

The complaint

Ms H complains Santander Consumer (UK) Plc trading as Santander Consumer Finance (SCUK) supplied her with a car that she believes wasn't of satisfactory quality.

What happened

In March 2020, Ms H entered into a conditional sale agreement with SCUK for a used car. The car's cash price was £6,974, it had travelled 42,500 miles and it was first registered in November 2014. The agreement was to last 60 months with monthly instalments of £154.

In September 2020, the car broke down and it had to be recovered. The next day, Ms H contacted the dealership and she was advised to take it to a local garage, who I will refer to as W. W said the sump plug had fallen out, oil had drained and the engine had seized. They said it would cost around £4,000 to repair.

Ms H complained to SCUK, stating she only had the car for six months and it's now not working. She said the sump plug must not have been fastened correctly when the car was supplied and this caused the oil leak which led to the engine failure.

In November 2020, SCUK arranged for an independent inspection. The inspection report said *"the vehicle has been driven on to destruction due to low oil, before eventually depleting all oil and burning out before complete engine seizure"*. It went on to say there was insufficient evidence of oil spillage to suggest it depleted through an untightened sump plug. It concluded the car had suffered from oil starvation which required further inspection to assess the damage. Overall it said the fault wouldn't have been present at supply.

In light of these findings, SCUK made arrangements for a further inspection however they said there were delays in doing so due to the Covid-19 pandemic. Ms H said during this time she was left without transport and she needed a car especially as she was a key worker. She said she had to hire another car while maintaining the contractual payments and this caused her financial hardship. SCUK said they would change the due date for November 2020's payment so the amount wouldn't be debited. Ms H said she ended up buying another car as she needed to travel to work.

In January 2021, she advised SCUK of her continued financial difficulty, she was moving, the car wasn't working and it needed to be transported to her new address. SCUK confirmed they were still making arrangements for the car to be further inspected.

The car was eventually inspected by a manufacturer approved garage in March 2021. They confirmed there was heat damage and scoring to the cams and the engine had seized due to oil starvation and it would cost over £8,700 to repair.

Based on the above, SCUK issued their final response. They said there was insufficient evidence the fault with the car was present at supply. However in recognition of the delays in answering the complaint, they agreed to remove the arrears of January and February 2021 (£309) as a gesture of goodwill and remove any adverse information from Ms H's credit file in relation to the two missed payments.

In April 2021, SCUK considered the car abandoned as it hadn't been collected by Ms H and in May 2021 issued a default notice for breach of contract stating the car had been abandoned. They said Ms H needed to resume possession of the car by 1 June 2020. As the car wasn't retrieved by Ms H, it was sent to auction and sold for £2,900. SCUK said the sales proceeds of £2,804 was deducted, meaning Ms H was required to pay the final balance of £5,246. SCUK said Ms H hasn't paid any money towards this outstanding balance.

Our investigator recommended the case wasn't upheld. Based on the evidence, they felt there wasn't enough evidence the fault with the leak was present at supply. They said this was likely to be a wear and tear issue, meaning the car was of satisfactory quality. In terms of SCUK's level of service, they felt the compensation offered was fair.

Ms H disagreed. In summary she said:

- She and her partner checked the car regularly and there were no warning lights about the oil;
- W said the oil leaked due to an untightened sump plug;
- She hadn't abandoned the car after inspection, she didn't know where it was located;
- She was unaware the car had been sold;
- She had been told the contractual payments would be put on hold;
- She couldn't afford the cost of the repairs;
- The level of service from SCUK was poor.

In March 2022, I issued a provisional decision partially upholding the complaint, I said:

"Ms H was supplied with a used car that was around six years old and had travelled over 42,500 miles. For used cars, it's reasonable to expect parts may already have suffered wear and tear when compared to a new car or one that is less travelled.

Based on the evidence of the inspection report, the findings of the manufacturer approved garage and garage W, it's evident there was a fault with the car. Due to a lack of oil, the engine had seized up and the car wasn't working. This isn't in dispute.

However although I accept there was a fault, I must first consider whether it's likely to have been present at supply. The presence of a fault in a used car doesn't necessarily mean it wasn't of satisfactory quality. As mentioned above, I think it's fair to say for used cars, it's likely repairs and or maintenance may need to be carried out more quickly or frequently than a brand new one. Components of a car can't be expected to last indefinitely and it's reasonable to expect they would need to be maintained.

