

The complaint

Mr S complains Sainsbury's Bank Plc trading as Sainsbury's Finance ("Sainsbury's Bank") hasn't treated him fairly when he raised a claim under section 75 of the Consumer Credit Act 1974 ("CCA")

What happened

Mr S bought a used car in May 2022. The car was just under ten years old and had covered 79,054 miles, and Mr S agreed to buy it from a car dealer for £16,495. The car came with a new MOT which contained one advisory: "front tyres wearing on inner edges".

Mr S paid part of the price – £4,495 – on his Sainsbury's Bank credit card, paying the rest by other means.

Around six weeks after purchasing the car, Mr S reported a hissing sound coming from the engine to the dealer, who looked at it under their warranty. They tightened some clips and this stopped the hissing sound.

There were then further problems. Mr S says he noticed one day that the front door locks could only be locked or unlocked from inside the car. It's unclear when Mr S noticed this, but he says the dealer declined to look at the car for free because it was outside of its three-month warranty, and so he did not take the car back to the dealer.

Mr S also says he noticed a vibration around 4-5 months after purchase, which developed into a violent judder after a few weeks. He took the car to an independent garage which carried out a vehicle health check dated 16 January 2023. At this point the car had covered 83,282 miles. The garage reported the front tyres were old, worn at the edges and the cords were showing through, and that a wheel alignment was urgently needed.

Mr S paid for new tyres and a wheel alignment at a cost of £529. He examined the car's MOT history and noted that in May 2021 (at 77,621 miles) there had been advisories relating to the tyres being worn close to the legal limit on the edges. This caused him to be suspicious that the MOT arranged by the dealer in May 2022 had not been honest and he'd been sold the car with tyres which were already worn out.

Not long after, in February 2023, Mr S approached Sainsbury's Bank to raise a section 75 claim. The bank asked for more information from Mr S and also from the car dealer, to try to understand what liability it may have for what had gone wrong.

Mr S provided further information. The dealer wrote to the bank to say that it had attended to the hissing issue, that the tyres had been in a legal condition at the point of sale, and that it couldn't recall being contacted about the door locks.

On 17 May 2023 Sainsbury's Bank rejected Mr S's section 75 claim, reasoning that not enough evidence had been provided that the dealer had breached its contract with Mr S. Mr S complained about this decision and the bank's claims process. Sainsbury's Bank stood by its decision but accepted there had been some occasions Mr S had received poor

customer service, for which it offered him £50 compensation. Dissatisfied with this response, Mr S referred his complaint to the Financial Ombudsman Service for an independent assessment.

One of our investigators began looking into the case. In her initial assessment she didn't think the complaint should be upheld. She made the following key findings:

- By the time Mr S had contacted the bank it had been too late to try to reclaim any of the funds via a "chargeback".
- Section 75 of the CCA allowed Mr S to hold Sainsbury's Bank liable for breaches of contract or misrepresentations by the car dealer. Terms were implied in Mr S's contract with the dealer by the Consumer Rights Act 2015 ("CRA"), including that the car would be "satisfactory quality" taking into account its age, mileage and other relevant circumstances.
- It would be fair to say that a car which was around ten years old and had covered about 78,000 miles would have experienced wear and tear, and that repairs and maintenance may be required sooner than with a less road-worn car.
- The issues with the car which hadn't been resolved by the dealer appeared to be the front door locks not engaging, and the front tyres causing vibration/judder.
- The bank's request for independent third party evidence hadn't been unreasonable. There was insufficient evidence that the faults were present or developing at the point the car had been sold to Mr S, which meant there was also insufficient evidence that there had been a breach of contract for which Sainsbury's Bank would be liable to Mr S under section 75.
- The bank had acknowledged some customer service issues and the £50 compensation it had offered in respect of these was fair.

Mr S disagreed. He said he had in fact provided an independent report from the garage which had replaced the tyres, and sent our investigator a full copy of this report. He emphasised the discrepancies in the MOTs from 2021 and 2022 and contended that the car had been mis-sold with worn-out tyres. Mr S said that the 2022 MOT was essentially a misrepresentation of the condition of the car's tyres, and he'd ended up with a bill for replacing them sooner than he'd have expected.

Our investigator considered Mr S's new evidence and arguments, but was not convinced. In a second assessment, she focused in more detail on the tyres and the door locks.

