

## **The complaint**

Ms K complains that Capital One (Europe) plc rejected her Section 75 claim regarding a car she purchased.

## **What happened**

Ms K says that she had issues with a car that she bought. She says there was a tear in the leather of the car even though she had been told there was no wear and tear. Ms K says the dealer offered her £200 as a goodwill gesture, but she did not accept this, as she says she couldn't get the car repaired for that cost. Ms K raised a claim under Section 75 of the Consumer Credit Act (CCA) 1974 with Capital One, but this was rejected. Ms K made a complaint to Capital One.

Capital One did not uphold Ms K's complaint. They said they were unable to continue Ms K's claim under the CCA as she did not meet the criteria. Ms K brought her complaint to our service.

Our investigator did not uphold Ms K's complaint. She said she thought Capital One completed a thorough investigation and reached a fair outcome. She said there was no evidence that there was a misrepresentation that induced Ms K to enter into the agreement. Our investigator said that Ms K was aware of the tear before leaving the supplying dealer, and she continued with the sale.

Ms K asked for an ombudsman to review her complaint. She said she took the car for the tear in the car door to be assessed, and they gave an official quote on how much it would cost to repair the tear in the car door which was considerably more than the £35 she'd been quoted by the dealer.

## **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.

Firstly, I'm aware that I've only summarised Ms K's complaint points. And I'm not going to respond to every single point made by her. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I must be clear to Ms K that I can only focus on the actions of Capital One as part of this complaint, as other third parties that are involved here such as the dealer she used to buy the car from do not come under this service's jurisdiction to consider any role they have played in what happened here.

When someone makes a payment on their credit card, in order to make a valid Section 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. Section 75

gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because section 75 of the CCA itself is worded in the following way:

*“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”*

The debtor in this case is Ms K, because she paid part of the car purchase using her Capital One credit card. The transaction financed by the credit card account was the order of the car, and the supplier was the dealer. Section 75 says that it is the debtor who needs to have a claim against the supplier in respect of a misrepresentation or breach of contract.

I've reviewed all of the evidence that Ms K has provided Capital One and our service. I've considered what she has said about being forced into buying the car. She's told us that the manager of the dealership refused to give her a refund when she said she wasn't interested in buying the car anymore.

But the dealer told Capital One as part of their investigations that when Ms K mentioned the rip she was informed the car's condition aligns with its age and mileage. They told Capital One that despite the clarification Ms K continued to settle the remaining balance, and she signed all of the necessary paperwork.

As it's one word against another here, I've considered what the terms and conditions of the sale shows about cancellation. Section 23 of the terms state that *“to exercise this right to cancel, you must inform us of your decision to cancel this Agreement in writing in clear statement (e.g. a letter sent by post, fax or email) to our address as set out overleaf”*.

Neither party have produced any evidence that Ms K attempted to cancel the purchase within the relevant timeframe in writing. A verbal request would not satisfy the requirement set out in the terms, so I can't say that Capital One should have acted differently based on Ms K saying she was forced into buying the car in the absence of written evidence that she tried to cancel the purchase.

So I've considered if there was a misrepresentation or breach of contract here. The original advert for the car is not available, so I can't see what was advertised. The dealer has provided evidence to Capital One of a *“Vehicle condition delivery report”*. This document states *“It is understood your car is not brand new and will have some signs of wear and tear, unfortunately age and mileage catch up with us all!”*

At the end of the report it states *“Only sign this once you have visually inspected the condition of the exterior and interior.”* And Ms K has signed the form. So I'm persuaded that she would have been aware of the tear prior to her driving away from the dealer. So I'm unable to conclude that Ms K met the criteria under Section 75 of the CCA, and therefore I can't say that Capital One treated Ms K unfairly with her claim.

The dealer told Capital One that their interior repair specialists estimate the repair to be a quick 15 minute job costing around £35. I've reviewed the various quotes Ms K has received about how much it would cost to repair the tear. But as the Section 75 claim was unsuccessful, the difference of the quote from the dealer and the companies she's received a quote from become immaterial to the complaint she's brought against Capital One, as regardless of the cost of repair, I can't conclude that Capital One should have given her a

different outcome on her claim.

That's not to say that I don't sympathise with Ms K's position about how much the repairs may cost her. But it would not be proportionate for me to ask Capital One to uphold her claim based on the evidence they were provided by both sides here, as I can't evidence a breach of contract or that there was misrepresentation here. I do note that the dealer offered Ms K £200 compensation as a gesture of goodwill. While I'm aware this wouldn't cover the costs of the repairs from the different quotes Ms K has received, this may be an avenue Ms K wants to take up so she will receive at least something towards the repair costs. But it follows I don't require Capital One to do anything further.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 2 October 2024.

Gregory Sloanes  
**Ombudsman**