

The complaint

Mr L complains that Sainsbury's Bank Plc declined his claim under section 75 of the Consumer Credit Act 1974 in regard to a car he had paid for using his Sainsbury's Bank credit card.

What happened

In December 2021, Mr L bought a used car. He paid a £500 deposit on 10 December 2021 and the balance of £3,290 on 16 December 2021. Both payments were made using his Sainsbury's Bank credit card. Mr L says that he noticed faults with the car straight away and the dealership said these would be fixed. However, he says after two months the car was returned to him and still had issues. Mr L took the car to get independent assessments and decided to pay for repairs to get the car roadworthy.

Mr L started court proceedings against the dealership and obtained a default judgment in March 2023 in which he was awarded around £6,774. Mr L says he hasn't been able to recover this money.

Separate to the court proceedings, Mr L raised a Section 75 claim with Sainsbury's Bank. Sainsbury's Bank declined Mr L's claim. It said that the dealership had provided Mr L with the option to return the car but as Mr L hadn't done this it couldn't determine if the correct works would have been carried out or a refund offered. Sainsbury's Bank did find that it hadn't provided the service it should have in regard to his complaint and credited his account with £150 because of this.

Mr L wasn't satisfied with Sainsbury's Bank's response and referred his complaint to this service. Our investigator upheld this complaint. She didn't think the car was of satisfactory quality at supply and said that there had been a breach of contract. She recommended that certain repair costs were refunded to Mr L.

Sainsbury's Bank didn't agree with our investigator's view. It noted the age and mileage at the point of purchase and said there wasn't evidence that the car wasn't fit for purpose unsafe or undriveable. It didn't agree that there had been a breach of contract and as the car was sold as seen there was no misrepresentation.

Mr L responded to our investigator's view. He said that he had received the court judgement over a year before and had tried to resolve this. He said he had hardly used the car in the past two years and has been incurring costs for insurance, tax and the MOT. Mr L said he was at risk of a significant financial loss as well as having endured many months of stress which had affected his mental health. He said he had paid over £7,500 for repairs, court costs and bailiff fees and he should be refunded this along with being paid compensation for the upset he has been caused.

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.

Under Section 75, a consumer can raise a claim against the finance provider (subject to certain conditions) if there has been a breach of contract or misrepresentation by the supplier.

Mr L was a consumer, provided with a used car by a trader. The Consumer Rights Act 2015 has the effect of incorporating into the contract a term that the car will be of satisfactory quality at the point of supply. Satisfactory quality takes into account factors such as any description (for example, the age and mileage) and the price of the car. At the time of acquisition, the car was around thirteen years old and had been driven around 106,000 miles. The price Mr L paid for the car was in line with the average market price of a car of the type Mr L acquired that was in good condition and so while it would be reasonable to expect that the car will have suffered some wear and tear the price paid didn't mean that Mr L should have expected to pay additional amounts to bring the car up to a good condition..

I have noted the comments provided by Sainsbury's Bank about the nature of the issues and the age of the car. The car was delivered to Mr L on 15 December 2021 and a day later he noticed warning lights and that the car wasn't running properly. The car was returned to the dealership and the codes reset. However, a few days later smoke started to come from the car and a warning light came on telling him to stop driving and the car was leaking fluids which I do not think a buyer should have expected. Mr L contacted the dealership at that time, but it wasn't able to take the car back for repairs until 3 January. The car was returned, and the dealership provided Mr L with a list of repairs that had been undertaken. Looking at these, while some could be considered wear and tear items, I do not find this is the case for all. And noting Mr L's comment about the warning light telling him to stop driving, I do not think that the car was of satisfactory quality at the point of supply.

Repair can be a reasonable remedy and I note repairs took place in early 2022 (after the initial code reset in December 2021). However, the repairs took a long time and when the car was returned to Mr L on 24 February 2022, there were still issues. Mr L took it for independent inspections and these confirmed there were still problems with the car including issues with the wheels being buckled, the suspension and oil leaks.

In its response to Mr L's Section 75 claim, Sainsbury's Bank said that the dealership had requested the car be returned to it on several occasions between 28 February and 5 March but Mr L had refused to do this. While I note this comment, as Mr L had already allowed the dealership two opportunities to repair the car (first when the codes were reset and then the car was at the dealership for two months) I think Mr L had provided adequate opportunity for the issues to be remedied and this hadn't happened.

Taking the above into account I think that there was a breach of contract that hasn't been remedied and as such it would have been reasonable for Mr L's Section 75 claim to be upheld.

As I intend to uphold this complaint, I have considered what is a reasonable outcome. I understand that Mr L undertook repairs to make the car roadworthy and I can see it passed an MOT in November 2022. While I can see Mr L hasn't had much use of the car, as it was repaired and available for use, and Mr L still has the car I do not find that Sainsbury's Bank is required to refund him the purchase price of the car. However, I do find that Mr L should be refunded the costs of certain repairs that he paid for. Having looked through the list of items I agree with our investigator's suggested refunds (including those for costs that Mr L paid for items that he was told had been repaired). I note Mr L's comments about the other costs he incurred including the alloy wheels and also the timing of when he paid for repairs. But I have to consider the nature of the repairs, the price, the age and mileage of the car at

the point of supply and the mileage then covered before repairs were undertaken and on balance, I find that the outcome suggested by our investigator is reasonable in this case.

Mr L has taken the dealership to court and has incurred costs through this process. While I understand he wants these costs to be included in the refund I find this is a separate issue. It was Mr L's choice to take legal action against the dealership and an outcome was provided in response to that. This decision is in regard to the Section 75 claim, and I find the remedy recommended is reasonable.

Mr L was paid £150 compensation by Sainsbury's Bank due to the delay and issues in dealing with his Section 75 claim. Having looked at the issues involved I find this reasonable.

As noted above, Mr L has an outstanding court judgement against the dealership. This complaint has been raised against Sainsbury's Bank as the finance provider. I've decided the fair way to settle this dispute is for Sainsbury's Bank to pay Mr L £1,979.24 along with interest, on the basis that he hasn't received any payment from the dealership. This settlement is likely to have an impact on the judgment Mr L holds in relation to the dealership, and he should take legal advice if he wants to clarify how his position will be affected.

Putting things right

Subject to Mr L confirming he hasn't received payment from the dealership and that he will inform Sainsbury's Bank if he does so or if he seeks to take any steps to enforce the judgment against the dealership, my final decision is that to settle this complaint Sainsbury's Bank must pay Mr L £1,979.24 along with 8% simple interest from the payment dates to the settlement date.

Details of the payments that make up the total above and the dates on which they were made are set out below:

- The invoice dated 14 June 2022 for £1,080.78. These repairs included the oil leak and new valve stem seals.
- The invoice dated 3 May 2022 for £115.00 to replace one tyre.
- Invoice dated 6 April 2022 for £174.00. This included replacement top shock mounts and front disc guards.
- Invoice dated 4 March 2022 for £132.23 to replace a tyre.
- Parts for the car totalling £324.72 which Mr L purchased in April 2022 (1 April 2022 - mini bush kits, strut top mounts front £39.95, front Anti Roll drop links £14.99, anti-roll bar bush kits £16.90, brake disc pads and petrol fill cap £96.84, brake pair disc pads £42.10, 4 April 2022 parts totalling £113.94).
- The cost of the diagnostics check costing £152.51 (invoice dated 16 March 2022). I understand the second diagnostics costs were part of the process included in the replacement of the tyre invoiced on 4 March 2022.

My final decision

My final decision is that Sainsbury's Bank Plc should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 October 2023.

Jane Archer
Ombudsman