

The complaint

Mr L complains that National Westminster Bank Plc (“NatWest”) unfairly declined a claim he made under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

In April 2021, Mr L noticed that his car was leaking oil. He’s told us that he took it to a garage and asked them to identify what was causing the leak and advise on whether it was economical to repair. The garage checked over the car and was satisfied it was in good condition for its age and mileage, so Mr L went ahead with the recommended repairs.

The garage replaced the oil filter, the oil cooler and changed the engine oil. They also replaced the rear prop shaft coupling, refaced all brakes and serviced the transmission. They charged Mr L a total of £1,719.06 and supplied an invoice which set out a breakdown of the individual costs for parts and labour.

Within approximately 10 miles of picking up the car, the engine failed. So Mr L returned the car to the garage. The engine was sent away for analysis and Mr L was asked to pay for an expert report, which he did.

The expert raised concerns about some of the work Mr L had paid for. They said in their opinion, the oil filter and engine oil were unlikely to be recent replacements despite being charged for by the garage. And the cost of the oil cooler seemed unusually high. But they concluded that the engine failed due to being *“progressively worn from either very high mileage, insufficient oil changes, low quality oil and filters or a combination of them”*.

Mr L believes the garage has been negligent in their advice and repairs. He’s also concerned that he’d been charged for parts and labour that hadn’t been provided. So he contacted NatWest to make a claim under section 75 of the CCA as he’d paid the garage on his credit card. He asked NatWest to refund the amount he’d paid for the repairs and the expert report, along with the value of his car which had been destroyed due to the negligence of the garage.

NatWest concluded that it wasn’t responsible as it didn’t think Mr L had a valid claim. It said that the items in dispute amounted to less than £100 individually, so section 75 protection didn’t apply.

Mr L disagreed and brought his complaint to our service. But our investigator didn’t uphold it. She came to the same conclusion as NatWest. As no agreement could be reached, the complaint was passed to me to decide and in August 2022 I issued the following provisional decision.

My provisional decision

Section 75 of the CCA allows consumers who have paid for goods or services on a credit card to claim against their credit card provider for any breach of contract or

misrepresentation on the part of the supplier of the goods or services, so long as certain technical conditions have been met.

NatWest declined Mr L's claim because, in its view, the claim didn't meet one of the technical conditions due to the prices of the individual items. It said that because the only items disputed on the garage's invoice were the oil filter and the engine oil – which cost £11 and £89.25 – the value of the claim didn't meet the £100 threshold for section 75.

The applicable term in the CCA here is subsection (3)(b) of section 75 which says:

"[Section 75 protection] does not apply to a claim -

...

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000..."

This means section 75 protection will not apply to any "single item" to which the supplier has attached a cash price of £100 or under, or more than £30,000.

Fundamentally, the dispute between the parties here is about how to define "single item". NatWest says it's the individual parts and labour broken down on the invoice. But Mr L believes it's the cost of the overall transaction, as he paid for one service i.e. to fix an oil leak.

Identifying the "single item" isn't always straightforward. It will depend on the nature of the thing being purchased and how it is presented for sale.

In this case, Mr L was quoted a price to fix an oil leak which involved the garage carrying out some servicing and repairs. Mr L didn't specify what specific works he wanted the garage to undertake, instead he left it to their professional judgement to decide what work and parts were required to complete the job.

A price was agreed, and a verbal contract was entered into. It appears there may have been some variation to this contract, with other repairs being added – such as refacing the brakes. But overall, I'm satisfied that Mr L entered into one contract for the service rather than lots of separate contracts for parts and repairs priced individually. I say this because the garage didn't list the individual work and prices of each part and labour beforehand; this was only itemised for transparency at the end.

So I'm not persuaded that the "single item" here is the oil filter and the engine oil, but rather the contract as a whole which puts the value of the claim within the criteria for section 75 to apply. It's for these reasons that I'm persuaded NatWest should've considered Mr L's section 75 claim further. As it didn't, I've thought about what it would've done if it had.

In order to further satisfy the criteria of section 75, Mr L needs to evidence a breach of contract and / or misrepresentation. The Consumer Rights Act 2015 ("CRA") is relevant legislation here. Regarding the supply of services, it says:

"Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if... it is taken into account by the consumer when deciding to enter into the contract."

It goes on to say:

“Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.”

So I've thought about whether the garage failed to do what was agreed between them and Mr L which would amount to a breach of contract. Or whether they did fulfil the contract but failed to act with reasonable care and skill. I've looked at all the available evidence, and in particular the expert report.

The expert's inspection of the engine led them to the opinion that certain parts and labour charged for weren't carried out. Specifically, the engine oil and oil filter were of a condition that wasn't consistent with being recent replacements. They were also not genuine parts from the car manufacturer, despite genuine part numbers being quoted on the invoice.

