

The complaint

Mr H complains about the quality of a car he bought using a credit card supplied by Sainsbury's Bank Plc.

What happened

The details of this complaint are well known to both parties, so I won't repeat them here. Instead I'll focus on giving the reasons for my 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 realise this will come as a disappointment to Mr H but having done so I agree with the conclusions reached by the investigator for the reasons I've outlined below.

I trust Mr H won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file or keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it because I don't think I need to comment on it to reach the right outcome.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

Sainsbury's had two possible routes for obtaining a refund for Mr H, a claim under Section 75 and a claim under the chargeback process.

In the first instance Sainsbury's looked at the chargeback process. Mr H bought the car more than 120 days prior to contacting Sainsbury's. So it said it couldn't dispute the transaction with the merchant, in this case the supplying dealer, D, through the chargeback scheme because it was outside the timescales allowed. The transaction date on Mr H's credit card was 29 June 2022. Sainsbury's said Mr H contacted it to dispute the transaction on 25 November 2022. So I'm satisfied that the transaction fell outside of the chargeback rules time allowance.

The other way Sainsbury's could use to refund Mr H would be to raise a Section 75 claim. Section 75 of the Consumer Credit Act 1974 protects consumers who buy goods and services on credit. It says in certain circumstances the finance provider, in this case Sainsbury's, is legally answerable for any misrepresentation or breach of contract by the supplier, in this case D.

To be able to uphold Mr H's complaint I would need to be satisfied there's been a breach of contract or misrepresentation by D and that Sainsbury's response to Mr H's claim under

Section 75 wasn't fair or reasonable. But I'm not determining the outcome of Mr H's claim under Section 75 as that would be for a court to decide. I'm deciding whether Sainsbury's acted fairly when it dealt with Mr H's claim.

Sainsbury's initiated Mr H's claim with their Section 75 team. As it hadn't provided an answer after eight weeks Mr H brought his complaint to this service. Sainsbury's subsequently issued a response and did not uphold Mr H's claim.

Was there misrepresentation?

A misrepresentation is an untrue statement of fact made by the supplier that induces a consumer into entering a contract.

Mr H hasn't been able to provide a copy of the original advert for the car. On the invoice I can see that Mr H signed and accepted that he had inspected, and test driven the car and was accepting the condition of it. So I'm persuaded that there wasn't an untrue statement of fact that induced Mr H into entering a contract to buy the vehicle.

Was there a breach of contract?

The car should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case such as this relevant circumstances would also include things like the age and mileage and price at the time the car was supplied to Mr H. The car here was around 12 years old and had been driven approximately 99,700 miles. So I think a reasonable person would expect it to be showing signs of wear and tear.

Mr H provided a timeline of issues he has had with the car. In the four months the car was on the road Mr H reported several issues. The CV joint, EGR valve and wheel bearing were paid for using the warranty that came with the car. Prior to the engine failing the other main issue that went wrong with the car was the failed turbo. Mr H said he was told that how he drove could have contributed to this problem. It is the case that the life of the turbo is affected by driving style. And would be considered wear and tear. He paid to replace the turbo.

I've not seen evidence that these faults were present at the point of supply.

In October having driven just over 2700 miles Mr H reported a loud knocking noise. He said the mechanic told him that it would take more than the car is worth to fully diagnose as the engine would need to be dismantled.

D commissioned an independent inspection and made the report available to Sainsbury's. In conclusion the report stated:

"It is not currently fit for regular use on the public highway due to the noise which is almost certainly due to engine wear rather than a manufacturing defect and given the fact that this vehicle has covered well over 100,000 miles we conclude it would not be premature engine wear. As you will see from the MOT history the vehicle passed an MOT with a similar mileage as at the point of sale. This not only confirms that the vehicle was road legal at point of sale it has also led us to conclude the engine noise was not present at that time. If the engine noise had been present at the time of the MOT, the MOT tester would have issued a notification of refusal to test the vehicle for

fear of damaging the engine. Good customer service would dictate that, given the fact this vehicle has only covered 2,000 miles since the date of sale, the sales agent should investigate and make a contribution towards the repairs."

Mr H said because the faults occurred within the first six months of him using the car it was the responsibility of the dealer to prove the faults were not present at the time of sale. I'm satisfied the independent inspection has concluded that the engine faults were not present at the point of sale nor were they present at the time of the MOT shortly after. And I note that the inspector has concluded that given the mileage of the vehicle the engine failure would not be premature engine wear and tear.

Mr H has argued that there are many cars of the same make and model and age for sale in trade publications that have covered much more than 100,000 miles which indicates that his vehicle has failed prematurely. My role here is to look at the circumstances of this particular complaint and without knowing the background of those cars is not possible for me to compare them.

I do understand Mr H's frustration. He said as a consumer he's done everything right, he bought from a reputable dealer, using a credit card which he said offered some protection. I sympathise with Mr H for the issues he's had with the car and understand his frustration and disappointment – but I'm not persuaded there's enough evidence to show the car wasn't of satisfactory quality when it was supplied to him. The dealer provided an independent inspection report to Sainsbury's which indicated engine failure was because of wear and tear. I've no reason to dispute these technical findings. And I think it fair and reasonable for Sainsbury's to rely on them when looking at Mr H's Section 75 claim. So I'm not persuaded Sainsbury's dealt with the claim unfairly and I won't be asking it to do anything further.

Without accepting liability D offered Mr H a goodwill gesture of £350. If Mr H would like to take up this offer he should go back to D to see if the offer is still available to him.

I understand Mr H will be disappointed with my conclusions. Nothing in this decision prevents him from pursuing the complaint through the courts. Although of course this would come with other costs and risks.

My final decision

My final decision is that I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 March 2024.

Maxine Sutton
Ombudsman