C-S agreement refers to the arrangements that need to exist between the relevant parties in order to be able to make a Section 75 claim.

I can see that Mr P feels very strongly about this issue and I have considered his submissions carefully. In summary, he says he and his wife purchased the car together. The payments for the balance of the car purchase were made from their joint account. He says that he was the one dealing with the dealership during the purchase, and that his wife is the second (or additional) card holder on the credit card. So, he believes that because of these reasons this makes him a party to the contract.

It is Mr P who is considered to be the debtor because he has a credit card with Capital One; the creditor is Capital One because it has agreed to provide credit to Mr P; and the supplier is the car dealership. However, I don't think the car dealership has a direct relationship with Mr P for a Section 75 claim, because I think Mr P's wife was the contracting party and not him.

Although I don't doubt that Mr P has had some involvement in the process of helping with the car purchase, and while he might get some benefit from the car, I'm not satisfied that this is enough to make him a contracting party for the requirements of a Section 75 claim. I say this due to several reasons, outlined below.

I consider it persuasive that all the sale's documentation is in the name of Mr P's wife only. While this is not always a sole determining factor, I think this indicates that she was the contracting party here. I have also carefully considered other surrounding evidence and note that it is Mr P's wife who is the one that is the registered keeper of the car, and not Mr P. So, it would be her that would have certain rights, obligations and responsibilities as a named person driving the car. The number plate on the car was also changed to a personalised one with the initials of Mr P's wife. I can also see that 12 months approved used warranty for the car was put in her name. The insurance for the car was taken out in her name as a policy holder, and Mr P is only listed as the additional driver. I think this supports his statement that she was the main driver of the car, as most likely he only uses the car occasionally.

I'm also aware that Mrs P tried to initially raise a claim through the courts for the breach of contract and misrepresentation, but the claim was struck out. The fact that she was named as the claimant and not Mr P also supports the fact that it was Mrs P, not Mr P that was the contracting party. Mr P has also told us that the car was bought as a gift for his wife. So, I think that for the purposes of Section 75 all the above evidence serves as a relevant indicator of who is intended to be the contracting party in this instance. Therefore, I think, most likely it is Mr P's wife that is the contracting party. So, I think Mr P's wife entered into a contract to purchase the car for which Mr P provided some of the funds.

I know that Mr P says that his wife was a second (or additional) card holder, but this doesn't make a difference. This is because a credit card cannot be taken out in joint names, even though potentially multiple additional card holders can be added to a single account. But where there are additional card holders, it is the primary card holder (here Mr P) who is solely responsible for all the spending on the account, and it is he (Mr P), and not any additional card holders, that have the contractual relationship with the credit card provider.

The D-C-S arrangement needed to exist between the debtor (Mr P), the creditor (Capital One), and the supplier (the car dealership). As Mr P had no contractual relationship with the supplier (because it was his wife who entered into that contract), it seems there was no D-C-S arrangement in place. Also, Mrs P had no contractual relationship with Capital One either. So, while Mr P has my sympathy, I don't think Capital One acted unfairly in turning down the Section 75 claim.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 July 2021.

Mike Kozbial
Ombudsman