DRN-5314909

The complaint

Mrs J complains that Bank of Scotland plc will not meet her claim under section 75 of the Consumer Credit Act 1974 ("section 75") after she bought a car which developed faults. The bank trades in this case under its Halifax brand.

What happened

In May 2021 Mrs J bought a used car from a dealer which I'll call "S". It cost £10,970, of which Mrs J paid £7,470 using her Halifax credit card. It had been first registered in December 2016 and had a recorded mileage when Mrs J bought it of a little over 33,000 miles.

In or around August 2022 – that is, 15 months after she bought the car – Mrs J was contacted by the manufacturer to tell her that her car was the subject of a recall notice. She arranged for the necessary software to be installed as recommended, at no cost to herself.

Around a year later the manufacturer contacted Mrs J againagainof a recall notice. Mrs J arranged to have protective software installedof a recall. She arranged for protective software to be installed to address the issue.

From around August 2023 Mrs J received further contact from the manufacturer. It explained that software would monitor the performance of the car's exhaust gas recirculation (EGR) system, but that it was planning to replace the EGR cooler in the future – free of charge. The warranty period would be extended to 15 years. She arranged for protective software to be installed.

In April 2024 Mrs J's car suffered a catastrophic engine failure while Mrs J was driving it. The manufacturer assessed the damage, but did not believe that the failure was attributable to the EGR cooler.

Mrs J contacted Halifax. Since she had paid for the car with her Halifax credit card, she thought that it was responsible, along with S, for the problems with the car. Halifax did not agree. It noted that there had been no evidence of any fault withing six months of purchase and that it had been 15 months before the recall notice had been sent to Mrs J.

Mrs J referred the matter to this service, where one of our investigators considered what had happened. In doing so, Mrs J explained that the safety recall notice dated back to 2018 and had therefore been current when she had bought the car.

The investigator considered what had happened but was not persuaded that the car was faulty at the time of sale. She did not therefore recommend that the complaint be upheld. Mrs J did not accept the investigator's assessment and asked that an ombudsman review the case.

In or around August 2022

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.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Halifax, S and Mrs J are present in this case, and the transaction falls within the relevant financial limits. I have therefore considered Mrs J's dealings with S.

Under the Consumer Rights Act 2015 Mrs J's contract with S was to be read as including a term that the car would be of satisfactory quality. An item is of satisfactory quality if it is of the quality a reasonable person would expect in the circumstances; it includes matters such as durability and freedom from defects. And relevant circumstances in the case of a used car include its age, price and mileage.

A further effect of the Consumer Rights Act is that, if an item to which the Act applies does not conform to the contract within six months of purchase, there is an assumption that it did not conform at the point of purchase. If a fault develops after that time, the onus is on the consumer to show that the fault was present at the point of purchase.

It was therefore not quite correct of Halifax to say that, as no faults developed within six months, it has no liability to Mrs J for the failure of the engine after three years. The position is not as straightforward as that, since it would be open to Mrs J to show that the car was not of satisfactory quality, even if faults developed later than six months from the point of sale.

In addition, the Act's provisions about this are really rules of evidence which would apply in court proceedings – that is, they say who has to prove what in court. This service is not, however, bound by those rules in the same way a court would be, although they are matters which I must take into account.

I have no doubt that the catastrophic failure of the car on a motorway must have been a traumatic experience for Mrs J. As she says, it was potentially a lethal situation to be in. However, the seriousness of the damage is not necessarily evidence that the car was faulty at the point of sale.

Mrs J has relied to a large degree on what she says was an outstanding safety recall notice which predated the sale. That is, she says that the existence of the notice is evidence that the car was not of satisfactory quality at the point of sale. She has referred to The General Product Safety Regulations 2005. Amongst other things, those regulations say that a distributor shall not offer a supply a product which he knows or should have presumed to be a dangerous product. Mrs J says that S must have known about the recall and was therefore in breach of the regulations by selling the car. The regulations also include provisions about the circumstances in which an enforcement authority can require a product to be recalled.

Not all product recalls are made as a result of a product being dangerous. Nor do I believe that the fact that a product is the subject of a recall notice means that it is not of satisfactory quality – especially if the notice is in respect of something that can be easily rectified. And it is not clear in this case whether S knew about any recall notices, although I accept that it probably could have checked for general recall notices in respect of cars of the same make and model and age as Mrs J's.

I note as well that regulation 42 says:

Civil proceedings

42. These Regulations shall not be construed as conferring any right of action in civil proceedings in respect of any loss or damage suffered in consequence of a contravention of these Regulations.

It is not sufficient therefore for Mrs J simply to show that the car was the subject of a recall notice at the time of sale. That does not, of itself, amount to a breach of contract on the part of S.

Be that as it may, I do not believe that I can safely conclude that the catastrophic failure of the car in April 2024 was attributable to any safety recall that was outstanding in May 2021, when Mrs J bought the car. The manufacturer has said that was not the case, and I do not believe there is compelling evidence to the contrary. Given that it was nearly three years from the time of the sale to the time of the damage, I am not persuaded that the fault which appeared in April 2024 was present or developing at the time of sale.

It is not for me to say whether Mrs J does in fact have a claim against S. Nor is it for me to decide whether he has a claim against Halifax under section 75. What I must do is decide what I consider to be a fair resolution of Mr J's complaint about Halifax's decision to decline her claim. In the circumstances, however, I think it was reasonable of Halifax to decline that claim under section 75.

My final decision

For these reasons, my final decision is that I do not uphold Mrs J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 1 July 2025.

Mike Ingram
Ombudsman