DRN-5898682

The complaint

Mr A complains about the way Capital One (Europe) plc handled his request for a refund.

What happened

In October 2023 Mr A had paid a firm I'll refer to as 'T' to have his car's engine rebuilt with a 'bare reconditioned engine' (I'll refer to this as the 'engine refit' throughout this decision). A crankshaft was installed as T said Mr A's one wasn't reusable. The engine rebuild cost £4,320 with part of this being paid using his Capital One credit card (the 'card'). Mr A tells us that after his car broke down in July 2024, he took it to his local garage who I'll refer to as 'C'. C told him there was a problem with the crankshaft which C said was a well-known issue for a car of this type.

Mr A made a claim for breach of contract via Capital One under section 75 ('section 75') of the Consumer Credit Act 1974 ('CCA'). Mr A said the car was now unrepairable and only fit for scrap. Capital One said an initial report ('report1') by C, wasn't detailed enough for it to accept liability for breach of contract. Mr A obtained a second report ('report2') from a firm I'll refer to as D. Initially, Capital One said the contents of report2 were sufficient enough for it to accept liability. However, after D declined to answer questions about the contents of its report, Capital One declined the claim.

Mr A referred his complaint to our Service. Before the matter came to us (and during), Capital One issued final response letters addressing various complaints about the way it handled the section 75 claim offering Mr A £25 as a goodwill gesture. However, Capital One maintained its position in respect of not accepting liability. And whilst the matter was with us Mr A obtained a third report ('report3') from another firm who I'll refer to as ('E'). Both parties (Mr A and Capital One) have agreed to our Service considering the way Capital One handled the claim up to, and including, report3.

Our investigator didn't recommend upholding the complaint. Mr A asked for an ombudsman to review matters. I issued a provisional decision saying I wasn't intending to uphold this complaint. Amongst other things, Mr A responded by saying in relation to this complaint that: Capital One confirmed it was liable under section 75 and it should honour its promise to refund Mr A along with reimbursing him for the costs he's incurred such as for the car hire; the insurance matter referred to by T has been taken out of context; and the 'secure yard' issue along with the (non) independence of D who authored report2, has been disproven.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service. However, I've given careful consideration to all of the submissions made before arriving at my decision including those Mr A made in response to my provisional decision. As I set out in my provisional decision

(which now forms part of my final decision), I'm not upholding this complaint for the following reasons:

Briefly summarised, section 75 of the CCA says that where a consumer uses certain types of credit - and that includes a credit card - to purchase goods and/or services and there's a misrepresentation and/or breach of contract by the supplier (in this case T), the consumer will have a 'like' claim against the provider of finance (Capital One) as they would against the supplier. There are other conditions, but it's not disputed they're met in the circumstances of this complaint.

What I'm reviewing here is whether Capital One has acted fairly in declining Mr A's section 75 claim. In essence, I'm looking at the claims handling. I'm not a court so whilst I've had regard to the law including the Consumer Rights Act 2015 (satisfactory quality etc), I'm not making a finding on whether there has actually been a breach of contract. Only a court can make a finding in this regard. However, I do think Capital One needs to fairly and reasonably conclude whether to accept liability under section 75 of the CCA.

The key issue in this case is whether Capital One's conclusion that there wasn't sufficient evidence to support a claim for breach of contract was fair (or not). As Capital One told Mr A from the outset, given the nature of the claim involving an engine fitted several months before the failure happened, a report from an expert in the field was necessary to establish fault. In all the circumstances, I don't think this request was unreasonable.

In terms of report1 authored by C, it doesn't seem to be disputed by either party that this didn't have sufficient detail to establish who was at fault in terms of the engine's failure. C's mechanic said in order to establish whether what he suspected to be a fault with the crankshaft which was something fitted by T at the time of the engine refit, the engine would need to be taken apart and this work would cost 'thousands of pounds'. So, C said it couldn't give a conclusive reason as to whether the fault was the result of something done (or not done) by T during the engine refit. Further, from what I can see the report that C's submitted dated 8 August 2024 (report1) seems to be about an engine fault that was related to the manufacturer's engine not a reconditioned one. As this case concerns a reconditioned engine as well as C confirming it couldn't provide a conclusive reason without more work being carried out, I don't think Capital One were wrong to conclude report1 doesn't sufficiently prove Mr A's case for breach of contract.

In respect of report2 authored by a mechanic at the firm I'm calling D, Capital One did initially accept liability but when it didn't get any substantive response from D to questions that were asked, it declined the claim. One of these questions was about how one of D's mechanics could've examined the car when it was in a secure parking facility owned by C. C had confirmed that the car had been in the secure parking facility from 25 July to 12 October 2024 and no one (including Mr A) had access to the car during this period. And given report2 was dated 23 August 2024, there doesn't seem to be sufficient evidence to show one of D's mechanics actually examined the car to establish what the fault was and whether T (and by extension Capital One) was responsible for that fault.

