

The complaint

Mr K complains that Capital One (Europe) plc mishandled his claim under section 75 Consumer Credit Act 1974 ("s.75") in respect of a faulty car.

What happened

In August 2022 Mr K bought a second-hand car. It was some 15 years old and had a recorded mileage of 87,459. He has submitted invoices which show he had the car serviced and maintained. The car cost £3,995 and he paid a deposit of £100 with his Capital One credit card. Mr K has said that in December 2023 while travelling on a motorway the car broke down and he had it recovered to the supplier. It had a recorded mileage of 112,773 at that point. That shows he had driven the car for 25,314 miles.

Mr K has told this service the supplier told him that 2 cylinders had lost compression but he wasn't really sure what was wrong with it and said it would be best to have a new engine. Mr K did not obtain a diagnostics report. I gather the supplier tried to install a second-hand engine, but this didn't work. Mr K says he was told a new engine would cost £3,000.

Mr K then made a claim under s.75 to Capital One. It asked that he complete a claims form and then it asked for an independent report. There followed an exchange regarding the nature of the report. Mr K felt that Capital One was asking for a report to show that the car was faulty at the point of sale or that it had an inherent fault. He took the view that the vehicle had not lasted a reasonable amount of time and that was sufficient to allow Capital One to accept his claim.

Mr K brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said that it was reasonable for Capital One to have asked for an independent report. She also thought that in the absence of an independent report it was likely that wear and tear had contributed to the fault.

Mr K didn't agree and our investigator set out the relevant legislation and guidance on s.75 claims. Mr K asked that the matter be considered by an ombudsman and sought a clear decision on what was required from an independent report.

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 can understand Mr K's disappointment by both the car and the decision by Capital One, but I do not consider I can uphold his complaint. I will explain why.

Firstly, I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

This complaint has been submitted as a claim under s. 75 of the Consumer Credit Act 1974. S. 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For s. 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There is no dispute that the chain is intact and so I have to consider if there has been a breach of contract or misrepresentation.

Mr K has not suggested that there was misrepresentation and I have not seen any details of how the car was advertised. I have seen the purchase invoice which is brief and gives basic details about the car. As such I cannot see that there are any grounds for a claim of misrepresentation. That means I must consider if there was a breach of contract.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The deposit was paid using Mr K's Capital One credit card and so this service is able to consider complaints relating to the s.75 claim. Capital One is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

There are two main routes for Mr K's claim. Firstly, it could be held that the car was not fit for purpose at the time of sale. In other words that it had a fault or an inherent fault. The second is that the vehicle can be shown not to have been of satisfactory quality as it didn't last a reasonable amount of time.

The first issue I noted with this complaint is that there is no supporting evidence that the car ever broke down. I have no reason to doubt what Mr K has said, but given he is expecting Capital One to pay a significant sum it is reasonable that he be asked to provide it with evidence that the car had broken down and what was wrong with it.

Secondly, as Capital One staff are not car experts in order for them to evaluate his claim it is reasonable to have asked for an independent report. Mr K has expressed concern that it wanted to establish if the car was faulty at the point of sale as he felt the key issue was the fact the car didn't last as long as it reasonably should. It is quite possible for a report to

address both issues and that is what usually happens with such reports.

I appreciate the nature of the report became a significant issue for Mr K but I think it is quite clear that one was required and it was up to him to supply it. If his claim had been upheld I would expect Capital One to have covered the cost of the report.

Looking at his claim I think it is worth setting out the relevant legislation. The CRA says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

Section 9 of the CRA states:

"9 Goods to be of satisfactory quality

(1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

(2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—

(a) any description of the goods,

(b) the price or other consideration for the goods (if relevant), and

(c) all the other relevant circumstances (see subsection (5)).

(3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—

(a) fitness for all the purposes for which goods of that kind are usually supplied;

(b) appearance and finish;

(c) freedom from minor defects;

(d) safety;

(e) durability.

The explanatory notes which accompany the CRA explain:

"if a breach of the statutory rights – for example a fault - arises in the first 6 months from delivery, it is presumed to have been present at the time of delivery unless the trader proves otherwise or this presumption is incompatible with the nature of the goods or the particular breach or fault."

This fault happened long after six months and so it cannot be presumed it was present at the point of sale. If the consumer considers the goods were faulty at the point of sale they must provide supporting evidence.

Alternatively, it must be established that the goods were not of satisfactory quality for example as in this case that they did not last a reasonable time. That is reached by deciding what a reasonable person would conclude taking into account the relevant circumstances. Here we are dealing with a car which contains many moving mechanical parts and which was some 15 plus years old when it failed. I note that in the 16 months Mr K owned the car he covered over 25,000 miles and at the point of failure it had 112,773 miles on the clock.

While one might hope that the car would have lasted longer than it did I do not consider it unreasonable for it to have suffered some form of fault. What that fault was we do not know and we do not know what contributed to it and so I do not think it was unreasonable for Capital One to have refused the claim without supporting evidence. In short, I do not think Mr K has established that the vehicle was not of satisfactory quality because of the fault which developed when it had been driven for over 110,000 miles. Whatever the fault was it could have been caused by any number things and as such I do not consider Mr K has established that the vehicle was not of satisfactory quality simply because it did not last longer than it did.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 January 2025.

Ivor Graham
Ombudsman