

The complaint

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

What happened

In April 2023 Mr C acquired a used electric car under a conditional sale agreement with SCUK. The car cost around £27,000 and it was to be paid back over around four years. There was an advance payment of around £9,500. I understand the car was around six months old and had covered 7,200 miles when it was acquired.

A couple of days after acquiring the car Mr C contacted the supplying dealer and the manufacturer because it wasn't charging at the rate it was supposed to. The dealer responded to say it had recently charged the car and it was fine but asked Mr C to contact it if he needed help. Mr C liaised with the dealer and its representative over the next few weeks, but he wasn't happy things weren't progressing, so he wanted to reject the car. It looks like the dealer wanted Mr C to arrange for the manufacturer to investigate or for Mr C to speak to the company that supplied the home charger he was using because the issue was present when Mr C was at home. The dealer told Mr C it wouldn't be able to send one of its technicians to his home because even if it found a fault the advice from the manufacturer would likely be to wait for a software update.

Mr C said he'd been trying to resolve the issue with various parties. He said the manufacturer had no option to schedule test charges at any of the dealerships. He also supplied an email from the manufacturer that said *no further investigation/assistance can be provided at this time as the update is awaiting completion and release. As there is no current timeframe set for this, we will be closing of your case [sic]*. Mr C raised his complaint with SCUK in June 2023.

An independent report was carried out in July 2023, and I understand the mileage at this point was around 11,200. The report noted the car wouldn't fast charge when plugged in and using the associated app for the charger. The report said the car displayed a message saying "unable to fully charge vehicle". The report noted Mr C had another vehicle of the same model which charged as intended. The report said the fault is consistent with requiring a software charging update and that it was likely to have been there at point of supply.

SCUK said to Mr C that based on the report the car needed to be inspected by a garage again. And it said the dealer would offer £300 compensation. Mr C complained saying the car had been to the manufacturer garage twice and it had an independent inspection. Mr C was unhappy and referred his complaint to our service. I initially set out that Mr C had also taken the car to the supplying dealer, but I've been told that's not correct.

SCUK sent a final response for the complaint in September 2023 and said it agreed there's a fault as per the independent report, but the dealership needed to wait for a software update. It said the dealer had offered £300 compensation and it was willing to offer £200 for the inconvenience caused.

Mr C wasn't happy with the outcome. In summary he said:

- An independent report was carried out that confirmed the fault.
- He'd been to a manufacturer garage on three occasions.
- The fault remained with no date of estimated fix.
- It caused distress and inconvenience and he'd incurred extra costs as a result.

In October 2023 the car was recovered after breaking down. Several fault codes were found, and Mr C said the car was recovered for around three weeks. Fault codes were reset and he was left without a vehicle during that time.

Our investigator issued an assessment saying Mr C should be able to reject the car because he'd been waiting seven months for a remedy.

Mr C wanted to highlight he'd incurred extra costs as a result of having to use public charging points instead of being able to charge the car at home. He also gave some details of when the car was inspected and for how long. He also explained he requested rejection within a couple of weeks of acquiring the car and so he should've been allowed within the short term right to reject.

SCUK responded to say the issue could be down to the charging point at Mr C's home or with his app. It requested a specialist from the manufacturer visit Mr C for inspection. Mr C didn't want to allow this. He said he'd had the charger replaced and he also had another car of the same model that charged without issue.

I issued a provisional decision that said:

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 C 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 C 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 C 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.

In Mr C's case, the car was used when it was supplied and had already covered around 7,200 miles. I think the reasonable person would have slightly different expectations of it compared to a new car. But I'm conscious it cost around £27,000 and was only around six months old. So I don't think a reasonable person would have expected it to have any significant issues when it was acquired.

I've first thought about what evidence there is showing there was a fault with the car. Mr C complained there was an issue with the charging within a couple of days of being supplied the car. The manufacturer sent a message to Mr C saying it was waiting for an update release for the issue. There's an independent report saying there's a fault that was considered to have been there at point of supply. The dealer set out the fault needs to be inspected by the manufacturer. Moreover, Mr C showed us the car was recovered in October 2023 and the recovery report highlighted a number of fault codes. I think there's sufficient evidence to say, on balance, there are faults with the car. The faults were apparent within the first six months of acquisition. And I don't think a reasonable person would expect those sorts of faults given the age, mileage and price of the car when it was acquired. So I think there's been a breach of contract.

I've next thought about what needs to be done to put things right. Mr C says he should've been able to exercise his short term right to reject the goods, and that he tried to do that within a couple of weeks of acquiring the car. The CRA broadly sets out that Mr C had 30 days to exercise the short term right to reject if he indicated that to the trader and the goods weren't of satisfactory quality. The issue in this case is that I've not been supplied evidence Mr C sought to exercise his short term right to reject via SCUK – who is the trader under the conditional sale agreement. So, based on what I've seen so far, it's not clear SCUK acted unfairly by not allowing Mr C to reject the car on this basis.