From what I can see, Capital One's questions in response to report2 were fair and reasonable and should've been something the expert (D) would easily be able to answer. But D's staff seemed reluctant to answer Capital One's questions saying it (D) may never respond. And as far as I'm aware it hasn't done so. As Capital One's agent said during the call with D, Capital One is not the expert here. And given there wasn't sufficient evidence from the relevant expert to show the crankshaft had actually been examined, I don't think it was unreasonable or unfair for Capital One to say it was no longer willing to accept liability under section 75 of the CCA based on report2's findings. I appreciate it was disappointing for Mr A to find out that Capital One had changed its decision but nothing

had been finalised at the point it informed him that report2 was no longer sufficient for it to accept liability.

Whilst the case was with our Service Mr A obtained a third report (report3) from a firm I've referred to as 'E'. On this occasion, the expert said it was the oil pump that failed. Capital One, fairly in my view, agreed to review this report which put the engine's failure down to a faulty oil pump. In essence, the mechanic who authored report3 and examined the car, said that T should've replaced this oil pump at the time of the engine fitting as this would've been standard practice. And because T didn't replace the oil pump this caused the crankshaft's failure. I've listened to the call between Capital One and the mechanic from E. In effect, the mechanic said that he was unable to say for sure whether the fault was the result of the work carried out by T. But said that, in his view, it was standard practice for an oil pump to be replaced with a new one (rather than the old one that came with the original engine) when an engine refit is carried out. And as far as he could tell, T didn't do this. So, his view was T was at fault for the engine's failure.

I've fully taken into account the findings as set out in report3 and the call with the mechanic who authored this report (as well as the follow up answers to Capital One's questions E gave). However, I'm not persuaded Capital One acted unfairly or unreasonably for continuing to decline the claim. I say this because whilst E's mechanic said it was standard practice for an oil pump to be changed during an engine refit he wasn't able to point to any particular document showing that this was standard practice across the whole industry – rather he referred to a web search he carried out during the call with Capital One's agent.

In addition, report2 and report3 directly contradict each other about what led to the car's failure – report2 said it was the crankshaft and report3 said it was the oil pump and neither party (D or E) seems to have carried out a thorough examination of the car in the way C suggested would need to be done i.e. by taking the engine apart to examine the cause of the problem. The lack of thorough examination of the car by any of the mechanics involved in the reports as well as the inadequate answers to its questions, appears to be the basis for Capital One declining Mr A's claim. And given the (technical) nature of the claim, I don't think Capital One has acted unfairly or unreasonably for not accepting it is liable under section 75 of CCA for breach of contract.

Mr A responded to my provisional decision making several points which I've summarised above. To be clear, in terms of how Capital One assess the section 75 claim, I don't think Mr A has provided any new persuasive evidence that Capital One acted incorrectly when it declined his claim under section 75. In addition to what I've set out above, I'll add the following reasons for reaching my decision as to why I'm not upholding this complaint:

- I don't think there is any dispute that Capital One initially said the report authored by D was detailed enough for it to accept liability under section 75. But because D's mechanic wouldn't provide further information to support their (report2) findings, I don't think Capital One acted unreasonably or unfairly when it said that it wouldn't accept liability.

- I take on board what Mr A says about the insurance point being misrepresented. This point relates to comments made by T (the garage who fitted the engine). But as far as I can tell, Capital One didn't base its decision not to accept liability on this particular issue.

- Similarly, I've noted what Mr A has said about the marker added to his credit file. But again, from what I can tell, the issue was that Capital One didn't think the expert reports were sufficient to show there had been a breach of contract for which it should be held liable under section 75. I want to make it clear to Mr A that I've considered all relevant information. I note his comments about the marker on his credit file and the

impact he says this has had on his claim. But as I've set out above, I'm satisfied Capital One gave a reasonable basis for declining his claim for breach of contract.

- Mr A says that the 'secure yard' (i.e. secure parking facility of C) issue has been disproven, and he maintains D's conclusions should've been accepted by Capital One. But Capital One did seek clarification about these points from D. And the questions it asked to support what is, in effect, a legal claim against it, were questions its (D's) mechanic should reasonably have been able to answer. I'm satisfied that Capital One has acted fairly and reasonably in the way it assessed the information it received from D and the subsequent report by E.

- I note Mr A says being asked so many questions led to the respective garages 'disengaging' with Capital One. But, in my view, I consider Capital One, in seeking to decide whether it should settle a legal claim, wasn't being unfair or unreasonable when it asked a number of questions to the garages who put their name to relevant reports.

- Mr A says that Capital One directed him to incur car hire and diagnostic costs which it said would be reimbursed. My understanding is (and this seems supported by the correspondence between Mr A and Capital One including calls with Capital One's agent) is that he would only be reimbursed if his claim was successful. As the section 75 claim wasn't successful, I don't think Capital One is acting unfairly by not reimbursing Mr A for these costs.

For all the above reasons, my decision remains that I'm not upholding this complaint. I appreciate this is not the outcome Mr A was hoping for. As noted above, my role is to look at things informally. So, if Mr A disagrees, he can reject my decision and pursue matters by alternative means if he wants, such as court (seeking appropriate advice in the process).

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 February 2026.

Yolande Mcleod
Ombudsman