

The complaint

Mr A is complaining Capital One (Europe) plc hasn't refunded an amount he paid on his credit card to buy a car. He brings the claim under Section 75 of the Consumer Credit Act 1974 (S75).

What happened

In November 2019 Mr A bought a car for his son and daughter-in-law. The car cost £4,000, it was around seven years old and had travelled around 37,000 miles. He paid a deposit of £300 and paid the remaining £3,700 on his Capital One credit card.

Mr A says, around two weeks later, his son told him a fault had arisen with the car that made it unsafe to drive. And he said a lot of warning lights appeared on the dashboard. Mr A says he took the car back to the supplying dealership, but he found out the company had changed hands. However the new owner agreed to look and diagnosed a fault with the ABS pump and it arranged to refurbish it.

Mr A says the car was then fault free for a period of time, but around six months later he says the same fault reappeared and the car became unusable. He says he tried to go back to the supplying dealership, but he says the dealership wasn't willing to help. So Mr A contacted Capital One to ask for assistance under S75. But Capital One said he wasn't eligible to claim under S75.

I issued a provisional decision upholding this complaint and I said the following:

"I think there are two issues I have to decide here:

- 1) Is Mr A able to hold Capital One responsible for anything the supplying dealership may have done wrong; and if so*
- 2) Does Capital One have to do anything to put things right?*

I shall deal with each point separately.

Is Mr A able to raise a S75 claim?

Mr A partly paid for the car on his Capital One credit card. S75 sets out that in certain circumstances, as the finance provider, Capital One is jointly liable for any breach of contract or misrepresentation by the supplier.

However, in order for S75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement (DCS) between the parties. In essence, the key here is that it's the debtor who is entitled to make a claim against the creditor, and their claim against the creditor is the same as their claim against the supplier. So, if the debtor doesn't have a claim themselves against the supplier, they can't hold the creditor liable for any breach of contract with the supplier.

As I said Mr A paid for the car with his Capital One credit card, so there is a contractual

relationship between him and Capital One. There is also a financial relationship between Capital One and the supplying dealership, given Capital One paid the dealership £3,700. But Capital One doesn't believe there is a contractual relationship between Mr A and the dealership as it believes the purchase invoice is in the name of Mr A's daughter in law. But I don't agree.

I've looked at the contract and I agree that Mr A's daughter-in-law's details are initially recorded as the contracting party and the contract says the car is to be delivered to Mr A. But there are also arrows on the invoice indicating that these are swapped around. And this is in keeping with what Mr A has told us about what happened at the time. Mr A bought the car as a gift for his son and daughter in law. He was intended to be the contracting party and the car was to be delivered directly to his daughter in law. I'm satisfied that Mr A did enter into a contract to buy the car from the dealership and he was the intended contracting party.

So it follows that, as I'm satisfied there's a contractual relationship between Mr A and the supplying dealership and given what I've said above, I'm satisfied there is the relevant DCS agreement between the parties. I'm also satisfied all other criteria is in place for Mr A to be able to claim under S75. So I don't think it was fair for Capital One to say Mr A wasn't eligible to claim under S75.

Does Capital One need to do anything to put things right?

As I set out above, S75 sets out that Capital One can be held jointly liable for any breach of contract or misrepresentation by the supplying dealership. So the issue for me to decide now is whether there is enough for me to say whether the dealership breached the terms of the contract it had with Mr A for him to buy the car.

Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the contract that the car must be of satisfactory quality. There's no dispute that there's been faults with the car, but the issue is whether they were present at the time of sale, and whether that fault makes the car of unsatisfactory quality when it was supplied. I've also thought about whether a reasonable person would expect to see the faults when they rose, given the car's age, price and mileage – in short was it sufficiently durable?

Mr A has said the car first experienced issues within two weeks of him acquiring it, having travelled around 200 miles. Given how quickly this fault arose, I'm satisfied it's likely this fault was present at the point of supply. The repair invoice in December 2019 shows that the garage removed and cleaned the ABS pump.

