

The complaint

Mr C complains about how Capital One (Europe) plc (“Capital One”) handled a claim he made in relation to a transaction on his credit card.

What happened

Mr C says he entered into an agreement with a company I’ll refer to as “P”, to hire a car. He paid for the car hire with his Capital One credit card in August 2023. He says the cost of the car hire was £623.58.

In September 2023, Mr C contacted Capital One and made a claim under section 75 of the Consumer Credit Act 1974 (“s75”). He said he was due to collect the car at 10am but it wasn’t ready for him until 11:30am. He said this was delayed performance of the contract. Mr C says the car broke down on 27 August 2023 at 2am and this was defected performance. Mr C says he wasn’t given any information by P about who to contact to resolve the issue and so, he paid £250 cash for a repair. He says he returned the car to P on 29 August 2023. Mr C says he complained to P, but it said Mr C should have contacted its customer service department. Mr C says P didn’t provide him with a contract. Mr C also complained to Capital One about its delays in considering his complaint.

Capital One issued its response to Mr C’s complaint in November 2023. It apologised for the delay in contacting Mr C and credited his account with £50.

Unhappy, Mr C referred a complaint to this service. He said he didn’t receive a contract from P and when the car broke down, he had to pay for out of pocket expenses. Mr C said Capital One didn’t respond to his complaint. He said he had been deprived financially due to the breakdown cost and stress caused because the breakdown happened in the late/early morning, in the middle of nowhere and when he didn’t have any mobile signal.

Our investigator looked into the complaint but didn’t think Capital One had acted unfairly. She said she hadn’t seen anything to suggest why the car broke down or what had been agreed with P in the event of a breakdown. She also said that she could see Mr C had been refunded £200 by P in late August 2023 and whilst Mr C said this was a refund of the deposit he paid, there was no supporting information to confirm this. She said without a copy of the contract, she couldn’t consider whether P had breached it or whether anything had been misrepresented to Mr C.

Mr C disagreed and said this service didn’t say an independent report was required and he hadn’t been sent a copy of the contract. He also said the repair invoice confirmed that the issue with the car was the battery and belt.

Our investigator said she didn’t think an independent report was required and so, this wasn’t requested. She said Mr C hadn’t mentioned that he had this and so, she considered the complaint based on all the information provided to her.

As Mr C remains in disagreement, the complaint has been passed to me to decide.

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've read and considered the whole file and acknowledge that Mr C has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

To make it clear, this complaint is about Capital One, as Mr C's credit card account provider. It's not about P, who isn't a financial service provider and so I don't have jurisdiction to consider a complaint about it.

I've considered whether I think Capital One acted unfairly when it considered Mr C's claim under s75.

Under s75, Capital One is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is P in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mr C made the purchase on his credit card which was supplied by Capital One. I have no copy of the invoice and so, it's unclear whether the goods were for Mr C's benefit or any other party. So, it's not clear whether a valid DCS agreement exists here.

There are also financial limits that apply to a valid s75 claim. Mr C needed to have purchased single items with a cash price of over £100, but no more than £30,000. The credit card statement shows a payment of £623.58 to P. As there is no invoice or agreement, it's unclear what Mr C contracted with P for.

However, given the nature of P's business, I'm prepared to accept that on balance, it's more likely than not that Mr C made a payment on his credit card in return for hiring a car and that the car hire price fell within the financial limits that apply to a valid s75 claim.

So, on balance, I think it's more likely than not that Mr C has a like claim against Capital One, as he does against P. And that P was acting as an agent of Capital One.

What I now need to consider is whether there was a breach of contract or misrepresentation that took place. I've considered this based on all the evidence provided by Mr C and Capital One.

In this case, no contract, agreement or invoice has been supplied by Mr C. I can see that Mr C has said he has had difficulty in obtaining this. In absence of this information, I can't fairly consider what the terms of the contract were, I can't fairly identify what specific car Mr C contracted with P to hire and I can't fairly consider what agreement Mr C had in place with P about any potential breakdowns. I also have no confirmation why P paid Mr C £200 in late August 2023. It's not clear whether this was a contribution to the breakdown costs or whether it was, as Mr C says, a refund of the deposit. It's also unclear whether Mr C agreed to purchase insurance from P to cover the cost of any repairs or breakdowns. And even if he did, I don't have any supporting information to show whether any purchased insurance would have likely covered the breakdown that took place.

In light of all this and with the absence of the agreement, invoice, contract or any further supporting information, I don't consider that there has been a breach of contract or misrepresentation.

Having said this, if Mr C is able to approach P and obtain a copy of the contract, he may decide to provide this to Capital One and it may review its current position.

Did Capital One act unfairly or unreasonably in any other way?

Mr C is unhappy with the delays caused when Capital One considered his complaint. Capital One has accepted that it caused a delay when considering the complaint and so, it offered Mr C £50 for the delay.

I can also see that Capital One emailed Mr C and requested he provide further information so it could investigate Mr C's complaint under s75. However, Mr C didn't provide this information and so, Capital One didn't provide a response to Mr C's complaint. Having thought about this carefully, I consider that Capital One tried to engage with Mr C in order for it to investigate his complaint. But it didn't receive the information it required. So I don't think it acted unfairly here.

Overall, I think the £50 Capital One offered for the delay in considering Mr C's complaint is fair and reasonable in the circumstances. Mr C should contact Capital One directly if he wishes to accept this amount and it hasn't already been paid to him.

My final decision

I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 December 2024.

Sonia Ahmed
Ombudsman