I've carefully considered the findings of the inspection report and the comments provided by garage W. Although it was carried out a couple of months after the car broke down, I'm most persuaded by the inspection report as it carried out a more extensive examination of the car and provided detailed findings. The inspection and W agree the engine had seized due to lack of oil but where they differ is the cause of the oil depletion and whether it would've been present at supply. W said it's down to an untightened sump plug but doesn't comment whether it would've been present at supply. The inspection said "there was not enough oil spillage or dampness or wash to suggest that the vehicle had depleted all of its oil through an untightened sump plug". The inspection also says it was 'driven on to destruction', concluding the fault wouldn't have been present at supply. In my opinion, based on the findings of the inspection this would suggest the lack of oil wasn't due to a fault being present at supply but due to wear and tear or lack of maintenance of the car. There is insufficient evidence for me to reasonably conclude the oil depletion was caused by an untightened sump plug which was present at supply.

Additionally, I note the car broke down approximately six months after it was supplied and it had travelled over 5,500 miles while in Ms H's possession. I consider this to be a significant amount of miles before the fault developed so this strengthens my belief the fault wasn't present at supply.

The inspection report also comments "The fault would have been evident in the form of a low oil warning, which would have been illuminated audibly and visually on the vehicle's dashboard". I'm aware these lights are there to warn drivers that attention is needed otherwise extensive damage may be caused. The manufacturer approved garage also commented "the cams had been subjected to heavy scoring and heat damage, indicating that there was no lubrication in the engine which created this fault". I note Ms H says she nor her partner saw warning lights prior to the car breaking down. However on balance, I think it's more likely than not there were signs there was issues with the oil prior to it breaking down which required Ms H's attention. Overall, I don't have enough evidence to persuade me the car suffered a sudden depletion of oil.

Taking everything into account, I believe the car was of satisfactory quality when supplied so I can't say SCUK is responsible for the fault.

Financial difficulty

From the time the car broke down in September 2020, Ms H hasn't been able to drive it and it was out of her possession getting inspected for a considerable amount of time. The car wasn't looked at by the manufacturer approved garage until March 2021, that is around four months after the initial inspection in November 2020.

During this time, Ms M said she had to find other means of transport yet she was required to meet the monthly payments. I can see around November 2020 she made SCUK aware she was suffering financial hardship and they agreed to move November 2020's due date so a payment wouldn't be taken. This didn't happen and they later paid her £154 as compensation. I appreciate the financial pressures this would've had on Ms H as she was paying for two cars. Given the communication to SCUK, it was clear this situation was causing her great distress as she waited for an answer on her complaint.

I'm satisfied on more than one occasion (November 2020 and January 2021), Ms H had made it clear to SCUK that she was suffering financial difficulty paying the monthly instalments and she was unable to use the car. Our service also made them aware of the same in January 2021.

In such times of financial difficulty, I would've expected SCUK to have shown forbearance and due consideration as outlined in the CONC guidance as per the FCA'S handbook. Aside from agreeing to move November's payment date, which they didn't do, I can't see SCUK had a conversation with Ms H about her financial circumstances so I don't believe they did enough to assist her financially.

Instead shortly after their final response to the complaint was issued, they considered the car to be abandoned at the garage as it hadn't been collected by Ms H. SCUK said they tried to call Ms H on 20 and 26 April and left messages but she didn't return their calls. While I accept this, I believe it would've been fair to have tried to contact her by other methods such as by email or letter so I can understand why Ms H's says she didn't know the car's location. SCUK is likely to argue Ms H had no intention of taking back possession of the car and I'm inclined to agree with this. I say this because she had already said she was experiencing financial difficulty, she couldn't afford the repairs to fix the car, there was nowhere to store it at her new address and she had bought another car. Given the circumstances, I believe it would've been reasonable for SCUK to have clearly discussed the options to end the

agreement early. Based on the agreement, the option of voluntary termination (VT) was possible but I believe voluntary surrender (VS) is also another fair option.

VT would've meant handing back the car and paying half the total amount payable plus any other costs such as damage to the car. In this case, the total amount payable was £9,389 thus half is £4,694. Given what Ms H had already paid, in the event the agreement was VT'd in May 2021, she would've been liable to pay a balance of £3,371 plus damage costs. According to SCUK, because the car wasn't running and required a substantial repair, the damage cost would've been around £6,600 meaning the overall liability to VT would've been around £10,000.

On the other hand, to VS the agreement, Ms H would need to return the car, the sale proceeds would've been deducted from the total amount payable and she would've been liable for the outstanding balance. In this case, the sale proceeds of the car was £2,804 but of course I must consider Ms H wouldn't have known in advance how much the car would sell for. In any event, had SCUK made these two options clear to Ms H, on balance I believe she would've chosen to VS the agreement as that was likely to be the most cost effective option given the significant damage costs. In any event, this is effectively what happened the car was sold by SCUK and the sales proceeds were deducted from the balance. The only difference is SCUK added a termination fee.