Outside of the first 30 days the trader would be entitled to an attempt of repair or replacement before Mr C would be allowed to exercise his final right to reject. But where the consumer requires the trader to repair or replace the goods, this must be done within a reasonable time and without significant inconvenience. In Mr C's case, he's had the car for nine months and from what I've seen, it's still not repaired. He's given several opportunities to the parties to resolve things. The remedy hasn't been carried out within a reasonable amount of time. So I think Mr C now has fair grounds to seek rejection.

Therefore, to resolve the complaint, I'm intending to say SCUK should end the agreement and collect the car from him. I think it's broadly fair for SCUK to retain the monthly repayments in recognition of the use Mr C has had of the car. But it should refund him his deposit, along with interest. The deposit on the agreement is around £9,500 so this is what I'm proposing SCUK refunds Mr C. But if that's not right, either party can let me know in response to this provisional decision.

From what Mr C has said he was without use of the car for around a month while it was in for inspection or being inspected at his home. And I believe for three of those weeks (after the car was recovered in October) he wasn't given a courtesy car. Given his monthly repayment is around £135 I'm going to propose he's refunded £100 in recognition of the loss of use he had of the car – primarily for the three weeks he was without a courtesy car. If that's not right, either party can let me know in response to this provisional decision.

Mr C has been able to use the car, and I've not seen enough to say his use was impaired. But he's told us he's lost out by having to charge the car at public charging places rather than doing it at home. Charging it outside of his home is more expensive. He's shown us some invoices showing what he paid to charge the car away from home. There's not going to be an exact science for this part of the complaint. I'm conscious Mr C was always going to need to pay to charge the car. And I wouldn't be able to conclude all the charging away from home represents consequential losses that SCUK needs to refund him. I appreciate it's difficult for him to demonstrate clearly the exact extra costs he's incurred. It would make things very complicated, and I'm required to decide complaints quickly and with minimum formality. But I accept that it wasn't as easy for him to charge the car at home as it should have been. I understand the charge may have been slower and it was more difficult to charge the car at a convenient (and most cost effective) time. So I'm satisfied he's been put

to some inconvenience over the last nine months. But I'm not going to direct SCUK to reimburse him everything he's had to pay to charge the car in public places.

SCUK offered Mr C £200 for the inconvenience. I understand the dealer offered £300. I'm going to propose SCUK takes ownership of the whole offer and, to the extent not done so already, makes sure Mr C is paid a total of £500 in recognition of the distress and inconvenience caused. He's had the issues with the charging. He's had to make various visits for inspections. He broke down in October 2023. And from what I've seen, a lot of the enjoyment of acquiring a car has been taken away. I think £500 along with what I'm intending to recommend seems like a fair way to put things right, in the round.

For completeness, SCUK has said more recently it would like to have a specialist from the manufacturer visit Mr C to inspect the charger and app. I can appreciate why it's suggested this. But Mr C isn't willing to have further inspections carried out. I'm mindful SCUK was notified of the complaint back in June 2023, so I think it's fair to say it's had enough opportunity to investigate the issue. There's been an independent report setting out the fault. The manufacturer has referred to a software update being required – indicating a problem with the car as opposed to Mr C's charger and app. And Mr C has told us the charger has been replaced and it's working on another vehicle of the same model. So I'm satisfied, on balance, I can reach a conclusion on the complaint based on the evidence that's already been submitted by the parties.

To resolve the complaint, I'm intending to direct SCUK to:

- end the agreement with nothing further to pay;*
- collect the car at no further cost to Mr C;*
- refund Mr C's advance payment of £9,561.67;*
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;*
- pay £100 for loss of use;*
- pay £500 compensation;*
- remove any adverse information from Mr C's credit file in relation to the agreement.*

If SCUK considers it is required to deduct tax from my interest award it should provide Mr C a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

Mr C responded to say, in summary:

- The dealer specialised in another manufacturer, but they spoke and arranged an appointment with the manufacturer of the car subject to this complaint. He said he always adhered to requests for inspection.*
- With regards to the charger, he'd contacted the manufacturer of it because of the insistence of the parties there was no fault with the car. He had the charger replaced but it made no difference.*
- He raised a further concern with SCUK following the car being recovered and that SCUK said this would need to be raised as a further complaint, but no contact was made.*
- He reiterated he was forced to use public chargers. And explained that the car was only able to charge at half the rate at home, and he couldn't set it to charge when he wanted.*
- He explained he'd been paying for the car but had raised the issue within 48 hours of supply.*
- He thought SCUK didn't take ownership of the complaint and he said he had to keep going through the same fault-finding processes.*

- He agreed with other elements.

SCUK didn't agree with the provisional decision. In summary, it said:

- To its knowledge, no one has seen proof the charger didn't work at the scheduled time.
- The vehicle hasn't been back to the supplying dealer.
- The manufacturer report *suggested* the issue may be fixed with a software update.
- It didn't know the vehicle had broken down.
- It questioned why Mr C had to charge at public charging points.
- It acknowledged the complaint had been ongoing for some time but that was because it didn't have evidence there was a fault so it couldn't resolve it.

