

## The complaint

Mr M has complained about the way Santander Consumer (UK) plc T/A Volvo Car Financial Services (SCUK) dealt with a car he acquired under a conditional sale agreement with it.

## What happened

Mr M acquired a car under a four-year conditional sale agreement with SCUK in September 2020. The cash price of the car was £25,595. Monthly repayments were around £380 and there was a final payment of around £8,000.

Mr M's daughter used the car, and I understand was the registered keeper. She says she was the victim of a crime because her ex-partner took the car that'd been acquired under the SCUK agreement without permission. The car was in an accident, and it was seized by the police. SCUK's notes say it received an alert on 5 July 2022 that the car had been seized for 'no insurance/driving licence', and that the car was damaged. SCUK arranged to collect the car. SCUK spoke to Mr M in July 2022 and its notes say his daughter was going to deal with things including the insurance. The notes also say SCUK told Mr M to arrange for the insurance company to speak with it direct.

Mr M's daughter (and another representative) spoke to SCUK who said it was happy to release the car to an insurance company. It asked for authorisation because it wanted the repairs done properly, and that it held full interest in the car. It looks like Mr M was unhappy SCUK was asking for details of his insurance because he acquired the car for his daughter to use. So SCUK asked for his daughter's insurance information and driving licence.

SCUK's notes say Mr M's daughter told it the car had been stolen and involved in a crime. They go on to say no claim was made through insurance because the policy wasn't in her name – although she says her ex-partner was insured. It looks like SCUK asked Mr M's daughter to arrange for Mr M to call it to discuss options.

Towards the end of July 2022 SCUK said Mr M had breached the agreement. It referred to terms 4.4 and 4.5 of the conditional sale agreement that says:

*4.4 You will not use or let anyone use the goods illegally. You will not let anyone obtain any rights (including liens) over the goods or let anyone take or threaten to take them to pay any debt that you owe. You will keep the goods in your possession and under your control and will not sell, transfer, mortgage, lend or give the goods to anyone.*

*4.5 You will not allow the goods to be seized or removed by the police under a statutory power, this will be treated as a breach of the agreement. In the event that the goods are seized or removed we may take the goods into safe custody.*

SCUK said it wouldn't release the car unless it was to an insurance company, or it received everything due under the agreement. It pointed out Mr M had the right to voluntarily terminate the agreement or it could sell the car on his behalf. SCUK also explained a non-remedial

default notice had already been issued asking for full payment, and it wouldn't give the car back direct to Mr M or his representatives to arrange repairs

SCUK received a letter from the police setting out Mr M's daughter's ex-partner had taken the car without permission. There was some back and forth about SCUK obtaining details of the insurance. It looks like things reached a stalemate. Mr M's daughter complained and SCUK issued a final response saying it had acted fairly and that it would be willing to release the car to an insurance company to make sure the repairs were done properly.

Mr M continued to pay towards the agreement, and he referred a complaint to our service to consider.

Our investigator looked into things but didn't think there were grounds to direct SCUK to take action. She said she couldn't see Mr M or his daughter were insured to drive the car at the time of the accident. And that this was a requirement under the conditional sale agreement. She noted other breached terms of the agreement that SCUK had highlighted. And she said she could understand SCUK's reluctance to return the car – that belongs to it – without knowing the car would be assessed and repaired properly. She noted Mr M's daughter hadn't reported the car stolen. She also said she thought SCUK had treated Mr M fairly and that if the matter couldn't be resolved with Mr M's daughter's ex-partner's insurer, other options should be explored to end the agreement.

Mr M's daughter didn't agree. She said she didn't report the car stolen because she was the victim of domestic violence. She said the car was insured at the time of the accident (by her ex-partner) and that there was a claim put in against the other party involved. She said she was insured up until the end of June 2022 and that her partner took out a policy after that. Rather than going back to SCUK to discuss things, she wanted all options looked at.

As things couldn't be resolved the complaint has been passed to me to make a 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 first want to say I'm sorry to hear about what Mr M and his daughter have been through. It can't have been easy. And I want to thank Mr M for taking the time to bring his complaint to our service.

I also want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr M and SCUK that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr M acquired the car under a regulated conditional sale agreement, and our service is able to deal with complaints about these sorts of agreements.

There are certain parts of the complaint that don't seem to be in dispute. It's not in dispute the police seized the car after it was taken from Mr M's daughter by her ex-partner without permission and that it was in an accident. Terms 4.4 and 4.5 that I've mentioned above refer to not allowing the car to be used by someone illegally, losing possession of it, or allowing it to be seized. It looks like the arrangement was for Mr M's daughter to use the car, even though Mr M was SCUK's customer. SCUK doesn't seem to have an issue with this, in this

case. I don't think Mr M or his daughter *allowed* the car to be taken. But it's not in dispute they weren't in possession of the car.

