

## **summary of complaint**

Mr C's complaint relates to a claim he made under section 75 of the Consumer Credit Act 1974 ("section 75"). He bought a car paying part of the money using his credit card issued by Capital One (Europe) plc ("Capital One"). He complains that the "sleep mode" feature of the car was not explained to him when he bought it and it is a design fault. He is dissatisfied with Capital One's decision to decline his claim.

## **our initial conclusion**

Our adjudicator did not recommend that the complaint should be upheld. She concluded that as there was no discussion about the sleep mode prior to the car being bought this meant that no misrepresentation occurred which could have induced Mr C to buy the car. She also concluded that the sleep mode is a feature of the car and not a fault.

Capital One accepted this recommendation. Mr C did not. In summary, he reiterated his earlier stance that he had a valid claim for misrepresentation and breach of contract in relation to the sleep mode. He repeated that he could not use the car as intended because the storage options he has available to him mean that he is unable to access his car when it is parked in his garage. He feared that this function could leave him stranded as he lives in a remote area. He has not used the car for over a year and it was damaged by the supplier when it was left in their possession and has missed its two year service.

Therefore, Mr C asked that an ombudsman to review his complaint.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where necessary and/or appropriate, I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in the light of the evidence that is available and the wider surrounding circumstances.

Mr C has described how he decided to buy the car as a kind of "treat" for himself after many years of hard work. I can well understand his sense of consternation when he discovered he could not use the car as he wanted and expected to be able to use it. I do sympathise with Mr C's situation but my role is limited to considering whether a valid claim arises against Capital One as a result of this.

Section 75 provides that a consumer has a like claim against the supplier and the lender for any misrepresentation and/or breach of contract. Mr C has claimed misrepresentation on the grounds that the 'sleep mode' was not communicated to him at the point of sale. He also says that the car was not fit for purpose and that his claim should succeed because of the rights he has under the Sale of Goods Act.

A misrepresentation can occur when a statement has been made which was not true or that was misleading, and the consumer relied on that statement when buying the goods. Mr C tells us that the 'sleep mode' function was not discussed at the point of sale so, in the circumstances I am not persuaded that an absence of a discussion about this particular function could be deemed as misrepresentation. I would not expect the supplier to discuss

each and every feature of a car in all circumstances. Further, I am not persuaded that the supplier remained silent about this feature in an attempt to mislead Mr C about the car.

From what Mr C says it seems that the activation of the 'sleep mode' is causing him some difficulties when he is parking the car in his garage in particular. The car came with this built-in security feature and although this particular feature may not be ideal to Mr C's personal circumstances, I am not persuaded that the car could be considered as defective or not fit for purpose on account of this.

Having considered the overall circumstances of the complaint, I do not consider that there are grounds on which Mr C could make a valid claim against Capital One. I note his comments about the damage to his car whilst in the supplier's possession but that aspect of his complaint is outside the scope of this complaint. He will need to refer it to the supplier directly.

**my final decision**

My final decision is that I do not uphold this complaint.

Joyce Gordon  
**ombudsman**