SCUK sent a default notice stating Ms H had abandoned the car and she must resume possession. While I note it said if Ms H wishes to end the agreement, she will need to pay £3,371 plus damage costs (which was the amount to VT), it also says:

"IF YOU HAVE DIFFICULTY IN PAYING ANY SUM OWING UNDER THE AGREEMENT OR TAKING ANY OTHER ACTION REQUIRED BY THIS NOTICE, YOU CAN APPLY TO THE COURT WHICH MAY MAKE AN ORDER ALLOWING YOU OR ANY SURETY MORE TIME"

So I can understand why Ms H felt she had no support or other alternatives available with SCUK despite her making it clear to them that she was suffering financial difficulty.

This is likely to explain why within days of receiving the default, she contacted SCUK. She said she was given the impression that further action would be put on hold. I must stress SCUK have no obligation to put the account on hold but for the reasons explained above, I do believe they could've done more to support in her time of financial difficulty.

Taking everything into account and in order to put things right, I believe SCUK should treat this agreement as being voluntarily surrendered (VS) in May 2021. They should amend the credit file to show the same once the balance is made or an arrangement to pay is agreed based on what Ms H can afford. SCUK should also remove the termination fee of £325. They've already offered to remove the adverse information from January and February 2021 and pay compensation, this should be done, if not already completed.

Other

Ms H asked for help in September 2020 but it wasn't until March 2021 when she was told where she stood by SCUK. Although I find the car was of satisfactory quality at supply and even given the wider circumstances of the Covid-19 pandemic, I believe SCUK could've done more to provide an answer sooner.

Having reviewed SCUK's contact notes, I can see Ms H contacted them on numerous occasions requesting to speak to the case handler but many of her requests went unanswered. I find the service provided by SCUK was below what I would expect. In recognition of the same, I understand they credited her account with £309, the equivalent of two months payments as a gesture of goodwill, agreed to pay £154 for not moving

November's payment date and agreed to remove the relevant arrears marker from her credit file for January and February 2021.

Summary

Overall, I'm not satisfied there's enough evidence to say the fault with the car was present or developing at the time of supply therefore I find it was of satisfactory quality. However I don't believe SCUK treated Ms H fairly when she told them she was struggling financially. I would've expected them to have done more to clearly outline the options to end the agreement early before terminating it. Had they done so, I believe it's most likely Ms H would've chosen to VS the agreement.

I find the level of service provided by SCUK to be below what I would expect so I can understand Ms H's frustration and upset about this. However SCUK has paid over £500 in compensation (£154 for not updating November's payment date and £390 for poor service) and I believe this is a fair amount in the circumstances so I won't be asking them to pay more".

Response to the provisional decision

Ms H disagreed with the findings of the provisional decision. In brief, she said:

- She didn't drive the car to destruction. She nor her partner ignored any warning lights;
- The inspection was after the oil depletion but at the time it happened, there was a puddle of oil present and the garage advised the untightened sump plump was the cause;
- The repair cost quoted by SCUK was high and their level of service was poor.

SCUK said as it was a conditional sale agreement and not a personal loan agreement, voluntary surrender wasn't available to Ms H, only voluntary termination was possible and they didn't consider that to be a cost effective option. They also said there was no other option which could have been offered to Ms H which would've assisted with her financial difficulties so overall they believed they treated her fairly.

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 thank both parties for their further comments which I've carefully considered. I understand Ms H is disappointed by my findings and I'm sorry if I caused her any offense as that wasn't my intention. However there is insufficient evidence for me to reasonably conclude the car wasn't of satisfactory quality when supplied. Concerning SCUK's further comments, while I understand VT is a contractual right under such agreements I think it's generally fair that the option of VS is also given especially in instances of financial difficulty as was the case with Ms H. Therefore I remain of the belief they didn't treat her fairly in that regard.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to partially uphold Ms H's complaint.

To put things right, Santander Consumer (UK) must:

- Treat the agreement as being voluntarily surrendered in May 2021;
- Remove the termination fee of £325 from the outstanding balance;
- Amend Ms H's credit file to show the agreement being voluntarily surrendered once the balance is paid off or an arrangement to pay is agreed;
- Remove adverse information Ms H's credit file from January and February 2021 (as already agreed)
- Pay the compensation amount offered (if not done so already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 18 May 2022.

Simona Charles
Ombudsman