

The complaint

Mr H complains Santander Consumer (UK) Plc (SCUK) supplied him with a car that he believes wasn't of satisfactory quality.

What happened

In November 2022 Mr H entered into a 48 month conditional sale agreement for a used car. The car's cash price was around £10,900. It was around nine years old and had covered over 48,000 miles. Mr H was required to pay monthly instalments of £265.

Within days of acquiring the car, he complained there were issues with it, namely one of the doors wouldn't lock and the clutch was faulty. The car was returned to the dealership who carried out repairs.

However despite this, Mr H complained there were still issues with the clutch and there were abnormal noises come from the power steering. The car was returned to the dealership for a second time but they said no faults could be found. Mr H complained to SCUK.

An independent inspection was carried out in January 2023 which concluded there was an excessive whining noise coming from the power steering pump and an abnormal odour of clutch slipping. It said the faults were developing at supply and it was the dealership's responsibility.

Based on the above, SCUK upheld the complaint and said a further repair should be carried out. However the dealership said they couldn't find the fault so Mr H went back to SCUK. A further inspection was carried out in March 2023 and it determined the repairs had resolved the issues but Mr H maintained they remained.

Unhappy with the situation, he referred the complaint to our service. Given the conflicting information from all parties concerned, the investigator recommended a third inspection. The findings of that report differed from the previous two. It said there was a fault as engine management lights were illuminated and there was an abnormal noise coming from the differential on the gearbox. However it said these faults developed after supply.

Following this further evidence, the investigator recommended the complaint was upheld. She believed the abnormal noises found in the third report were the same ones reported in the first one. Despite some repairs being carried out, she said further issues remained so SCUK should allow rejection. SCUK disagreed following further representations by the dealership.

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've decided to uphold Mr H's complaint. I will explain why.

Mr H acquired a car under a regulated credit agreement. SCUK was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to 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 involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

In this case, Mr H was supplied with a used car that was over nine years old and covered over 48,000 miles. For used cars, it's reasonable to expect parts may already have suffered notable wear and tear and may need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied.

Despite repeated requests, there is limited evidence about the initial faults reported by Mr H- that is a door wouldn't lock and the clutch was faulty. There are no job cards from the dealership about the repairs. However broadly speaking it appears SCUK accept these faults were present and repairs were carried out which included the replacement of the clutch. On this basis, I find there were faults with the door locking system and clutch. Given how soon these faults were reported after Mr H acquired the car, I find they were present at supply meaning the car wasn't of satisfactory quality (a breach of contract).

Although Mr H reported the door was fixed, within days of the car being returned to him, he said there remained issues with the clutch and a further issue with abnormal noises coming from the power steering. At this point, he complained to SCUK. Based on their contact notes, he asked to reject the car.

I wish to reiterate the CRA says a consumer has 30 days to reject a car that's of unsatisfactory quality. It also says if the consumer agrees to a repair, the clock stops running during the period of any repair. On return of the car, the consumer has the remainder of the 30 day period or 7 days (whichever is the longer) to use the short-term right to reject if the car is still faulty. In this case, it appears the car was returned to the dealership on two occasions within a 30 day period. Moreover, the first inspection report in January 2023 concluded there were faults with the car which was the selling agent's responsibility.

Therefore it's unclear why SCUK didn't allow Mr H to reject the car as he requested. The CRA makes it clear where there has been a breach of contract, there is one opportunity to repair the car and I must stress this is in relation to the car as a whole and not to each individual fault. As that has already happened in this case, I question why SCUK said there should be another opportunity of repair. I believe it would've been fair to have allowed Mr H to reject the car at that point. I don't find SCUK acted reasonably by not allowing him to do so.

Despite the findings of the inspection in January 2023, it's reported the dealership found no faults meaning no further repairs were carried out. I find this to be strange given the conclusions of the report. It is also worth noting there is no documentary evidence (such as job cards) from the dealership as to what checks were carried out so I can't say what was looked at or checked.

Matters have moved on since then and there has been a further two inspection reports, this is because there is a dispute as to whether faults remain with the car. I wish to reassure all parties I've carefully considered all three reports. As the findings of them are well known to both parties, I won't repeat them in full. But in summary, the conclusions of each one says:

1st inspection (January 2023):

"When manoeuvring the vehicle and applying complete locks, there was an excessive whining noise heard from the power steering pump. When holding the steering wheel at a complete lock, the whining noise becomes worse"

"We would consider, based on the mileage the vehicle has covered and the MOT performed on 14/11/22 and the mileage taken from our instructions, we consider the faults were developing at purchase and are the selling agent's responsibility".