But the expert seemed satisfied that some works, like replacing the oil cooler, had been completed. And they didn't conclude that the works undertaken – or the failure to replace the oil and / or filters – were the cause of the engine failure. They suggested there was *“a lack of servicing at the correct periods/mileage or inferior oil had been used”* and that the engine had high mileage.

I'm mindful that the expert only inspected the engine. So there is no commentary on the works undertaken to the brakes or prop shaft. As such, I can't make a finding on whether these were carried out and to what standard.

From what I've seen, I think the garage told Mr L that it would carry out works to fix the leak which included changing the oil and filters. This was taken into account by Mr L when deciding whether to enter into the contract. And therefore it's a term of that contract under the CRA. The expert's report persuades me that this work wasn't carried out despite being charged for. So I think there's been a breach here.

But I can't fairly say that this breach went on to cause the extent of damage to Mr L's car that he believes it did as that's not suggested in any of the evidence submitted.

Putting things right

I'm satisfied the single item in dispute is the contract for services entered into to repair the leak to Mr L's car. And the value of this falls within the criteria for section 75. I'm also satisfied there's been a breach of contract by the garage. So I think NatWest should meet the claim under section 75.

But I have to take into account that some of the parts and labour Mr L paid for were provided. And whilst I appreciate there is no benefit to those works now that his car is beyond repair, Mr L is still liable to pay for them unless there is evidence that they were carried out without reasonable care and skill. This isn't suggested in the evidence submitted.

So I've thought about how much of the garage's invoice NatWest should refund. This isn't an exact science as it's not clear what parts and labour specifically relate to replacing the oil and filter.

I'm inclined to direct NatWest to pay one quarter of the invoice, as well as the cost of the expert's report, plus 8% simple interest per annum. I think this is fair in the circumstances. I'm not intending to award the value of Mr L's car because there is nothing in the evidence submitted which suggests that the engine failed as a result of anything the garage did or didn't do.

Responses to my provisional decision

NatWest didn't agree with my provisional decision, and provided the following comments:

- It doesn't accept that the works carried out on the car can fairly be determined as a single item. Mr L knew about / requested a number of different services from the garage and these are listed on the invoice.
- The oil and filter change appear to be such a small cost both in terms of parts and labour that it wasn't actually itemised in the labour summary. The item costs were £11 and £89.25 and the least expensive labour cost on the invoice is £26, so if it's assumed it cost £26 or less, then the total would be £126.25. Whilst other items on the invoice may be related to the oil or oil filter, even adding all of the smaller items doesn't bring the total to £429.76 awarded.
- It hasn't seen evidence that Mr L paid for the expert report and would require proof of payment.

Mr L has raised several points on why he disagrees with my decision, along with further evidence on the condition of his car. I don't intend to list them all, but I consider the key points to be as follows:

- The original contract entered into with the garage was for an oil leak repair, at an agreed price of £1,000 plus VAT. After entering into the contract, further repairs were agreed which increased the price.
- Mr L has provided evidence of the condition of the car prior to this incident which he believes shows it was in good repair.
- The expert didn't conclude in his report that the car had a lack of servicing or high mileage, but merely stated the engine could have failed for one of these reasons. The mileage was lower than average at the time of the engine failure and Mr L has full service history on the vehicle.
- Mr L has provided a statement from a specialist in this make of car, who is of the opinion that the car wasn't of high mileage for this make, model and age.
- The specialist is of the opinion that replacing the engine oil and filters is normal practice when replacing an oil cooler to repair an oil leak, these aren't standalone repairs.
- The specialist is of the opinion that if an oil cooler replacement is not carried out correctly, it can lead to oil starvation which can cause catastrophic results to the engine. In addition, the engine can fail if its run without oil or insufficient oil.

As further evidence was provided, I issued a second provisional decision in September 2022 which I've set out below.

My second provisional decision

Both Mr L and NatWest have raised a number of points regarding this complaint and whilst I may not have mentioned them all, I want to reassure both parties that I've read and considered everything that's been provided. But I don't intend to respond to every point individually, or possibly in the level of detail they would like. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

Single item

Whilst I've thought about NatWest's comments, I remain satisfied that the single item in dispute is the contract entered into to repair the oil leak – rather than the individual parts and labour required to meet the contract.

Mr L isn't a mechanic, and I'm not persuaded he asked the garage to carry out a number of different services in order to stop oil leaking from his car. I'm satisfied it's more likely that he, as a layperson, would've informed the garage of the problem and trusted them to establish what work was required to fix it.

Value of claim

I've considered both Mr L and NatWest's comments regarding my provisional award of one quarter of the garage's invoice.

In particular, I've thought about the specialist's comments that it's normal practice to replace the engine oil and oil filters when replacing the oil cooler. This may explain why there isn't a separate labour charge for this, as it may well fall within the labour cost of £455 to replace the cooler.

