

The complaint

Ms S complains about the service she's received from Santander Consumer (UK) Plc t/a Santander Consumer Finance (SCF) in relation to a car finance agreement she took out.

What happened

In December 2019, Miss S entered into a 49 month conditional sale agreement to acquire a used car. The total amount payable under the agreement was around £46,200. She was required to make monthly repayments around £570 followed by one final payment of over £16,500.

In July 2020 and October 2020, the car was involved in an accident. The car was being driven by Ms S' ex partner's brother on both occasions – which caused the car to be written off. After some back and forth, the insurer agreed to settle the claim. According to Ms S, the insurer provided two options. That is, they would pay out around £17,000 and she could keep the salvage of the car or they would pay around £26,000 but she couldn't keep it. Ms S chose the first option.

A payment of around £17,000 was put towards the finance agreement in December 2021. As a result, SCF removed their financial interest from the car in January 2022. They told Ms S she was still liable for the outstanding balance (over £27,000) and she was now required to make revised monthly repayments of around £350. But Ms S said she couldn't afford this. In August 2022, Ms S contacted SCF to say her ex-partner had sold the car without her knowledge nor consent. SCF said there was nothing they could do as their interest in the car had been removed. Ms S complained they weren't assisting her in recovering the car. As the agreement fell further into arrears, the account was defaulted in October 2022.

Ms S complained SCF had unfairly defaulted her and she was unhappy they were holding her liable for the outstanding balance. She also complained she was coerced into the agreement by her ex-partner. She says it's only in recent months she's realised she was manipulated by him which is why she didn't raise this complaint point sooner. Ms S explained this situation has greatly impacted her personal life, including her mental health and financial circumstances.

SCF said following the payment by the insurer their interest in the car was removed so they had no control over what happened to it. They said their dedicated financial support team had done as much as they could to help Ms S given her financial difficulties but she owes the outstanding balance.

Unhappy with SCF's response, the complaint was referred to our service. Our investigator recommended the complaint wasn't upheld. In summary, he said there wasn't enough evidence to say SCF were aware Ms S was coerced into taking out this agreement.

He also didn't think SCF had acted unreasonably by not taking further action when they were told the car was taken and sold in August 2022. He said this was because SCF had removed their interest from the car and Ms S allowed her ex-partner to take possession of it. He concluded Ms S was liable for the outstanding amount owed under the agreement to SCF but he said they should work with her to set up an affordable repayment plan to pay it back.

Ms S disagreed and maintained her position. She commented because there wasn't a HPI financial marker against the car, it was able to be sold without her consent. She reiterated she'd been manipulated by her ex-partner into taking out the agreement, along with other forms of credit. She said it wasn't fair she was left to pay for a car that was no longer in her possession. She explained the distress and impact this issue has had on her mental health and overall wellbeing.

In response, SCF said they are willing to put in place a suitable repayment arrangement but they needed full details of Ms S' financial circumstances (income and expenditure) to determine a monthly repayment amount.

As an agreement couldn't be reached, the complaint has been referred 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.

Having done so, I don't intend to uphold this complaint. I'll explain why.

But first, I want to say I'm very sorry to hear about what's happened. I empathise with the situation Ms S finds herself in and I recognise the impact it's having on her. I acknowledge the distress and upset this has caused and why she's keen to get matters resolved.

I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. No discourtesy is intended by this but I've only centred on the issues I consider to be key in reaching a fair outcome.

Did SCF do anything wrong in supplying Ms S with the conditional sale agreement?

Ms S complains she was coerced into entering into the agreement by her ex-partner. I'm sorry to hear about this. However I must make it clear it's not my role to say whether or not she was. Instead, I must consider whether SCF were aware (or ought to have been reasonably aware) at the point of supply, Ms S was being coerced into the agreement by or for somebody else. In this case, I don't find there's not enough evidence to reasonably say they would've been aware. By Ms S' own admission, it's only some time later she felt she was being manipulated by her ex-partner, stating he asked her to get the car in her name as he didn't have a licence. I understand why Ms S feels she was manipulated but I don't consider that amounts to coercion.

Overall, I don't find SCF nor the broker knew, or ought reasonably to have known Ms S was being coerced, therefore I don't find they did anything wrong in supplying her with the agreement.

Did SCF act fairly when the car was written off?

