

The complaint

Mr A is unhappy with the response from Sainsbury's Bank Plc when he raised a claim under section 75 of the Consumer Credit Act 1974 about the quality of a used car.

What happened

In July 2022, Mr A bought this car at a distance after seeing it on a video provided by the supplying dealer (who I'll refer to as W). The car was five years old with about 55,000 miles on the clock and cost over £13,000. Mr A paid a deposit of £200 using his Sainsbury's Bank credit card. Shortly after delivery, in early August 2022, Mr A complained to W about chips scattered across the front and on some doors, worn brake discs, a screeching noise and he hadn't received the V5. W said the V5 would arrive shortly, brake discs had adequate wear left, the noise was probably due to the car being left standing for a while and the exterior condition was in keeping with the car's age and mileage. W also suggested that Mr A could take the car to a local garage and have any issues rectified under a warranty supplied with the car.

Mr A didn't think that was fair. He says the salesperson told him any bodywork issues would be sorted out by W's bodyshop before delivery and the V5 was subsequently registered at the wrong address with a spelling error which caused issues with a parking permit and the DVLA. In mid-August, he had the car checked by an independent mechanic who found the brake discs were satisfactory but the car had nine diagnostic faults, the fuel filter hadn't been changed for a number of years and the lower front grill was pushed in on the passenger side.

Mr A relayed these findings to W and asked for things to be fixed or he would reject the car. After some back and forth, W agreed to provide a refund and asked Mr A to return the car to the dealership, which was located some distance away. Mr A didn't think that was fair and he contacted Sainsbury's Bank (in September 2022) asking for a refund (under section 75) of the purchase price (£13,600) plus his out of pocket expenses (£144 for the condition report) - and compensation.

Sainsbury's Bank asked for more details initially – including copies of the sale paperwork, the warranty and an independent inspection report. It required this information by post which Mr A found inconvenient but he supplied the relevant paperwork. Then, in November 2022, Sainsbury's Bank rejected his complaint as it didn't think the right arrangements were in place for a section 75 claim. Mr A didn't think that was fair and he referred the matter to our service. In the meantime, Sainsbury's Bank agreed to re-open the matter (in February 2023) and asked Mr A to obtain another, more detailed, expert's report. He didn't think that was reasonable - in view of the evidence already provided and the time taken to deal with the matter so far. Sainsbury's Bank paid just under £150 to compensate Mr A for complaint handling issues but it didn't accept his section 75 claim.

One of our investigators considered the evidence and she recommended Mr A's complaint should be upheld. She was satisfied that the salesperson said (in a pre-sale video) there would be "no dints, scratches or anything like that at all" and, whilst the independent inspector considered the body work was in "fair condition", he found the lower front grill was

“pushed in on the passenger side” - and photographs Mr A supplied seem to show the same thing. She found the car was not as described and Mr A had a short term (30 day) right to reject under the Consumer Rights Act 2015 (CRA). She was satisfied he’d emailed W within that time asking to reject the car and she thought it was unreasonable of W to expect him to arrange and pay for its return in the circumstances.

To put things right, she recommended that Sainsbury’s Bank should arrange for the car to be collected at no additional cost to Mr A, rework his credit card account as if the £200 deposit transaction never took place and refund the cost of the car - £13,600 (plus interest) - along with the £114 Mr A paid for the independent inspection report. She didn’t think Sainsbury’s Bank was responsible for any loss caused by the V5 errors and she found the compensation paid already, for failings in the way Mr A’s complaint was handled, seemed fair.

Sainsbury’s Bank didn’t agree and asked for the matter to be referred to an ombudsman. In summary, Sainsbury’s Bank says it’s not disputing there was a breach of contract but there’s nothing to support this in the inspection report and the photographs of the front grill. It points out the independent technician found all parts were “in working condition” except that the “very lowest front grill [is] pushed in on the passenger side” but didn’t call this a dent or indicate how significant the damage is. Sainsbury’s Bank considers the photo of the grill that Mr A supplied is inconclusive, it was reasonable to request another expert’s report (which it offered to pay for) and there’s insufficient evidence to uphold the section 75 claim. It thinks Mr A’s complaint was handled fairly overall and it’s unreasonable to require it collect the car – as there’s no facility in its business framework to do this. It suggests that Mr A should sell the vehicle and any refund could be discounted accordingly.

