

The complaint

Mr A complains about the quality of a car he has been financing through an agreement with Santander Consumer (UK) Plc ("SCUK"), trading as Santander Consumer Finance.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

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 know it will disappoint SCUK, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr A acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then SCUK, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr A. The car here was about two years old and had completed about 17,500 miles when it was supplied to Mr A, so I don't think a reasonable person would expect much wear and tear to be present.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when SCUK were responsible for the car's quality, unless they can demonstrate otherwise. But here, as the car failed after about 11 months the relevant legislation puts the onus on Mr A to demonstrate the fault was most likely present, or in this case developing, when the car was supplied to him

The relevant legislation explains that when we consider whether goods are of satisfactory quality we should consider if they've been durable. I'm persuaded here that Mr A has provided sufficient evidence to suggest the car has not been durable. I say that because I don't think a reasonable person would expect such significant issues on a car that has only completed about 26,000 miles. The turbo has needed replacing, as has the start/stop battery and there's a misfire on two cylinders that needs further expensive investigation.

I think that's sufficient evidence that the car hasn't been durable and hasn't therefore been of satisfactory quality.

The relevant legislation allows the business one opportunity to repair a vehicle that has been of unsatisfactory quality. SCUK say they haven't had that opportunity as Mr A didn't report the matter to them until after he'd approved the first repair attempt.

I don't think that's fair. Mr A has explained that the supplying dealership had referred him to another main franchised dealership as they'd experienced a fire and couldn't help him. In those circumstances, I think if Mr A had told SCUK that the car needed attention they would have been likely to send him to the dealership the supplier had suggested – the one he did attend.

So, I think the outcome would have been likely to be the same. That dealership didn't resolve the issue for Mr A and failed to corroborate the misfiring that the roadside assistance engineer had identified. Mr A subsequently paid £144 for a diagnostic at another garage who were able to corroborate the faults. So, I think there is sufficient evidence that there has been a first repair attempt and that that attempt has failed. In those circumstances MBFS should now allow Mr A to reject the car.

Putting things right

SCUK should collect the car at no cost to Mr A and they should end the finance agreement.

They'll need to refund any deposit Mr A has paid and, as he's been deprived of that money, they will need to add interest to that refund.

Mr A has had to commission a report on the car's condition in order to support his claim. I think that cost has been incurred as a consequence of the car being of unsatisfactory quality. So, SCUK should refund the £144 that report cost Mr A. They'll need to add interest to that refund too.

Mr A has been inconvenienced by these issues. He's had to take the car back to a dealership on a couple of occasions and has had to arrange for assistance from the emergency call out service. He's also had to arrange his own diagnostic report and escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances SCUK should pay him £300 compensation for the distress and inconvenience he's experienced.

It was reasonable for Mr A to stop using the car in March 2022 after he was warned continued use could damage the car further. So, SCUK should refund any finance instalments he's paid since the car broke down on 11 March 2022. They'll need to add

interest to that refund.

It's only fair that Mr A pays for the use he's had from the car so I'm not asking SCUK to refund any payments he made towards his agreement before the 11 March 2022.

My final decision

For the reasons I've given above I uphold this complaint and tell Santander Consumer (UK) Plc to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr A.
- Refund Mr A's deposit/part exchange contribution and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any finance instalments paid since 11 March 2022 in respect of lack of use and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the £144 Mr A paid to have the faults diagnosed and add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr A £300 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse information they may have reported to Mr A's credit file in relation to these issues.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 July 2022.

Phillip McMahon
Ombudsman