DRN-5259951

The complaint

Mr R has complained that Santander UK Plc unfairly failed to refund him for a car he bought at auction, which he's explained wasn't of satisfactory quality.

What happened

In November 2023, Mr R bought a used car via an online auction. When he collected the car, it had serious issues with the gearbox. He's explained that the promotional video hadn't evidenced this fault. Further, before he'd bid for the car, he'd contacted the auctioneer and spoken to the yard supervisor, who had said the car was in full working condition with no issues regarding the engine or automatic gearbox.

Mr R contacted Santander, to say the car had been misrepresented to him. But, Santander declined his claim. Mr R then brought his complaint to our service, but our investigator didn't uphold it.

The complaint's now been passed to me.

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.

Having done so, I'm not upholding it. I know this will be very disappointing for Mr R, and I have considerable sympathy for the position he's in. But, I'll explain why I don't think Santander has acted unfairly.

There are two routes whereby Mr R could have potentially recouped his money. These are under the chargeback scheme, and under section 75 of the Consumer Credit Act 1974. I'll address these in turn.

The chargeback scheme is voluntary, but I'd expect it to be used where possible. Here, Santander did raise a chargeback, but the merchant defended it. Mr R thinks it was unfair for Santander not to pursue the matter further. But, I'm satisfied it fairly considered there not to be a reasonable prospect of success. This was because the merchant had said the car was 'sold as seen'. And, looking at the advert for the car, it does not say it has no faults. I appreciate that this could be seen as a misrepresentation by omission, but I don't think it is, in these circumstances. This is because the auctioneer's terms and conditions state: 'All vehicles are sold 'as they lie' with all faults and imperfections and errors of description. The absence of any reference to the condition of a vehicle does not imply that the vehicle is free from faults…'.

I've also thought about the conversation Mr R had with the yard manager. I can't know for certain what was said. But in any event, the auctioneer's terms state that any statements made by the auctioneer as to the condition of a vehicle are the auctioneer's opinion (not a statement of fact). They further state that no oral or written representations made prior to or at the time of sale shall be deemed to be a representation of fact.

I turn now to section 75. As set out by our investigator, section 75 provides, in simple terms, that a finance provider can be held liable for misrepresentations and breaches of contract, as if it were the seller. However, certain conditions must be met.

One of these conditions is that a valid debtor-creditor-supplier link must be in place. What this means, is that the payment must have been made to the seller. Here, Mr R's contract was with the seller of the car, but he made his payment to the auctioneer. I'm aware that Mr R feels that the auctioneer was the seller's agent, and I have sympathy for this position. However, the requirements of section 75 are strict, and I think it reasonable that Santander considered the auctioneer's involvement was sufficient to break the link. I consider the auctioneer to be more than just a payment facilitator, given it had an active role in the sale. So, I think it was fair to view it as a third party such that the link was broken.

However, even if this interpretation were wrong, there would need to have been a misrepresentation. And I think it fair for Santander to have found there wasn't – for the same reasons as given regarding the chargeback.

This means that I don't think Santander acted unfairly in not providing or securing a refund.

My final decision

For the reasons given above, it's my final decision not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 September 2025.

Elspeth Wood
Ombudsman