2nd inspection (March 2023):

"Based on the evidence available to ourselves at the time of our inspection, on inspecting the repaired faults we can confirm that the repair work to the vehicle has been carried out to the commercially acceptable standard".

3rd inspection (August 2023):

"We have carried out diagnostic checks and there was a diagnostic code within the vehicle's system relating to this fault. There were no abnormal noises or operation noted from the vehicle's steering or clutch, no abnormal smells were noted to the vehicle during the course of our road test"

"However we did note there was a noise from the differential on the gearbox when taking up drive and on cornering. This fault is not related to a previous repairs carried out to the vehicle. The vehicle has been in service for approximately 9 months and covered a mileage of in excess of 6,000 miles. As such, we do not consider the present faults with the vehicle to have been present or developing at the point of finance inception, the faults with the vehicle have developed after purchase".

Based on these inspection reports, it's evident different conclusions have been reached. I must emphasise where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I note the first and third report makes reference to abnormal noises coming but they differ as to its source. One says it relates to the power steering, the other says it's from the gearbox. Nevertheless it's clear the noise is present and Mr H has complained about this from the outset.

SCUK is likely to say the third inspection report explicitly says this noise wasn't related to the previous repair (referring to the second report). However there is no indication the inspector was made aware of the conclusions of the first report and the abnormal noises found. Moreover, there is no evidence any repairs were carried out by the dealership following the first report so I can't reasonably say they were completed to an acceptable standard as commented in the second report.

Mr H has provided two videos regarding the noises, copies of the same have been provided to SCUK. Having watched the videos, I can hear strange noises when Mr H is driving particularly when turning the wheel. I don't have to be an expert in car mechanics to

recognise this noise is abnormal for a car. Moreover based on the further comments from the dealership, they also appear to accept there are unusual noises which they suspect is coming from the steering wheel/column. On balance, I find its most likely these abnormal noises relate to a fault (source unknown) which Mr H has been complaining about from the beginning and two inspection reports make reference to them. In light of the same, I find this further fault also meant the car wasn't of satisfactory quality at supply.

Mr H says he has lost confidence in the car and given what has happened, I can understand why. Based on the timeline of events and the inspection findings, I find SCUK should allow Mr H to reject the car. For the reasons highlighted above, it's unfortunate they didn't allow him to do so earlier back in January 2023 when he first asked. Had they done so, matters could've been resolved sooner and additional trouble and upset avoided.

To put things right, SCUK should end the agreement, collect the car and refund the deposit paid. Mr H has covered over 6,000 miles since he acquired the car so despite the above faults, it is clear he's had use of it. Therefore it's fair he pays for this so I'm not asking SCUK to refund the monthly instalments paid. I note Mr H's comments that while the car was left at the dealership, they covered an additional 800 miles without his consent to do so. However I have insufficient evidence to say this happened.

As a result of being supplied with a faulty car, Mr H has mentioned he has incurred costs such as the cost of recovery (around £60) when the car broke down shortly after acquiring it. This should be refunded by SCUK.

From my understanding when the car was initially in for repairs in December 2022, Mr H was supplied with a courtesy car and SCUK agreed to pay £400 for the trouble and upset caused by the events up to that point. Given what has happened since including the further faults, trips to the garage, and further inconvenience, I agree with the investigator that SCUK should pay an additional £250 compensation for the trouble and upset caused (meaning a total of £650 compensation).

My final decision

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

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

- End the agreement with nothing further for Mr H to pay;
- Collect the car at no cost to Mr H;
- Refund the deposit*;
- Refund the cost of the car's recovery (subject to evidence being provided)*
- Remove any adverse information about this agreement from Mr H's credit file;
- Pay a further £250 compensation to Mr H for the trouble and upset caused.

*SCUK should also pay 8% simple interest per year on all the above refunds calculated from the date of payment up to the date of settlement.

*If SCUK Limited considers tax should be deducted from the interest part of my award it should provide Mr H with a certificate showing how much it has taken off, so he can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 December 2023.

Simona Reese
Ombudsman