About the tyres, she said these were wear and tear items and had needed to be changed eight months after purchase. It had been noted on the MOT that they were worn, and while Mr S had concerns about the MOT, she had no reason to believe a competent inspection hadn't been carried out. Our investigator also observed that the tyre manufacturer did not necessarily consider that six or seven year old tyres required automatic replacement. Finally, our investigator stated the report from the independent garage didn't explain why the tyres had failed or confirm if the issues would have been present or developing at the point of sale. Overall, she didn't think Sainsbury's Bank should be liable for the cost of replacing the tyres.

On the question of the door locks, our investigator observed that parts on a car could fail at any time, either suddenly or as a result of an issue which developed over time. Wear and tear on components was to be expected. The only documentary evidence of a fault with the

door locks was an MOT failure in April 2023, more than 11 months after Mr S had purchased the car. There was no other evidence about how the issue had arisen or whether it was present or developing at the point of sale. Our investigator didn't think Sainsbury's should cover the cost of repairing the door locks either.

Mr S remained in disagreement with our investigator. He was quite sure that the 2022 MOT was not genuine, and he noted the dealer hadn't even been able to supply him with the certificate on the day and had posted it to him. He asked for a second opinion, and so the case has now been passed to me to decide.

While the case was waiting for an ombudsman to become available to review and decide it, an opportunity was provided for both parties to provide further comments or submissions.

Sainsbury's Bank said it wanted to reiterate that there was no evidence of faults (apart from the hissing noise) being present within six months of purchase. It also noted that "any car owner should expect to replace tyres".

Mr S said he had some more information to share following a request he'd made to the bank, but the files were too large for him to upload. Our investigator provided Mr S access to an online platform for him to upload the files. He tried to do this but was unsuccessful, and asked for the case to be decided on the information we had access to.

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.

When a consumer buys goods or services using a credit card, and something then goes wrong with the purchase, they may approach their credit card issuer for assistance. The card issuer may be able to help in obtaining a refund via the dispute resolution mechanism administered by the card scheme – often known as "chargeback" – or it may need to honour a claim under section 75 of the CCA.

Our investigator concluded it had been too late, by the time Mr S asked Sainsbury's Bank for help with his problems with the car, for the bank to attempt a chargeback. Nobody has commented on this since and it appears not to be in dispute. I therefore don't intend to analyse it in detail – I'll say only that I agree with our investigator's conclusion that it was too late for Sainsbury's Bank to try to get any of Mr S's money back via this route.

Section 75 of the CCA allows a consumer to claim against their credit card issuer, so long as certain conditions are met, in respect of any breach of contract or misrepresentation by a supplier of goods or services they have made a purchase from using the card. The most important of the conditions referred to above are that there needs to be a debtor-creditor-supplier agreement in place, and the item to which the claim relates needs to have a price of more than £100, but no more than £30,000. Both of these conditions have been met in Mr S's case, which leaves the question of whether there has been a breach of contract or misrepresentation by the supplier (the dealer).

Breach of contract

A breach of contract occurs when one party to the contract fails to honour the contract's terms. Contractual terms can be expressly written into the contract, or they can be "implied terms", meaning that they are treated as being included in the contract, for example because legislation says they must be.

When a person acts as a consumer in buying goods from a trader, as Mr S did here, the CRA applies to the contract of sale and causes certain terms to be implied. Most importantly, terms are implied that any goods will be “satisfactory quality”. The CRA makes it clear that what is meant by satisfactory quality is the standard a reasonable person would consider satisfactory, taking into account the description of the goods, the price paid (if relevant) and other relevant circumstances.

When purchasing a used car, the age and mileage of the car would, in my view, be relevant factors in determining what would be considered satisfactory quality. A car with a higher mileage will very likely have experienced more wear and tear on its moving parts than a car with a lower mileage, while an older car will have been exposed to the environment for longer and be more likely to suffer from issues such as corrosion and perishing of vulnerable parts. So, in general, I think a reasonable person would consider a lower standard of quality to be satisfactory when buying an older car with a higher mileage. It would be expected that expenditure on repairs and maintenance would occur sooner, and possibly be more expensive, than on (for example) a brand-new car.

It’s unknown exactly how the car Mr S bought was described to him, but it was nearly ten years old and had covered about 79,000 miles. I think a reasonable person would consider a vehicle of this age and mileage to have sustained significant wear and tear, and have a risk of incurring maintenance costs sooner rather than later. I don’t think a reasonable person would expect things to go wrong straight away however.

Turning to the problems Mr S experienced with the car, I note the hissing noise was resolved by the dealer, so I don’t intend to comment on that. I will focus on the door locks and the tyres.

