

complaint

Mrs L complains that Nationwide Building Society rejected a claim she made under section 75 of the Consumer Credit Act 1974.

background

Mrs L's daughter bought a car through a garage. I'll call this 'garage Q' and Mrs L's daughter 'Miss L'. Mrs L paid a deposit for the car using her credit card on 6 August 2016 and her daughter took ownership of the car on 14 August 2016, after the remaining balance was paid. It's not clear if the remaining balance was also paid from Mrs L's credit card account.

Between those dates Mrs L arranged for the cambelt to be replaced through garage Q – the work was actually carried out by another garage, which I'll call 'garage A' and this cost £240, which Mrs L paid for.

Some months later the car broke down, due to a water pump failure. This cost in excess of £2,700 to fix as the engine had to be replaced. Mrs L believes the water pump failure means the car wasn't of satisfactory quality when it was sold, and so there has been a breach of contract (she says water pumps are recommended to be replaced at the same time as cambelts and this wasn't done).

Mrs L made a section 75 claim to Nationwide which was declined. So she complained about that decision. Nationwide didn't uphold the complaint as it said the payment to fix the cambelt was made to a garage A not garage Q and it wasn't made using the credit card. It therefore believed a separate contract was entered into with garage A, and as the payment wasn't made using the credit card, it wasn't covered under s75. It did, however, offer to pay Mrs L £500 as this is the amount that would've been covered under the warranty for the repairs – but the warranty appeared to have been put in place too early, and so expired before the car broke down.

Mrs L didn't accept the offer and brought the complaint to this office as she didn't think her rights under the Consumer Credit Act 1974 or Consumer Rights Act 2015 had been met. One of our investigators looked into the complaint but didn't uphold it. She wasn't satisfied that the provisions of the Consumer Rights Act 2015 applied and she didn't think Mrs L had shown there had been a breach of contract.

Mrs L has asked for the matter to be referred to an ombudsman. In summary, Mrs L believes the provisions of the Consumer Rights Act 2015 do apply to the transaction. She argues she has shown there has been a breach of contract by the supplier as there was a significant failure of the car within the first six months, and so the fault must have been present at the time it was bought; the burden to show this doesn't fall with the customer.

She further argues that as she has a like claim against credit provider, under s75, she should be reimbursed the cost of replacing the engine.

I issued my provisional decision on 26 September 2017 explaining why I wasn't minded to uphold this complaint.

my provisional decision

I would firstly like to reassure Mrs L that although I have only summarised what she's said above, I have read all of her arguments in their entirety.

Nationwide argues that a separate contract was entered into with garage A for replacing the cambelt and as this was separate to the contract to buy the car, s75 doesn't apply (as well as the cost for replacing the cambelt not being paid for by credit card). I'm not sure I necessarily agree with that. Mrs L made the request for the cambelt to be replaced to garage Q and was part of the negotiations for the car. So I think it probably was part of the contract for the car itself.

I can also see Mrs L's point of view about the Consumer Rights Act 2015. If a fault does occur within the first six months, the onus is on the supplier to show it didn't exist at the time of the sale or show the issue is due to wear and tear. Contrary to Mrs L's arguments a water pump can wear – wear and tear isn't limited to items like tyres and breaks – so it's possible the failure was as result of wear and tear. But garage Q hasn't shown that despite being given an opportunity to do so. If a fault is significant that could mean the car wasn't of satisfactory quality when it was sold and so that would be a breach of contract. In such circumstances, a customer could have a claim against a credit provider for breach of contract under s75.

But neither of these points advances Mrs L's case. She is quite right when arguing that the first issue we need to consider is whether s75 applies. And having considered that I'm not currently minded to say it does.

Section 75 allows claims of misrepresentation or breach of contract against a supplier to have an equal claim against a lender, but only in relation to a debtor-creditor-supplier agreement; a three party relationship. But that's not the situation here. The car was sold to, and is owned by, Miss L not Mrs L. So the contract for the goods was between garage Q and Miss L, even if the car was initially bought and paid for by Mrs L.

Because of that, there is an extra party in the agreement, Miss L, which means the agreement isn't a debtor-creditor-supplier agreement. It follows from that, that Mrs L doesn't have a claim against Nationwide under s75 of the Consumer Credit Act 1974.

I know I'm writing in terms that are bound to disappoint Mrs L, not least because she's been given the impression s75 applies to the transaction. But as I'm not persuaded s75 applies to her claim, I don't think it would be fair to ask Nationwide to reimburse her costs for replacing the engine.

Lastly, Nationwide offered £500 as the warranty for the car was started earlier than it should have been; and this would've been the amount the warranty would've covered towards the cost of the repairs. It's not clear in whose name the warranty was, but Nationwide has confirmed it sees no reason why the offer doesn't stand. In all the circumstances, I find this offer to be fair, and I simply leave it to Mrs L to decide if she wants to accept it. If Nationwide is no longer offering this amount then I ask it to let me know in response to this provisional decision.

Nationwide has confirmed it has nothing further to add. Mrs L disagrees with the outcome, in summary she's said:

- She paid for the car, negotiated for it and paid for the work to be done. She also paid for the repair to be completed.

- Although the car is in her daughter's name this was so she could be insured as the main user and build up her own insurance history. Both Mrs L and her husband also use the car and are insured as name drivers.
- Her daughter made no financial contribution towards the purchase of the car.
- The relationship and contract with the supplier is Mrs L's.

my findings

I've considered all the available evidence and arguments, including the responses to my provisional decision, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional decision.

I understand Mrs L paid for the car and for the work to be done, this was something I acknowledged within my provisional decision. So this was something I was already aware of and had taken into account when reaching my provisional findings.

I also accept Mrs L and her husband are both named drivers and both drive the car from time to time. But it nevertheless remains that the car is registered in Miss L's name and she is the main driver for insurance purposes; the car is Miss L's not Mrs L's.

As explained in my provisional decision that means there are four parties connected to the purchase of the car. A debtor-creditor-supplier agreement is a relationship between three parties, not four. Because of that I remain satisfied that the necessary relationship doesn't exist for Nationwide to be equally liable for any breach of contract or misrepresentation under s75 of the Consumer Credit Act 1975.

It's possible Mrs L and her daughter might have a claim under the Consumer Rights Act 2015 against the garage that sold the car. But that's something they will need to look into and is separate to this complaint.

I appreciate Mrs L feels very strongly about this, understandably given what's happened and the further expense that's been incurred. But as I'm not persuaded Nationwide is liable under s75 of the Consumer Credit Act 1974 I won't be asking it to do any more than it already has.

Nationwide didn't correct my understanding of whether the offer of £500 still stood. I still don't know whose name the warranty is in, so I simply leave it to Mrs L to decide whether on reflection she now wants to accept that offer. If she does, she should contact Nationwide directly.

my final decision

For the reason given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 November 2017.

Claire Hopkins
ombudsman