

## The complaint

Mr R has complained that a conditional sale agreement he has with Santander Consumer (UK) plc T/A Santander Consumer Finance (SCUK) wasn't settled.

## What happened

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. But in summary, Mr R acquired a car (car 1) under a conditional sale agreement with SCUK in September 2021. The car cost around £20,300 and had repayments of £367.66 for five years. In January 2022 he decided to acquire another car (car 2) for around £35,750, also under a conditional sale agreement with SCUK. As part of the deal, he wanted to trade in car 1 and the dealer agreed to pay off the conditional sale agreement for car 1.

A day after the agreement for car 1 was due to be settled a £367.66 payment went out of Mr R's account for it. He contacted SCUK and its notes indicate it told Mr R once the settlement had cleared it would refund him. Mr R stopped paying the agreement for car 1 but the dealer hadn't settled it, so SCUK started contacting him about missed payments. Mr R contacted the dealer to find out what was happening. The dealer told Mr R it was in a dispute with SCUK and that it was trying to resolve things as soon as possible. The dealer offered to cover the payments until the dispute was resolved, but this didn't happen, so Mr R contacted SCUK to complain.

SCUK sent its final response letter in May 2023. In summary, it said it stopped its relationship with the dealer because of complaints about it not settling agreements with SCUK. It said despite the dealer promising to pay, the agreement was never settled. It said it put a code on Mr R's credit file to stop negative reporting in 2022. But having passed the matter to its solicitors, it concluded it was Mr R's responsibility to make sure payments were made to pay off the agreement. So it didn't uphold the complaint.

Mr R wasn't happy with the answer and referred his complaint to our service to consider. Our investigator said SCUK can be held responsible for the antecedent negotiations carried out by the dealer under section 56 of the Consumer Credit Act 1974. She said she thought the dealer had promised to settle the agreement for car 1 as part of those negotiations. She said Mr R wouldn't have entered into the agreement for car 2 had the dealer not promised to settle the agreement for car 1. She found SCUK should take responsibility and ultimately recommended SCUK:

- Settle the agreement for car 1.
- Remove any adverse information relating to the agreement for car 1 from January 2022 onwards.
- Refund Mr R the 19 January 2022 payment of £367.66 with 8% simple annual interest from the date the payment was made to the date of settlement.
- Pay Mr R £150 compensation.

Mr R accepted the outcome, but SCUK didn't. In summary it said there was clearly an arrangement between Mr R and the dealer, and that they are responsible for clearing the

outstanding balance. It said it can't see how it can be held responsible for debt owed by a third party.

As things weren't resolved, the complaint has been passed to me to decide.

### **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 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 R 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 R acquired both cars using a regulated conditional sale agreement with SCUK. Our service is able to consider complaints relating to these sorts of agreements.

Like our investigator pointed out I think section 56 of the Consumer Credit Act 1974 is relevant. This says:

#### **56 Antecedent negotiations.**

*(1) In this Act "antecedent negotiations" means any negotiations with the debtor or hirer—*

*(a) conducted by the creditor or owner in relation to the making of any regulated agreement, or*

*(b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or*

*(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c),*

*and "negotiator" means the person by whom negotiations are so conducted with the debtor or hirer.*

*(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.*

*(3) An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement—*

*(a) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer, or*

*(b) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator.*

*(4) For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including*

*communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.*

This provision has the effect of deeming the supplying dealer to be the agent of SCUK in any antecedent negotiations. SCUK is responsible for the antecedent negotiations the supplying dealer carried out direct with Mr R. I think the negotiations were antecedent because they preceded the relevant conclusion of the agreement for car 2.

The scope of 'negotiations' and 'dealings' is wide. And 'representations' covers statements of fact, contractual statements and other undertakings. In this case, I think the dealer made representations relating to the agreement for car 1 when setting up the agreement for car 2. The dealer wanted to purchase car 1 and it agreed to settle the finance agreement attached to it. I think that formed part of the negotiations because they relate to Mr R's entry into the agreement for car 2.

Taking all this into account, I think the dealer was acting as SCUK's agent when negotiating with Mr R. I find that SCUK is also responsible for what was said. Therefore, I consider it fair that SCUK honour its agent's promise to settle the agreement, which also happens to be with SCUK. I also think SCUK needs to refund Mr R the payment he made after the agreement was supposed to be settled.

I agree adverse information should be removed from January 2022 onwards for the agreement for car 1, as this is when it should have been settled. I don't think Mr R has paid anything since then towards that agreement, so I don't need to direct SCUK to refund him anything else.

The matter also no doubt would have caused Mr R some distress as well. It must've been very worrying to not know what was happening, and for SCUK to ultimately tell him he was liable for repaying the debt. Our investigator recommended £150 compensation and I find this to be broadly fair.

### **My final decision**

My final decision is that I uphold this complaint and direct Santander Consumer (UK) plc T/A Santander Consumer Finance to:

- End the agreement for car 1 with nothing further to pay from Mr R and mark it as settled as of January 2022.
- Remove any adverse information relating to the agreement for car 1 from January 2022 onwards.
- Refund Mr R the 19 January 2022 payment of £367.66 with 8% simple annual interest\* from the date the payment was made to the date of settlement.
- Pay Mr R £150 compensation.

\*If SCUK considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much tax it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2023.

Simon Wingfield

**Ombudsman**