

The complaint

Ms R is unhappy because Bank of Scotland plc trading as Halifax declined her claim under section 75 of the Consumer Credit Act 1974.

What happened

In April 2022 Ms R purchased a second hand car from a dealership. She paid a deposit of £1500 using her Halifax credit card and paid the balance of £1795 by bank transfer.

Soon after getting the car Ms R had to replace all four tyres because the existing tyres weren't roadworthy. Soon after this the car broke down. Ms R paid for repairs totalling £1326.00.

Ms R contacted Halifax in June 2022. Halifax raised a chargeback claim under 'goods not as described' for the £1500 Ms R had paid on her credit card.

The dealership who sold the car to Ms R disputed the chargeback. It said Ms R hadn't reported the issues to them and that they hadn't been given the opportunity to inspect the car and repair any faults.

Halifax advised Ms R that the dealership had disputed the chargeback claim. Ms R told Halifax that she wanted a full refund of the cost of the car and not just the deposit. Halifax therefore passed the claim to the section 75 team to review.

Halifax declined the section 75 claim. It said that because Ms R had the car repaired without giving the merchant the opportunity to repair the fault, it didn't think there had been a breach of contract.

Ms R remained unhappy and complained to this service.

Our investigator didn't uphold the complaint. She said that Halifax had acted fairly when it declined the section 75 claim.

Ms R didn't agree. She said there had been a breach of contract because the tyres weren't legal when the car was sold to her.

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.

In certain circumstances section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Ms R's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Halifax's response to the claim under section 75 wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality at the point of supply. If they

aren't then a breach of contract can be said to have occurred.

Ms R has said that the car wasn't of satisfactory quality because it was supplied with tyres which weren't roadworthy. She's also said that the car broke down soon after it was supplied and that it needed significant repairs.

Ms R purchased the car on 21 April 2022 with a new MOT of the same date. Ms R had a flat tyre on 29 April 2022 and took the car to a tyre specialist who advised her that all four tyres needed to be replaced.

Ms R has provided an invoice from the tyre specialist dated 29 April 2022 showing that all four tyres were replaced at a cost of £676.33.

I appreciate that Ms R feels that she shouldn't have had to replace the tyres so soon after getting the car. However, tyres are a wear and tear item on a car and the fact that the car may have been supplied with tyres which had very little tread left in them doesn't make the car of unsatisfactory quality. Tyres are checked at an MOT, and I can see that Ms R's car passed an MOT on the same day that it was supplied to her, so I can't conclude that the tyres were illegal or unroadworthy at the point of supply. For these reasons, I'm not persuaded that there was a breach of contract arising from the condition of the tyres.

I've gone on to consider whether the issues which caused the car to break down were faults which made the car of unsatisfactory quality. I can see that Ms R took the car to a garage for repairs on or around 8 June 2022. The garage repaired the car and provided a report dated 22 June 2022. The report identifies a number of issues with the car including issues with the timing chain, thermostat housing and exhaust. The report states that the issues would've been present at the point of supply.

There are some observations I need to make here. Firstly, I'm not able to treat the report from the garage as an independent expert report. This is because the author of the report is the garage chosen by Ms R to carry out the repairs. For a report to be independent – and for me to be able to attach weight to it as evidence – the report would need to be completed by a party who is independent of both Ms R and the dealership. This isn't the case here.

Further, and in any event, the report doesn't say what caused the car to break down. The issues identified in the report – the timing chain, the thermostat housing and the exhaust – are all component parts of a car which are susceptible to general wear and tear. Taking into account the age and mileage of Ms R's car, I think it's more likely that the car required the repairs for issues which were due to wear and tear, as opposed to an inherent fault.

I haven't seen enough evidence to persuade me that the car wasn't of satisfactory quality at the point of supply. Because of this, I'm unable to say that there's been a breach of contract arising from the quality of the car.

As I've explained above, in order for a section 75 claim to be successful, there needs to be evidence of a breach of contract or a misrepresentation. There isn't enough evidence to show either here. Therefore, I don't think Halifax acted unfairly or unreasonably when it declined the section 75 claim.

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 Ms R to accept or reject my decision before 29 August 2023.

Emma Davy
Ombudsman