Having considered the evidence available, I was minded to uphold the complaint but my reasons were a bit different to the investigator’s and I was minded to reach a slightly different outcome. I thought it was fair to give the parties the chance to see my provisional findings and make further submissions (if they wanted to) before I made my final decision so I issued a provisional decision on 22 September 2023. I’ve set out below (in italics) what I decided provisionally - and why. This forms part of my final decision.

my provisional decision

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), 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 available evidence and the wider circumstances.

I’m obliged to take relevant law into account when I make my decision. Broadly speaking, section 75 says a borrower, like Mr A, may be able to bring an equal claim under an agreement with a supplier (W here) against a credit provider (Sainsbury’s Bank in this case) where there’s been a breach of contract or misrepresentation. I think section 75 is relevant here but I want to make it clear that I’m not deciding liability under section 75 - only a court can do that. In this decision, I’m considering whether Sainsbury’s Bank has provided a fair and reasonable response to Mr A’s complaint.

I’m satisfied that the crux of Mr A’s claim is that this car was misrepresented and/or not as described when he agreed to buy it. There seems to be no dispute that he purchased the car at a distance based (as far as I can see) on a video W supplied and assurances made in pre-sale discussions. I’ve watched the video and I’m satisfied that the salesperson states that the car was in “very nice condition for its age” with “no dents, scratches or anything like that at all”. Our investigator thought this was too vague to be relied upon but, for the reasons I’ll explain below in more detail, I minded to disagree - in these particular circumstances.

The CRA says this car should have matched its description (section 11) and, looking at photos Mr A provided of the car, I don't think it did. I can see very obvious chips in several places (such as those just over the petrol cap). I can't see these chips on the video footage W sent to Mr A – where the car's exterior was filmed from more than a metre or so away - so I can't reasonably find Mr A accepted this damage was present when he agreed to buy the car. I think a reasonable person would consider the chips visible here fall within the salesperson's reference in the video to no dents or scratches or "anything like that". And it's understandable Mr A was disappointed with the condition of the paintwork (among other things) when the car was delivered.

Mr A told us he bought this car to give to a family member to celebrate a special life event and he told the salesperson about this at the time. I think that's likely to be true – I've seen an email he sent the salesperson where he references this and asks if they can supply a bow to put around the vehicle. I've also seen several emails (sent pre-delivery) where Mr A refers to the condition of the paintwork – in one email he states that he was assured by the salesperson that W's bodyshop would check the vehicle and any "chips and scuffs" (which he hadn't seen) would be removed before delivery. I've seen nothing to suggest that W responded to contradict this – which I would have reasonably have expected if Mr A had misunderstood things.

Based on the evidence I've seen, I'm satisfied that Mr A probably made it clear in the pre-sale discussions he had with the salesperson that the condition of this car's exterior was a key factor in his decision to purchase. I think it's more likely than the condition of the car's exterior was misrepresented – in that Mr A was led to believe the car would be free from any dents, scratches, chips or scuffs on delivery - and this misrepresentation induced him to purchase this particular car. I consider this conclusion is supported by Mr A's actions after he received the vehicle - he contacted W shortly after delivery to make his dissatisfaction clear and he hasn't gifted the car as intended or driven it since.

I can see that W replied to Mr A at the time suggesting the car was in reasonable condition for its age and mileage. That may be the case - but I'm satisfied this isn't the standard Mr A was led to expect by the salesperson and what was said and shown to him the pre-sale video. Taken with the damage to the front grill identified by the independent technician, I'm minded to find the presence of multiple chips on the car's exterior mean it did not meet the description provided and its condition was misrepresented.

I think it's fairly clear that Mr A became more concerned about the quality of the car after he had it inspected and the independent technician identified several additional issues. I don't have enough evidence to reach a conclusion as to the seriousness of these – the faults identified by the diagnostic check, for example, may be historic codes that simply weren't cleared. But, given I'm minded to find this car was misrepresented, for the reasons set out above, I don't think I need to make any firm findings about those issues in this decision.