I've thought about the circumstances here. Clearly, SCUK would want either Mr M or his daughter to be insured on the car. That's part of the terms of the agreement. So when it found out the car had been in an accident and, at that point, neither Mr M nor his daughter were insured I think it's reasonable it would have been very concerned. And it may have had strong grounds to terminate the agreement.

When SCUK found out the car had been seized after the accident it did what I'd expect by arranging recovery. And once it had authority to speak to Mr M's daughter and found out the car had been stolen it asked if an insurance claim had been put through which is also what I'd expect.

It wasn't clear if Mr M's daughter or her ex-partner were insured on the car when SCUK initially spoke to her. SCUK had concerns that if the car had been involved in a crime it might not be covered under a policy. SCUK's notes indicate it said Mr M's daughter could find this out, which seems fair. And it also said it would go through the options with Mr M which also seems reasonable.

I think SCUK tried to work with Mr M and his daughter to help resolve things. It held off from terminating the agreement and it offered to work with the insurance company. I think that was fair of it.

The letter from the police says Mr M's daughter was the victim of a crime on 5 June 2022. Ms M's daughter said the car was stolen in June, so I think this is what that refers to. Mr M's daughter said she reported the car stolen and had cancelled her insurance because she wasn't the one driving. She's told our service she was insured up until the end of June 2022 and that her ex-partner took out a policy in his name after that.

It's not clear why Ms M's daughter didn't contact SCUK or her insurer when the car was stolen. But she's mentioned she was the victim of domestic violence which might explain why she didn't. As I explained above, I'm very sorry to hear that. But I'm considering how SCUK have acted. I don't think it's unreasonable for SCUK to have expected an insurance claim to be raised as it would have reasonably thought either Mr M or Mr M's daughter were insured when the car was stolen. And Mr M's daughter's submissions indicate she was insured at that point up until the end of June.

However, what doesn't seem to be in dispute is that neither Mr M nor his daughter were insured on the car from July 2022. And this is a breach of the terms of the agreement. It's also curious the notification SCUK received was that the car was seized for 'no insurance/driving licence'. Taking this into account, along with the other circumstances around it being involved in an accident, being seized, and having been stolen but with no notification being made to SCUK, I can understand why it wasn't willing to simply return the car to Mr M.

SCUK said it would speak to an insurance company because it wanted to make sure the repairs would be carried out properly. Moreover, SCUK has said it doesn't know the extent of the damage to the car. The car could be a write-off or may have significant damage. So I can understand why it may have felt it was prudent for an insurance company to be involved in determining what's wrong. As the owners of the car and in light of the circumstances I don't think that's unfair. It also sought to let Mr M know about the other options he had such as voluntary termination and surrender. Which I also find to be fair.

I agree with our investigator that it's not fair Mr M is left in limbo. It seems unlikely at this stage that Mr M or his daughter are going to be able to resolve things via the third-party insurance company. Perhaps Mr M's daughter can speak to her own insurer about the car being stolen, as this seems to have happened while she was covered. That's ultimately up to her. But I'm not going to direct SCUK to terminate the agreement because that could put Mr M in a worse position and cause detriment.

SCUK was put in a difficult position – it wanted to give Mr M enough breathing space to sort things out. But that can't go on forever. So I will echo what our investigator has said and recommend Mr M, or his daughter, speak to SCUK (or the insurer) to discuss a way forward. As I've said above, it looks like Mr M's daughter may be able to raise a claim because the car was stolen when she had cover. Alternatively, with the agreement still being active Mr M has the right to voluntarily terminate the agreement. SCUK has also indicated it would allow him to surrender the car. And Mr M can still settle the agreement to have the car returned. SCUK will be able to give Mr M more details about these options if he wishes.

In all the circumstances, given the car was stolen and seized; the theft was not reported to SCUK; it seems as though Mr M's daughter had the option to put in a claim to her insurance company; the car wasn't insured by Mr M or his daughter when it was in an accident; and we don't know the extent of the damage, I don't find I have the grounds to direct SCUK to return the car to Mr M at this stage. So, while I know it'll come as a disappointment, I'm not going to be making any directions. I'll remind SCUK to treat Mr M with forbearance and due consideration if there's any financial difficulties.

### **My final decision**

My final decision is that Santander Consumer (UK) plc T/A Volvo Car Financial Services has dealt with things fairly and I make no directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 July 2023.

Simon Wingfield  
**Ombudsman**