

The complaint

Mr H has complained about a car he acquired under a conditional sale agreement with Santander Consumer (UK) plc T/A Santander Consumer Finance (SCUK).

What happened

The circumstances of the complaint are well known so I'm not going to go over everything again in detail. But, in summary, Mr H acquired a used car under a conditional sale agreement with SCUK in December 2022. The cash price of the car was around £7,800. It was around seven and a half years old and had covered around 53,000 miles when Mr H acquired it.

I understand Mr H contacted SCUK in April 2023 and said the car had an issue with the timing belt and needed an Engine Control Unit (ECU) update. SCUK's notes say Mr H heard a rattling sound. The notes say the warranty that came with the car had expired, which is why Mr H contacted SCUK. The notes also say the last service was five years previous, but Mr H said the car was sold with a full-service history.

SCUK arranged for an independent inspection report to be carried out in June 2023. The mileage at this point was around 55,800. The report broadly said it was unable to identify any faults with the car. It noted a faint rattling noise between changing gears but said this was commensurate with the car's age and mileage.

SCUK sent a final response for the complaint and said no faults were identified. It also said with regards to the service history the dealer had said the car wasn't mis-sold. It said Mr H had time to review the paperwork and that he'd signed a certificate to say he was happy with the car and paperwork when he acquired it. As things weren't resolved, Mr H referred his complaint to the Financial Ombudsman.

One of our investigators looked into things but didn't make any recommendations. She said she'd not seen enough to demonstrate a fault with the car. And that she'd not seen enough evidence the car was sold as having full-service history. And that if this was important to Mr H, he had the opportunity to review the documentation at the point of supply.

Mr H didn't agree. He said the sale was pushed through just before Christmas and he had no offer to test drive the car. He said he didn't have time to go through everything. And that he only chose the car because it was advertised as having full-service history. He said the car wasn't as described. He also reiterated he thought the car was faulty and that the noise was getting worse. He supplied an invoice from a third-party garage that said the car had a metallic rattle in a certain rev range while driving. It said it was unable to find a problem but that it sounded like a loose metal bracket or something similar.

As things weren't resolved, the complaint has been passed 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr H and SCUK that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr H acquired the car under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr H entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory, fit for their intended purpose and as described. SCUK is the supplier of the goods under the agreement and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.

In Mr H's case, the car was around seven and a half years old when it was supplied and had already covered around 53,000 miles. The price he paid was lower than if it was a newer less road worn model. So I think the reasonable person would have different expectations of it compared to a new car.

It doesn't seem to be in dispute there is a rattling noise with the car at certain revs. But the problem I have is that I've not been supplied sufficient evidence there's a fault with the car that makes it of unsatisfactory quality. Even if the rattling was considered a fault, the evidence I've seen seems to indicate this is commensurate with the car's age and mileage. I think SCUK acted fairly by arranging an independent report. But I don't think there's grounds to say the car was of unsatisfactory quality and that SCUK needs to do something else to put things right.

Mr H has also said the car was supplied as having full-service history. He said he wouldn't have acquired the car if he'd known that wasn't correct. I've seen a snippet from an advert for the same model car from the supplying dealer setting out it came with full-service history, which I believe was for the car Mr H acquired. The dealer said that it was common for a car's service history to comprise of invoices and paperwork, and that service books may not always be stamped.

I'm mindful that it looks like Mr H first reached out for help with the faults, as opposed to seeking to reject the car due to misinformation about the service history. I can understand our investigator's point that if the full-service history was critical, she'd have expected Mr H to check that when going through the sales process; or that she'd have expected him to seek to reject the car as soon as he was aware it didn't come with full-service history. But I'm also mindful that Mr H has signed a form at the point of supply that says he'd been given a copy of the service history. The CRA does set out that changes to information concerning a goods' description can be made before the consumer enters into the contract if they are expressly agreed. I appreciate Mr H says he was rushed on the day, but it's hard to reach firm conclusions on that. Ultimately Mr H decided to enter into the agreement to acquire the car. He signed to say he'd been given the service history and that he agreed the car was as described. So even if I were to agree there was a problem with the advert, it looks like Mr H was given sufficient information about the car before deciding whether to enter into the agreement.

Therefore, while I'm sorry to hear Mr H is unhappy with the car, I don't find I have the grounds to direct SCUK to take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 April 2024.

Simon Wingfield
Ombudsman