Under the CRA a consumer like Mr A has a short term right to reject goods within 30 days in this situation (sections 19, 20 and 22 refer). I'm satisfied that Mr A contacted W within this time. It looks as if he would have accepted repairs then - if W had undertaken these within a reasonable time – which seems reasonable. But, W suggested instead that Mr A should take the car to a garage near him and have it repaired under the warranty it came with. I find it understandable that Mr A was reluctant to do this, in these particular circumstances. I'm satisfied it would not only have added to his inconvenience but, given W had already said the car was supplied in line with the level of quality required under the warranty, it's difficult to see why the relevant cover would have extended to put right the damage in question.

I consider Mr A made it fairly clear to W within 30 days of delivery (in an email dated 23

August 2022) that he wanted to reject the car if W didn't arrange repairs within a reasonable time - and I think W understood that. I can see the dealer responded, a few days later, stating "if you are not happy....please return the vehicle, along with all documents to our branch...and a refund of the purchase price will be provided". I appreciate Mr A and W may have been at cross purposes here, to some extent. I can see W refers to the 14 day right to cancel under distance selling legislation and seems to suggest it would extend this time as a goodwill gesture - whereas Mr A was, I think, seeking to rely on his rights under the CRA.

For the reasons set out above, I'm satisfied that Mr A had the short term right to reject this vehicle under the CRA and he sought to exercise that within the relevant timescale. The CRA says once this happens the trader should provide a refund and the consumer has a duty to make the goods "available for collection" – unless there's an agreement for the consumer to return the goods. I've seen nothing to suggest that there was any such agreement here. In any event, the CRA goes on to say "Whether or not the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning the goods in person to the place where the consumer took physical possession of them".

In light of my findings above, I consider W should reasonably have accepted Mr A's rejection of this vehicle and arranged to collect the car at no further cost to him. And I'm minded to agree with the investigator that Sainsbury's Bank should arrange to collect the car now, refund the total purchase price of £13,600 (including the deposit) and rework Mr A's account as if the £200 deposit payment was never made.

I have thought about what Sainsbury's Bank says about its business framework meaning it's unreasonable to require it to collect this car - but I can't see why the bank couldn't sub-contract this to a suitable third party. I'm aware that Sainsbury's Bank has been required to take similar steps in other decisions made by this service and it seems to have been able to do so without too much difficulty. Furthermore I don't think it's reasonable to put Mr A to the additional inconvenience of arranging the sale of this car - which also has the potential to lead to new points of dispute around the cost achieved, for example.

Mr A says the car hasn't been used since it was delivered so I haven't considered whether it would be reasonable to reduce the refund to reflect any usage - subject to confirmation of the car's current mileage. I think it was reasonable for Mr A to obtain the independent inspection report in these circumstances. I consider it is fair that Sainsbury's Bank refund the cost of this and the bank should also pay interest on any refunds at 8% simple a year from the date of payment until the date of settlement.

Like the investigator, I'm not persuaded I can fairly hold Sainsbury's Bank liable for the issues surrounding the V5 paperwork. And I think the compensation Sainsbury's Bank has paid already for poor complaint handling seems reasonable overall so, on the current evidence, I can't reasonably require it to do anything else.

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 invited the parties to consider my provisional findings and let me have any further comments (or evidence that I hadn't seen before) by 11 October 2023 and I'd review all the evidence available after that and make my final decision.

Mr A accepted my provisional findings but he feels Sainsbury's Bank delayed matters needlessly which increased his distress, inconvenience and financial losses. He says he's

been anxious and depressed as a result of what happened and he's out of pocket - given inflationary pressures mean the real value of any refund is reduced and the car may have damaged his driveway it's been parked there so long. He also mentions he had to pay a DVSA fine as the car wasn't insured for a time (because he didn't expect it to take long to sort things out) and he wasn't aware of the need declare the vehicle SORN – which he couldn't do, in any event, due to the V5 errors. In addition, he refers to issues with a separate car insurance policy that he took out with Sainsbury's Bank.

I'm afraid it's not within my remit in this decision to comment on any problems Mr A may have had with his insurance policy. It's open to him to raise this matter with Sainsbury's Bank and, if he's unhappy with the response he receives, he may be able to bring another complaint to this service.

I realise Mr A feels Sainsbury's didn't do enough to assist when he made his section 75 claim. I can't fairly criticise the bank for asking Mr A to provide some additional information however and I don't think there's enough evidence for me to fairly hold the bank liable for any damage to his driveway, the V5 errors and/or the impact of inflation. I think the compensation paid already seems fair and I can't reasonably require Sainsbury's Bank to pay more in all of the circumstances.

