DRN-4508685

The complaint

Mr H has complained about the quality of a car he acquired under a conditional sale agreement with Santander Consumer (UK) plc T/A MG Motor Financial Services (SCUK).

What happened

To summarise, Mr H acquired a new car for £27,040 under a four-year conditional sale agreement with SCUK in August 2022. I understand he paid a £6,000 deposit and there was a £1,000 manufacturer contribution. He was due to pay back the agreement with monthly payments of around £270 followed by a final payment of around £10,500. Mr H entered into a sales agency agreement on the same day that gave him the option to sell the car back to SCUK at the end of the term for the price of the final payment if he wished to take that option instead of buying the car. The sales agency agreement came with a 10,000-mile annual limit. Each excess mile would be charged at 14.9p (excluding VAT).

Mr H said he noticed issues with the car straight away. He said the wing mirrors were faulty; there was a rattling noise; and certain connectivity functions didn't work. I understand he tried to reject the car with the supplying dealer after it had attempts to try to resolve the issues for him.

Mr H decided to contact SCUK for help. An independent report was arranged that noted the car had been subject to unsuccessful repair attempts. There was a severe rattle behind the dash, and problems with the entertainment system noted. Further repairs were arranged, but Mr H said the car wasn't brought back to conformity. So he complained again.

A further independent inspection was carried out that acknowledged an abnormal heavy vibration when accelerating. Mr H was able to return the car in early 2023 to the supplying dealer and SCUK unwound the agreement. I understand Mr H was refunded the five payments he'd made. SCUK also compensated Mr H £200 for the distress and inconvenience caused. Mr H was unhappy the dealer only refunded him £4,182 from the deposit because it charged him 45p per mile. He referred his complaint to the Financial Ombudsman to consider. To resolve the complaint, he requested the rest of his deposit back along with further expenses including £120 of premium petrol for testing the car as requested by the supplying dealer, along with around £150 for the cost of tinting the windows.

Our investigator said SCUK should refund the balance of the deposit with interest, but it could offset the refunded payments. He thought it should increase the compensation to £300 and said Mr H should be reimbursed 10% of the monthly payments for impaired use, and any adverse information about the agreement should be removed from his credit file.

Mr H accepted the proposal, but SCUK didn't. In summary, it said:

- It reached the correct outcome.
- Mr H was charged for usage fairly.
- It felt an extra £100 was unfair.

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. 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.

The car was new when it was supplied so it should have been in perfect working order, and free from even minor defects. It doesn't seem to be in dispute the car wasn't of satisfactory quality and there were unsuccessful repair attempts. Mr H has been able to reject it which seems fair. What's left to decide is how to put things right.

I don't think it's fair Mr H receives a full refund. It's fair he pays for his use of the car. The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure for example. I've thought about what a fair deduction would be and have considered relevant guidance on what fair usage should be, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. I've been mindful of the following elements of the guidance which would be relevant to this complaint such as that fair usage should reflect the use the consumer has had from the goods. Deductions shouldn't be made for the time the goods were being repaired or having faults assessed. Considerations can be made for all relevant information when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this and relevant information can include, for example, the type of goods, the intended use, expected lifespan etc.

As a starting point, in the particular circumstances of this case, I agree the monthly repayment towards the conditional sale agreement is a reasonable figure to use for a months' worth of use of the car. The payments weren't significantly impacted one way or another by anything unusual in the way the agreement was set up. Mr H didn't cover more miles than were set in the mileage limit on the sales agency agreement. But I think the monthly figure would be fair if the goods conformed to the contract and were able to be used as intended. In this case, it doesn't seem to be in dispute that didn't happen.

Five repayments towards the agreement total £1,365.90. Whereas the dealer thought a deduction of £1,818 was fairer. I believe this means Mr H covered around 4,000 miles in the car. The figures aren't drastically different. And as I said, there's no exact science here. I'm conscious that some of the miles were covered by Mr H in the course of having inspections and repairs carried out. Moreover, I'm conscious that Mr H's use of the car seems to have been slightly impaired for the whole time he had the car. It must've been frustrating for him having issues with a new car that were highlighted in the independent reports. I expect a lot of the enjoyment was taken away.

Taking everything into account, I think the fairest way to come up with a fair use figure is to use the monthly repayment towards the conditional sale agreement as the starting point. And I agree with our investigator that a 10% reduction of that seems broadly a fair way to recognise the impaired use.

I think Mr H was no doubt caused some overall inconvenience as a result of being supplied a car that wasn't of satisfactory quality. He's had various trips to the garage, along with inspections that needed to be attended or have carried out. He's claimed for other expenses such as premium petrol he says he was asked to try. And he's said he paid around £150 for window tinting that he's not going to receive the full benefit of now he's rejected the car. There's a lack of supporting evidence of costs incurred, but I'm conscious Mr H accepted our investigator's recommendation of a total of £300 compensation. Moreover, it's not possible, for example, to apportion exact petrol costs to miles covered as a result of the breach of contract. But having thought about everything that happened, I think the £300 recommended by our investigator is fair in all the circumstances. I think it's broadly reflective of the overall inconvenience not accounted for in the impaired use deduction; the extra costs incurred; and the time without use of the car. I therefore agree SCUK should, to the extent it's not done so already, pay Mr H £300 compensation.

The only slight change I'm going to make to the redress is that I think interest should be added to the portion of the deposit Mr H wasn't refunded when the car was rejected, because I think this is a fairer way to calculate the time Mr H was deprived use of the deposit funds in this case.

My final decision

My final decision is that I uphold this complaint and direct Santander Consumer (UK) plc T/A MG Motor Financial Services to:

1. Refund Mr H's deposit of £6,000.
2. Refund 10% of the monthly repayments he'd paid.
3. Offset anything already refunded to Mr H.
4. To the extent it's not done so already, pay Mr H £300 compensation i.e., pay Mr H £100 if £200 has already been paid.
5. Remove any adverse information about the agreement from Mr H's credit file.

Interest should be added to the £1,818 portion of the deposit in relation to point 1 a rate of 8% a year simple from the date Mr H received a refund of £4,182 to the date of settlement.

Interest should be added a rate of 8% a year simple to the refunded 10% portion of payments in point 2 from the date each payment was made to the date of settlement.

If SCUK considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much tax it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 April 2024.

Simon Wingfield
Ombudsman