

## The complaint

Mr B complains about the way in which Nationwide Building Society dealt with his claim under Section 75 of the Consumer Credit Act 1974.

## What happened

On 29 October 2022 Mr B purchased a second hand car from a merchant and paid using his Nationwide credit card. The car cost £3,350.

Mr B kept the car in storage until 22 November 2022 when he gave it to his son as a present for passing his driving test.

On 28 November 2022 the engine management light illuminated. Mr B took the car to his local garage for a diagnostic. The garage said there was a cooling fault with the engine and advised Mr B to take the car back to the merchant.

Mr B tried to make contact with the merchant, but no-one returned his calls.

On 14 December 2022 the car lost power. Mr B took the car back to his local garage. The garage fixed an issue with the brakes.

On 17 January 2023 the engine overheated. Mr B managed to get a response from the merchant who said the car was out of warranty and it wasn't prepared to help.

Unable to resolve things with the merchant, Mr B complained to Nationwide and raised a claim under section 75.

Nationwide began an investigation under section 75. It asked Mr B to provide evidence that the fault with the car was present at the point of supply. Mr B provided a report from the garage that he'd initially taken the car to, but Nationwide said this wasn't sufficient. Nationwide then asked Mr B to provide a quote for repairs to the car. Mr B provided two quotes, but Nationwide rejected these as being too expensive.

Mr B brought his complaint to this service.

I issued a provisional decision in which I upheld the complaint. I said that having reviewed the available evidence, I was satisfied that there was a fault with the engine cooling system. I said I appreciated that Nationwide didn't think that the report from the garage was sufficient, however, having reviewed the report, I don't think it was reasonable for Nationwide to dismiss it. I said the report clearly evidenced a fault, and although Nationwide had suggested that Mr B was friends with the mechanic, I hadn't seen any evidence to support this, or anything to give me reason to doubt the reliability of the report.

I went on to consider whether the car was of satisfactory quality. I said that because the fault had occurred within a short time of the point of supply, there was a presumption under the relevant legislation that the fault was present at the point of supply unless the business could show otherwise. I said the merchant hadn't provided any evidence to rebut the presumption.

I explained that under the relevant legislation, the merchant was allowed one opportunity to repair the fault. I noted that the merchant had refused to help Mr B on the grounds that the warranty had expired. I said the warranty was irrelevant in the context of Mr B's rights under The Consumer Rights Act. I found that by refusing to repair the fault, the merchant had denied Mr B his rights under the relevant legislation, including the right to reject the car.

I concluded that there had been a breach of contract and that Nationwide was liable under section 75.

In terms of redress, I said that I had seen two quotes obtained (at Nationwide's request) by Mr B, which had subsequently been rejected by Nationwide on the grounds that the repairs weren't commercially viable. Having looked at the cost of repairs, I said it wasn't unreasonable for Nationwide to decide not to repair the car. But I said that in the circumstances, Nationwide had to put Mr B back in the position he would be had the breach of contract not occurred. This meant refunding the purchase price of £3,350.

I also said that Nationwide could've handled the section 75 claim better and that it had treated Mr B unfairly at times during the section 75 process. I said that Nationwide should pay compensation of £300 for the additional trouble and upset caused to Mr B.

I invited both parties to let me have any further comments or arguments they wished to raise.

Nationwide responded and said it had always been happy to refund the purchase price, but it didn't wish to take ownership of the car. It said it had made it clear to Mr B that if he sold or scrapped the car, it would cover the difference between the proceeds of sale/scrappage and the purchase price. Nationwide said with this in mind, it wanted Mr B to confirm what he intended to do with the car.

Mr B didn't respond to the provisional 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've taken account of what Nationwide has said. I appreciate that Nationwide doesn't want to take ownership of the car. That being the case, I don't think it's fair to expect Mr B to have to wait until he's been able to sell or scrap the car before the settlement can be finalised.

Based on what I've seen, Mr B hasn't been able to use the car for several months and its condition is likely to have deteriorated to the extent that there will be some costs involved in disposing of it, as well as further inconvenience for Mr B. I've also seen reference to Mr B having to pay storage costs. So, on the basis that Nationwide doesn't want the car, it's up to Mr B to dispose of it as he wishes. Any proceeds of sale or scrappage value he receives can be retained by him and offset against the costs of storage, disposal and the further inconvenience caused to him.

### **Putting things right**

To put things right, Nationwide Building Society must:

Refund the purchase price of £3,550 and re-work the credit card as if the purchase hadn't taken place

Pay 8% simple interest per annum on the amount refunded calculated from the date of

payment to the date of settlement

Pay compensation for trouble and upset in the sum of £300

**My final decision**

My final decision is that I uphold the complaint. Nationwide Building Society must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 July 2024.

Emma Davy  
**Ombudsman**