

The complaint

Mr B says Capital One (Europe) plc (who I'll call Capital One) were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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 think Capital One haven't been reasonable here and I'm asking them to take some further action. I'll explain why.

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 a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a legal claim that Mr B may have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

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.

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. Mr B's car was about ten years old when he purchased it and it had already completed over 50,000 miles. I think a reasonable person would expect it to, therefore, be showing signs of wear and tear and in my opinion the broken heated wing mirror is an example of

such wear and tear. I don't, therefore, think Capital One were unreasonable to reject that aspect of Mr B's section 75 claim.

I think a reasonable person would expect the air conditioning to be working even on a car of this age and mileage. Mr B has explained that the air conditioning was re-gassed before he took receipt of it, yet only a couple of months later an independent garage noted a leak in the air conditioning pipes that needed repairing. 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 sale. So, I think this is a fault that demonstrates the car wasn't sold in a satisfactory condition.

In those circumstances, I think Capital One were unreasonable to reject that aspect of Mr B's section 75 claim. They should refund the £1,894.71 repair cost.

The car was serviced before Mr B took receipt of it. The service schedule suggested that the spark plugs should be replaced but they weren't, and Mr B subsequently paid for that work to be completed. Capital One have accepted responsibility for that issue and have offered to refund the cost Mr B incurred. No further action is required.

Putting things right

Capital One should refund the cost of repairs completed to the air conditioning.

My final decision

For the reasons I've given above, I uphold this complaint and tell Capital One (Europe) plc to refund the £1,894.71 it cost Mr B to have the air conditioning repaired.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 January 2024.

Phillip McMahon
Ombudsman