

The complaint

Mr R says Bank of Scotland plc, trading as Halifax, were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

Mr R commissioned an independent inspection report from a company I'll call 'Z' in order to demonstrate the car he had was faulty. He paid £360 for the report with his Halifax credit card.

Z didn't think there was evidence the car was faulty, but Mr R didn't think they'd completed the inspection properly. He thought they should have connected the car to a diagnostic tester and that if they had they would have identified the fault with the battery that he was complaining about. He asked Z for a refund and when they refused, he raised a Section 75 claim with Halifax.

Halifax declined the claim as they didn't think there had been a breach of contract or misrepresentation.

Mr R referred his complaint to this service, but our investigator didn't think Halifax had been unreasonable to reject the claim as he thought Z had done what had been asked of them.

Mr R disagreed. He said Z were contracted to diagnose a fault and that based on their marketing material and what he been told by Z, a diagnostic was supposed to have been carried out. He asked for a final decision by an ombudsman.

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 know it will disappoint Mr R, but I'm not upholding this complaint. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

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 with a credit card, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The instructions that were provided to Z before they carried out the inspection didn't ask them to carry out diagnostic testing. They explained that the car was losing power, and the dealership hadn't been able to find fault; that Mr R hadn't been achieving the range he would have expected, and that the inspector should "*inspect and provide a report with regards to the vehicle's battery consumption*".

I think the report from Z did that. The test drive demonstrated that the "mileage per charge" that the car was attaining was in line with expectations. The report went on to explain why range may vary.

While it is clear from the materials Mr R has provided, that Z can perform diagnostic testing, I can't fairly say there was an agreement to do that on Mr R's car.

Overall, I don't think there is sufficient evidence of a breach of contract or of misrepresentation and, in those circumstances, I don't think Halifax were unreasonable to reject Mr R's claim.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 December 2024.

Phillip McMahon
Ombudsman