Door locks

Mr S hasn’t specifically challenged our investigator’s findings on the door locks, so I am not sure if he disagrees with her findings or why. However, I would say there is a lack of clarity in my opinion about when the front door locks failed. Reading Mr S’s submissions, I believe he thinks the locks might always have been broken, and he discovered this by chance some months later when he accidentally pressed the lock button on his key fob while inside the vehicle, and found the locks didn’t engage. Mr S says he has since repaired one of the locks himself by following a guide on YouTube.

As our investigator points out, the only documentary evidence of this issue is from the MOT failure on 25 April 2023 at 84,659 miles, and this only refers to the passenger door. The vehicle health check from the independent garage in January 2023 at 83,282 miles doesn’t refer to any problem with the door locks.

Clearly there has been a problem with at least one of the front door locks, but I don’t think the evidence is clear enough that this was a problem which was present at the point Mr S bought the car, or that the locks failed so soon after purchase as to render the car unsatisfactory quality when Mr S bought it.

Tyres

There’s no dispute that tyres are a wear and tear item that require regular replacement. They are in constant contact with the road and will be worn down over time. They are also vulnerable to external influences which might cause replacement to be needed sooner than normally expected (potholes for example, or misalignment of the suspension causing uneven wear).

In light of this, and the high age and mileage of the car at the point Mr S bought it, I don't think the fact that the front tyres needed to be replaced after eight months and about 4,000 miles necessarily means the car was not satisfactory quality as supplied.

Mr S has indicated the tyres were likely in an *unroadworthy* condition when he bought the car and this was only identified months later, by which time the tyres had deteriorated even further into a dangerous state. Or, at the very least, he thinks he was led to believe the tyres wouldn't require replacing, and him having to go to such an expense, so soon. I think this speaks more to the misrepresentation aspect of his complaint, which I will come to now, before returning to some final considerations around the question of breach of contract.

Misrepresentation

A misrepresentation is a false statement of fact or law made by one person to another and which causes that other person to do something which is to their detriment – such as enter a contract.

Mr S has contended that the MOT carried out at the point of sale was dishonest in some way and misrepresented the true state of the car's tyres. He points to the MOT history as evidence to support this contention.

According to the MOT carried out at the point of sale, the front tyres were worn on the inside edges. The MOT was a pass, indicating that, at the point of the test, the tester considered the tyres to be roadworthy. The previous MOT, carried out a year and approximately 1,500 miles earlier, had commented that both front tyres were worn close to the legal limit and worn on the edges. Again, the tester considered the tyres were roadworthy at this point.

The wearing of a tyre is a process which occurs over time and I think the MOT testers in 2021 and 2022 had both observed and commented on the same issue – wear on the inside edges of the front tyres. As only about 1,500 miles had been covered between the two tests, I think it's plausible that the tyres could still have been roadworthy at the point of the second test, but had ceased to be roadworthy at some point in the eight months and 4,000 miles after Mr S bought the car. The second MOT is less detailed in that it simply describes the inside edges as worn, but I don't think that means that it's not a genuine MOT or that it misrepresented the state of the tyres. It described the inside edges as worn, which they were. It didn't say or suggest that the tyres would not need replacing soon.¹

Ultimately I don't think the state of the tyres was misrepresented by the dealer.

Returning to the question of breach of contract, if a car was sold with unroadworthy tyres it would clearly not be satisfactory quality. However, for the reasons I've explained in the paragraphs above, I think it's likely the car's tyres *were* roadworthy at the point of sale.

Conclusions regarding the section 75 claim

Sainsbury's Bank rejected Mr S's section 75 claim. Based on my findings above, I don't think it was wrong to do so. The bank accepted there were some customer service failings while handling the claim and offered £50 compensation in respect of these failings. The failings appear to have been minor but frustrating – with £50 being in my view a fair amount of compensation to reflect the impact of these. My understanding is that this compensation has not been paid.

¹ It is worth mentioning that although a new MOT is valid for 12 months, this does not necessarily mean that the car will remain roadworthy for 12 months or that parts which are noted as being worn will not require replacement over that period. This is a common misconception.

My final decision

For the reasons explained above, I don't uphold Mr S's complaint about the outcome of his section 75 claim to Sainsbury's Bank.

Sainsbury's Bank has already made an offer to pay £50 compensation in respect of its customer service failings, and I think that is a fair offer. The bank should pay this compensation to Mr S, to the extent it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 April 2024.

Will Culley
Ombudsman