Sainsbury's Bank has disagreed with my provisional conclusions. It said (in summary) the section 75 claim was made on the grounds the car wasn't delivered in the condition promised and Mr A's main concerns relate to exterior bodywork, which he found to be worse than expected as it should have been without any chips, dents, or scratches. Sainsbury's Bank doesn't think a five year old vehicle, which had travelled over 55,000 miles, would reasonably be expected to be free from any scratches, dents, defects. And it considers there's no evidence to show Mr A was sold the car on the basis it was in "exceptional or impeccable or like new condition" - which seems to be what he expected.

Sainsbury's Bank thinks the car was in reasonable condition for its age and mileage - the independent inspector found it was "in working condition" and classed as "good" with one exception relating to "fair" bodywork – the "very lowest front grill pushed in on the passenger side" and there are no breakdowns or significant faults. It says things like the fuel filter not being changed in some time, don't mean the car was unfit for purpose or unroadworthy. And, in any event, the car was sold with a warranty that Mr A didn't use and the dealer offered a refund. The bank feels there's not enough evidence to support rejection on the basis of what was promised/how the car was described as opposed to what was delivered and it's possible the bodywork was damaged after delivery.

I think I've addressed most of the points raised by Sainsbury's Bank in my provisional decision. I've explained already why I'm satisfied that Mr A was led to believe the bodywork would have "*no dents, scratches or anything like that at all*". And, taken with the damage to the front grill identified by the independent technician, I consider the presence of multiple chips on the exterior mean the car did not meet the description provided and it was misrepresented.

Sainsbury's Bank also asked if I'm satisfied that the right arrangements were in place for Mr A to be able to bring this sort of claim. I can see Sainsbury's Bank considered whether the debtor-creditor-supplier relationship required under section 75 was present here earlier this year. Having taken legal advice, the bank appeared to accept that it was and I've seen nothing to persuade me otherwise.

Nothing that's been said or sent to us has caused me to depart from my provisional conclusions. For the reasons I've given, I'm satisfied that the exterior condition was of particular importance to Mr A when he decided to buy this car and I think he made that clear

to W at the time. I find the car was not as described on delivery. I'm satisfied that Mr A reported relevant issues very soon after he received the car. He's now supplied a picture of the odometer that indicates it currently has just over 55,300 miles on the clock. I think this supports his evidence that the vehicle hasn't been used and I'm not persuaded it's likely the relevant damage occurred after delivery.

Taking everything into account, I remain of the view this car was misrepresented and there was a breach of contract, in that it was not delivered as described. I'm satisfied Mr A had the short term right to reject the vehicle in the circumstances and he contacted W to exercise that within the relevant time. I consider W should reasonably have arranged to collect the car at no further cost to Mr A then - in line with the obligations set out under the CRA – and Sainsbury's Bank should now take the steps set out below to put things right.

Sainsbury's Bank has pointed out that some paperwork will need to be completed in order for the car to be collected and this will require the cooperation of Mr A. The bank asked me to include a requirement to this effect in my decision. It's a matter for Mr A if he wishes to accept my decision and I can't require him (or any third party) to take any steps in particular. Mr A has indicated however that he's keen to see an end to this matter. And, if he accepts my decision, he will doubtless appreciate that he'll need to liaise with Sainsbury's Bank and arrange for any necessary paperwork to be completed to enable the car to be collected.

My final decision

For the reasons set out, my decision is I uphold this complaint and I require Sainsbury's Bank Plc to:-

1. arrange to collect the car from Mr A, at no additional cost to him;
2. rework Mr A's credit card account as if the £200 deposit payment was never made. If this leads to a credit balance then this balance should be refunded to Mr A with the addition of 8% interest from the date of the transaction to the date of settlement;
3. refund the balance Mr A paid for the car (£13,400) plus the £114 he paid for the inspection report and pay interest on these refunds at 8% simple interest a year from the date Mr A made the relevant payments until settlement; and
4. (if it hasn't already done so) pay Mr A £150 compensation for his associated distress and inconvenience.

If Sainsbury's Bank considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr A how much it's taken off. It should also give him 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 A to accept or reject my decision before 7 December 2023.

Claire Jackson
Ombudsman