

The complaint

Mr L complains about a car he acquired under a conditional sale agreement with Santander Consumer (UK) Plc (trading as Kia Financial Services).

What happened

In September 2021 Mr L acquired a used car under a regulated conditional sale agreement with Kia Financial Services ("Kia"). The car was two years old and its mileage was 40,762 miles. Its cash price was £20,236. He had to make 48 monthly payments of £366.83, as well as a deposit and a balloon payment.

In October 2021 the car broke down and had to be recovered from the roadside. That was after Mr L had driven it for about 1,000 miles. The car was repaired under warranty; this involved replacing one of the injectors. On three more occasions, each of the other three injectors were replaced too. The second was replaced in January 2022, at 43,605 miles.

The car broke down a second time in October 2022, when the car went into limp mode – something which has happened several times since. On 1 November 2022 Mr L asked to reject the car. Kia arranged an independent inspection of the car. The result of that inspection was that the car was found to require a further repair, but the engineer thought that the fault would not have been present at the point of sale because the car had been driven over 8,000 miles by that point (the mileage at the breakdown being 49,375). So based on that report, Kia concluded that it was not liable. Therefore Mr L was not allowed to reject the car, and it was repaired instead. It was on this occasion that the third injector was replaced.

The third breakdown was in February 2023, when the car had only been driven another 600 miles (49,989 miles altogether). The fourth injector was replaced. Courtesy cars had been provided during the previous repairs, but not this time. Mr L says that caused considerable inconvenience to him and to his family. He complained to Kia and then to our service. (He is represented in this complaint by his wife.)

In its defence, Kia relied on the independent report, but our investigator did not find that report to be persuasive. She pointed out that injectors should last between 50,000 and 100,000 miles, and yet all four of them had failed before the car had been driven 50,000 miles, two of them within four months of the point of sale. She concluded that the car must not have been durable when it was supplied to Mr L, and so she upheld his complaint. However, she did not recommend that Kia take the car back and end the finance agreement because by the time she gave her opinion (in June 2023) both parties were satisfied that the car appeared to have been repaired. So instead, she just recommended that Kia pay Mr L £450 as compensation for his inconvenience, plus a refund of his monthly payment for the time he was without a courtesy car (March 2023), plus a refund of 75% of his monthly payment for the month following the second breakdown in October 2022 when the car had been in limp mode and had only been driveable over local journeys. She recommended that Kia pay interest on those refunds at eight percent a year, and that any adverse information concerning the agreement be removed from Mr L's credit file.

Mr L accepted that recommendation. Kia has not commented on it one way or the other. Because of that, the investigator referred this case for an ombudsman's decision.

In September 2023 the car broke down for the fourth time.

I wrote a provisional decision which read as follows.

What I've provisionally 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 agree with the investigator that the car was not durable at the point of sale, because fuel injectors should last between 50,000 and 100,000 miles and they all failed earlier than the low end of that range. It was a statutory implied term of Mr L's contract with Kia that the car would be durable, and so Kia is liable for that. So I uphold this complaint on that basis. It only remains for me to decide what the remedy should be.

Since the first two repairs had failed to fix the problem, I think that Mr L should have been allowed to reject the car in November 2022. Instead, the car was repaired for a third time. But that repair clearly failed to resolve the issue, as the car broke down again in February 2023, and another injector had to be replaced. Mr L then brought this complaint to our service and asked for either a replacement car or alternatively to reject the car. Nevertheless, he accepted the investigator's view that the car did not need to be returned because the repair in early 2023 had resolved the issues. Of course, that was before the car broke down again in September.

The latest problem does not appear to be related to the fuel injectors, and without more evidence I cannot safely conclude that it was caused by a fault which was present in September 2021. Nevertheless, I still think that the best remedy now is for Kia to take back the car, end the agreement, and refund the deposit (as well as the refunds the investigator recommended). I think that is fair because Mr L should have been allowed to exercise his right to reject the car on 1 November 2022, after it had been repaired twice, and the third repair still did not resolve the matter. He no longer has confidence in the car, and so I think he should now have another opportunity to be rid of it.

That does not mean that he gets a refund of his monthly payments since November 2022. He has still had use of a car since then, except for when he was without a courtesy car. So instead I will only require a refund of the deposit, and of the two refunds proposed by the investigator (with interest). And I propose to increase the compensation for his inconvenience to £750, as I think the amount previously suggested was a little low.

I am currently minded to uphold this complaint. Subject to any further representations I receive from the parties by the deadline below, I intend to order Santander Consumer (UK) Plc (trading as Kia Financial Services) to:

- Collect the car at no cost to Mr L and end the conditional sale agreement with nothing further to pay;
- Refund Mr L's deposit;
- Refund to Mr L one monthly payment (for the period from February to March 2023 when Mr L was without the car and without a courtesy car);
- Refund to Mr L 75% of one monthly payment (for the period from 17 October to 18 November 2022 when the car was in limp mode);
- Pay Mr L simple interest on the above refunds at 8% a year from the dates of each payment to the date of settlement;
- Pay Mr L £750 for his distress and inconvenience.

Responses to my provisional decision

Mr and Mrs L had nothing to add.

Kia suggested that £750 for Mr L's inconvenience was a little too high, and asked me to consider reducing it to £500. But that appears to have been based on a misunderstanding, as Kia apparently thought that I was going to order it to refund all of the monthly payments. I'm not going to do that, because Mr L had a car for most of the time, so Kia will only be refunding 1.75 monthly payments. So I remain of the view that £750 is fair.

There is therefore no reason for me to depart from my original findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Santander Consumer (UK) Plc (trading as Kia Financial Services) to:

- Collect the car at no cost to Mr L and end the conditional sale agreement with nothing further to pay;
- Refund Mr L's deposit (£943.51);
- Refund to Mr L one monthly payment (for the period from February to March 2023 when Mr L was without the car and without a courtesy car) (£366.83);
- Refund to Mr L 75% of one monthly payment (for the period from 17 October to 18 November 2022 when the car was in limp mode) (£275.12);
- Pay Mr L simple interest on the above refunds at 8% a year from the dates of each payment to the date of settlement; and
- Pay Mr L £750 for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 December 2023.

Richard Wood
Ombudsman