

## **The complaint**

Mr S complains about a decision by Nationwide Building Society (“Nationwide”) to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 (“section 75”).

## **What happened**

Mr S bought a used car for £6,400 in May 2023. The car was already about ten years old and had completed about 63,000 miles. He paid a deposit of £100 using a credit card supplied by Nationwide.

In August 2023 the car broke down. He took it to a third party garage, and they noted that the cylinder head was cracked. The supplying dealer refused to assist with the repair so Mr S contacted Nationwide and raised a claim under section 75.

In February 2024 Nationwide rejected Mr S’s section 75 claim. They said he could not demonstrate that the fault was present when the car was supplied to him.

Mr S, therefore, escalated his complaint to this Service where our investigator was of the opinion that it would be fair to uphold the claim and allow Mr S to return the car and get his money back.

Nationwide didn’t agree with our investigator’s opinion. They asked for a decision by an ombudsman.

## **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 know it will disappoint Nationwide, but I think they were unreasonable to reject Mr S’s section 75 claim. I’ll explain why.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

When something goes wrong, and the payment was made in part, or in full, with a credit card, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has the same right to make a claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. When considering whether goods are supplied in a satisfactory condition the legislation says we should consider if they have been durable.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was sold to Mr S. The car here was about ten years old and had already completed about 63,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply unless the supplier (or the credit provider in this case) can demonstrate otherwise.

I don't think Nationwide have been able to demonstrate that wasn't the case. They've explained that the car was already about ten years old and have suggested a fault of this kind could be expected on a car of that age. I think a cylinder head would be likely to last for at least 100,000 miles before it failed as long as the car was serviced in line with the manufacturer's servicing requirements. This car was serviced correctly, and Mr S had had it for less than three months, and had only covered about 2,300 miles, before the fault was identified. I think that was a very limited period of ownership within which Mr S could have contributed to any failure, and I think it's much more likely that the car was supplied with the fault developing and hasn't proven suitably durable. I don't think the age of the car is too relevant as it's the use of the car's engine, and potential overheating, that would be most likely to cause a cracked cylinder head. This car had only completed 63,000 miles when supplied and I think a reasonable person wouldn't expect a cylinder head to fail so soon.

Whether Mr S chose to take out a warranty for the car or to extend that warranty, has no bearing on the quality of the vehicle supplied and I don't think Nationwide needed to consider that when coming to their decision.

Overall, I think Nationwide were unreasonable to reject Mr S's section 75 complaint.

### **Putting things right**

The relevant legislation allows a business one opportunity to repair a car that is of unsatisfactory quality, but I don't think that would be the fairest option here. This is likely to be an uneconomical repair to complete and Mr S has been kept waiting for some considerable time for the repair. He's explained that the car is developing mould inside as he's unable to turn on the engine to dehumidify the air, and he's also explained that the battery has discharged due to the extended period of inactivity.

In the circumstances, I think the fairest solution would be for Nationwide to arrange the return of the car and for them to refund Mr S's money. Mr S has had some use from the car, but that use has been significantly impaired, and his enjoyment of the vehicle will have been impacted to the extent that I don't think it would be fair to suggest Nationwide should retain any of that money in respect of the use that's been had.

There have been delays providing Mr S with an answer to his section 75 claim and I can see that Nationwide have already provided some compensation in respect of that. But I think Mr S has been put to further inconvenience. He was left without a car or the means to buy a new one for some time and explained to Nationwide that he lived in a rural location and needed the car for work and to transport a young family. In the circumstances, I think Nationwide should pay him a further £200.

### **My final decision**

For the reasons I've given above, I uphold this complaint and tell Nationwide Building Society to:

- Collect the vehicle at no cost to Mr S.
- Refund £6,300 paid for the vehicle and reconstruct the credit card account as if the transaction never took place.
- Pay 8% simple annual interest\* on the refunds from the date of payment to the date of settlement.
- Refund the £100 deposit paid by Mr S.
- Pay £200 compensation for the distress and inconvenience caused.

\*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 June 2024.

Phillip McMahon  
**Ombudsman**