The car broke down again in June 2020. I've looked at the respective quotes for repair at that time and this shows that the car had only travelled around 1,700 miles in this time. These invoices – coupled with the actual repair issue – shows that this was the same fault that arose in December 2019. To repair the car, the repairing garage had to replace both the automatic braking system (ABS) pump and the ABS control module. It seems to me that the repair that was carried out in December 2019 only temporarily resolved the issues that first arose. So I think the crux of this complaint is whether the fault with the ABS system makes the car of unsatisfactory quality.

In deciding whether this car was of satisfactory quality, I take into account the relevant circumstances, such as the cash price, its mileage and age. In this case, Mr A paid around £4,000 for the car. The car was around seven years old and had travelled around 37,000 miles at the point of supply.

Mr A didn't buy a new car so he needed to expect the car to have suffered some wear and tear when he bought it – i.e. he couldn't reasonably expect it to be fault free. The issue for

me to decide is whether I think a “reasonable person” would expect to see the faults Mr A and his family have experienced. I also need to think whether the faults that arose would make the car unsafe.

While Mr A needed to expect to experience some faults with the car, given the car’s age, I don’t think a reasonable person would expect such a significant failing of the car’s braking system. Mr A eventually had the car repaired at a cost of around £1,900 – although I acknowledge some of these repairs were to the handbrake and start stop function and not related to the fault in question. However, it’s clear the majority of these repairs were related to the original fault. Ultimately, I don’t think a reasonable person would expect to incur such a significant repair expense within two weeks of acquiring a car.

In addition to this, the fault has caused a material failure of the car’s braking system. Clearly, the braking system is a fundamental aspect of the car’s safety features. So I think it’s reasonable to say that this would make the car unsafe to use.

Given all of this, I don’t think the car was of satisfactory quality when Mr A acquired it. I now need to decide what I think Capital One should do to put things right.

Under the CRA Mr A has the right to ask the supplying dealership to fix the car, but if that repair is unsuccessful he had the right to reject it. Following the first fault, Mr A approached the supplying dealership to ask it to fix the issues. As I said above, it seems to me a temporary fix was carried out. But it’s clear this didn’t resolve the issue.

Mr A has since repaired the car himself, so I don’t think he can now reject it. But he is out of pocket as a result – he paid £1,900 to repair it. That said, I’m not persuaded all the repairs that were carried out were down to the initial fault. I can see that he paid to repair the handbrake and also the start stop switch. I don’t think these faults are linked to the original fault and I don’t think Mr A has given me enough to say it’s down to the delay in getting the car repaired. I think these issues are most likely to be a natural consequence of the age of the car – i.e. down to wear and tear. So I don’t think Capital One needs to pay for this.

However, the invoice isn’t broken down to the individual parts, so I have to estimate how much Mr A was likely to have paid towards resolving the ABS system faults. I think fixing the handbrake and start/stop switch would have been a minor repair. So I think repairing the ABS system was the fundamental aspect of the repair invoice. Given this, I think Capital One should refund £1,500 of the invoice. It should also pay 8% simple interest on this amount from the date of the invoice (30 June 2021) until he gets it back.”

Mr A responded to say he didn’t have anything further to add, but he queried why the interest only starts from the date he had the car repaired when it had sat depreciating for so long before then.

Capital One responded to say it didn’t have anything further to add.

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.

Neither party has provided me with anything more to think about, so I see no reason to reach a different conclusion to the one I reached in my provisional decision. Mr A has queried why I only awarded 8% simple interest from the date he paid the invoice and not sooner given how long his car had been stationary. But 8% simple interest is awarded to compensate Mr A for any time he’s out of pocket – i.e. paid for something he shouldn’t have had to. While

I do not dispute this matter took a long time to resolve, Capital One is only required to pay 8% simple interest from when Mr A actually paid the repair invoice. So I remain of the opinion that the compensation I've awarded is fair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint. And I require Capital One (Europe) plc to pay Mr A £1,500. I also require it to pay 8% simple interest on this amount from the date he paid to repair the car (30 June 2021) until he gets it back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 April 2022.

Guy Mitchell

Ombudsman