I've read the terms of the agreement. In summary, it says the following about insuring the car and if it's written off:

- The car must be insured at all times for its replacement value and any claims against loss, damage or injury;
- If the car is considered a total loss (written off), the following sums will become immediately payable:
 - o Any unpaid repayments and any other sums owed before the total loss;
 - o The rest of the total amount owed under the agreement (less any rebate);

- Any insurance money received will be used to set off the above sums owed.

I've carefully thought about the SCF's actions when they received the payout from the insurance company and I'm satisfied they acted in line with the above terms. The payout was put to the agreement thereby reducing the balance to over £27,000 (this figure included a rebate). Thereafter, based on the above terms, I also find they were entitled to say Ms S was liable for any outstanding amount owed under the agreement (the shortfall) and she was correctly advised of the same.

As part of our service's investigation, we've asked SCF whether they told Ms S they had removed their interest from the car. They confirmed they hadn't. Although I believe it would've been helpful for them to do so, they weren't obliged to. Even if they had, I must emphasise the outcome would've been the same, that is, Ms S would be liable for the outstanding amount owed. Given the circumstances, I can understand why they removed the financial marker against the car, their only interest was the payment of the money owed under the agreement.

Based on the evidence presented to me, there is also a suggestion Ms S received around a £8,000 payout from a claim under a Guaranteed Asset Protection (GAP) insurance policy. GAP is an insurance policy which covers the difference (the gap) between the market value of a car when it's written off or stolen, and what the consumer has left to pay on their car finance agreement. If this indeed happened, it means there was a combined payout of around £25,000 when the car was written off. Although it was unlikely to clear the full balance owed, it would've significantly reduced it.

From my understanding, the GAP insurance was paid directly to Ms S. Based on the call notes, I'm satisfied she was told should the claim be settled in her favour the money should be put towards the agreement and if there was any shortfall, she would be liable to pay it. As Ms S chose not to follow this information, I can't hold SCF responsible for this.

Did SCF act fairly when they were told the car had been sold?

Ms S says the car was sold by her ex-partner without her knowledge nor consent and she's unhappy SCF didn't do enough to recover the car.

For the reasons outlined above, I find at the time the car was sold in August 2022, SCF had no interest in it so I can't say they had any obligation to assist in its recovery. However I can understand Ms S' frustration about this as she's been left without the car and she was seeking assistance.

I must point out even in the event SCF did have interest in the car, the agreement terms say it must be insured against claims for loss and remain in the consumer's possession. By Ms S' own admission, the car was uninsured and with her ex-partner which is how he managed to sell it. This goes against the terms of the agreement meaning Ms S would remain liable for the outstanding balance.

Did SCF act fairly in defaulting the agreement?

The terms say in the event payments falls into two or more months of arrears and the agreement holder doesn't satisfy any subsequent default notice, SCF can end the agreement. That's what happened here, the agreement was defaulted in October 2022. Based on the payment history of the account, it's clear Ms S was struggling with meeting the contractual payments. To assist her, SCF set up deferrals and other ways to assist her.

At the time the car was written off, the agreement was in around £1,500 in arrears. Following the payout from the insurer, SCF agreed to revised monthly payments of around £350. I understand Ms S was unable to afford this amount and there was some back and forth with SCF about what she could afford. Based on the account statement, the last payment received by Ms S was July 2022.

This meant the account fell into further arrears. Based on system notes, I can see arrears notices were sent. As there was no indication Ms S could bring the account back up to date within a reasonable period of time and it was a few months in arrears, I find it was fair for SCF to issue a default notice. As there is insufficient evidence the notice was satisfied, I can't say SCF did anything wrong in defaulting the account.

From my understanding, Ms S is still struggling financially. SCF has already agreed to set up an affordable payment plan which I consider a fair course of action. However they will need to gain a full understanding of Ms S' current financial circumstances to determine what she can afford. I strongly encourage both parties to work together to achieve this.

Summary

Taking everything into account, while I empathise with the situation Ms S finds herself in, I find SCF acted reasonably by agreeing to set up the finance agreement and they fairly applied the terms when the car was written off. The terms permit them to hold Ms S liable for the outstanding balance owed and when the account fell into arrears, it was reasonable for them to default the account. Lastly, I'm satisfied they tried to assist Ms S during times of financial difficulty.

My final decision

For the reasons set out above, I don't intend to uphold Ms S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 19 October 2023.

Simona Reese
Ombudsman