I acknowledge NatWest's concerns that my award is too high. But as I've said, this isn't an exact science and I'm not a mechanic. So I don't intend to work out what every screw and tube charged for on the invoice was in relation to, but rather to make an award that overall seems fair and reasonable in the circumstances of the complaint.

I'm aware Mr L considers my award to be too low. But I'm only awarding a refund towards the work that I'm satisfied wasn't carried out to a reasonable skill or wasn't carried out at all. The expert report provided on the engine doesn't suggest that the remaining work, other than to the engine oil and oil filters, were below standard. So I can't fairly conclude that he should receive a refund for the full cost.

Value of car

Mr L has provided several documents which he believes shows that the engine failed as a result of the work the garage did / didn't do. He wants NatWest to pay the value of his car as part of the section 75 claim. I've reviewed the evidence, but I don't agree.

Whilst Mr L has provided a statement from a specialist, there is nothing within the report to indicate that the specialist has actually seen and inspected the car and / or its engine. The statement merely provides an opinion based on information given by Mr L.

For example, the specialist says:

"I could only guess that considering the above points the replacement of the oil cooler had been done incorrectly or the engine oil hasn't been replaced and the vehicle driven without oil."

Having looked at the expert report, which was provided following an inspection of the engine, I can't see any suggestion that the oil cooler hasn't been replaced correctly or that there was no oil. In fact, the expert commented on the condition and feel of the engine oil, which implies the car wasn't left without oil.

The expert's conclusion was:

“The above evidence indicates this engine has failed from being progressively worn from either very high mileage, insufficient oil changes, low quality oil and filters or a combination of them and not from oil starvation / loss of oil pressure and therefore I do not see it is the result of any delay in commencing the repairs or neglect during the replacement of the oil cooler.” (my emphasis)

I appreciate Mr L’s strength of feeling regarding this complaint and I’m aware of the financial implications to him as a result of my decision. But I’m more persuaded by the findings of the expert who inspected the engine, rather than the general observations of a specialist that doesn’t appear to have seen the car. I’m also mindful that this car wasn’t without faults, given the problems Mr L was experiencing with it which caused him to take it to the garage in the first place.

Responses to my second provisional decision

Mr L didn’t agree with my findings. He says the garage admitted liability in full to him, in the presence of his friend who has provided a witness statement, at the time the car’s engine had failed. He says the expert’s reports are a red herring.

NatWest had nothing 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.

Mr L’s witness has provided a statement which says:

“[The garage] told [Mr L] he couldn’t [see the car] as the parts had been boxed up but not to worry as [the garage] was taking care of everything and they would be repaired and returned to [the garage] at no cost to [Mr L] and would be fitted back to the car...[The garage] accepted full responsibility for the fault with the engine due to negligence when dealing with the works to the engine the week before...[The garage’s] words were “don’t worry I’m so sorry about this don’t worry you’re not going to end up with another large bill, you won’t have anything to pay on top of what you already have”.”

Whilst I don’t disbelieve Mr L or his witness, I’m aware that this interaction would’ve taken place prior to the expert’s assessment of the engine. So the garage wouldn’t have known at this point what caused the engine to fail. I’m also mindful that the garage went on to ask Mr L to pay for the expert report which, had the garage accepted full responsibility, it’s not clear why a report was necessary. Or if it had been needed, I think they would’ve covered the cost – otherwise, I think Mr L would’ve queried why they weren’t, given the reassurance he’d received of no further bills to pay.

I don’t agree with Mr L that the expert report is a red herring. In fact, I’m of the opinion that it’s crucial to determining why his engine failed and whether this was as a result of the garage’s work. As I’ve said above, even if the garage did admit fault, this was without the benefit of this evidence. And it appears any admission has now been retracted.

Based on the information I’ve seen, I remain of the decision that NatWest aren’t liable under section 75 for the full value of the car. So I’m not deviating from the outcome set out in my provisional decisions.

If Mr L is able to secure an admission of liability from the garage along with proof that it was their work which caused the engine to fail, he should provide this to NatWest to consider further. And if NatWest decide to pay the claim in full based on that evidence, it will have the required proof to recover its losses from the garage or their insurers.

My final decision

For the reasons I've explained, I'm upholding this complaint and directing National Westminster Bank Plc to pay the following:

- reimbursement of one quarter of the garage's invoice – which amounts to £429.76
- reimbursement of the cost of the expert's report – which amounts to £1,080
- 8% simple interest per annum on both amounts above, from the date Mr L was unfairly deprived of the refunds – which I consider to be 13 October 2021 – until the date this is paid.

Mr L should provide proof that he's made these payments by way of an invoice or bank statement showing the amounts paid. NatWest has asked that this be sent to our service.

NatWest should make payment within 28 days of Mr L accepting this decision and providing proof of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 December 2022.

Sheryl Sibley
Ombudsman