SCUK also provided comments from the dealer that said, in summary:

- The right to reject isn't something determined by the dealer or SCUK, it's a statutory right. It said to say Mr C wasn't allowed to reject and then allow it 10 months later when he's been using the car isn't fair. It said in this circumstance the outcome should be that he should be given a partial refund to reflect the difference in value between the car he bought and the one he believed he was buying (assuming it does have the fault).
- If it accepted rejection, the deduction I've set out for use is unfair if you take a fair pence per mile figure.
- The offer of £500 compensation was instead of rejection not on top of it. The principle of compensation for distress and inconvenience is limited in Law.
- Interest at 8% is very onerous. Mr C wouldn't have received this in a bank account.
- The problem sounds like user error and unfortunately it's new technology and people struggle and assume it's a car issue when 99% of the time it's lack of understanding.

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'd like to thank the parties for their responses. I'm sorry if I got it wrong about the car being seen by the supplying dealer. I may have misunderstood one of Mr C's comments when he gave a location for an inspection. But this doesn't impact the overall decision. Mr C has offered some further clarifications and reiterated certain points, but broadly seems to accept the decision. SCUK has not agreed with the provisional decision, so I'll respond to the main points and explain why I'm not going to depart from the overall conclusions I reached. But I will clarify a specific point on the fair usage to avoid another dispute down the line.

I agree the inspector didn't inspect the car during the middle of the night. But it's not just an issue with the schedule charge, which is what SCUK and the dealer were offering compensation for. I have to bear in mind there's evidence the car wasn't able to fast charge, and the independent inspection refers to this being a fault several times in the report. The report didn't make any suggestion this might've been down to user error. If it was a simple answer, or user error, I can't see why that hasn't been established given how long things went on for. Mr C gave several opportunities for things to be resolved. I've also explained in my provisional decision the dealer (and SCUK) referred to a fault, although I appreciate it's saying that it was a suspected fault. There's also evidence from the manufacturer that an update was awaiting completion, which indicates an update was required to resolve an issue, although I also appreciate SCUK says this only suggested the issue might be fixed with a software update. I'm also conscious Mr C says there's no issue charging a different

car of the same model. It doesn't seem like all these points have been considered.

SCUK said it didn't know the car had broken down, but Mr C copied in SCUK when he sent us details of the breakdown, supporting videos, along with the report that was carried out by the recovery agents detailing several fault codes. So I don't agree it wasn't made aware. And while this happened after the complaint was referred to our service, I think it's worth considering given it highlights further issues with the car Mr C has experienced, particularly given it happened within six months of acquisition.

SCUK has also questioned why Mr C needed to use public charging points. Mr C has explained he was only able to charge at half the rate at home and he couldn't set it to charge when he wanted, which led to him sometimes having to charge it at public charging points. I think this is a reasonable explanation.

It's not straight-forward, and the technology might be considered new, and is quickly developing. But I'm required to resolve complaints quickly and with minimum formality. I had to make a decision based on the evidence submitted by the parties. SCUK had a reasonable amount of time to carry out its investigation on what went wrong, particularly if it didn't agree with the independent report. But I've not been supplied sufficient evidence to dispute the findings on the report. I've explained why, on balance, I thought there was enough evidence to show there was a fault with the car that made it of unsatisfactory quality. I don't think that's an unfair conclusion.

With regards to the right to reject, I've found on balance that the goods weren't of satisfactory quality and that there was an opportunity to repair. This wasn't carried out within a reasonable amount of time, so I think Mr C had fair grounds to validly request rejection of the car. I've taken into account what the CRA says about fair usage. I appreciate the dealer doesn't agree with the calculations. Again, there's no exact science for this. There's currently no industry wide agreement on a pence per mile for example. So, in line again with my requirement to resolve complaints quickly and with minimum formality, I've said the monthly payments are broadly a fair reflection for the use of the car.

However, I do want to add that I note the sales agency agreement Mr C signed said the selected annual mileage was 6,000. And that the rate for each excess mile is 14.9p (excluding VAT). While I appreciate the agency agreement was intended to be used if Mr C didn't want to keep the car at the end of the term, for the avoidance of doubt, SCUK can deduct excess mileage charges (calculated pro-rata) from the refund, if applicable. I think that's fair because the financial terms of Mr C's agreement were set on that basis. If he set the annual mileage higher, his monthly payments would have been higher – so it's only fair to take that into account when considering fair usage. I think this is a fair approach on these sorts of cases. I will specifically add it to the directions to avoid another dispute (in relation to excess mileage) if Mr C accepts the decision and the car is collected, which is when these sorts of charges are normally calculated and applied.

With regards to the deposit, I agree there might be cases where it should be reduced accordingly. But given things went wrong near enough straight away, and Mr C has been clear throughout he wanted to hand back the car, I've found he should also be refunded his deposit. He's now going to have to start again with a new deal, and I think a full refund of his deposit broadly puts him in a fair position to do that. The interest award is also in line with our approach in these sorts of cases so I'm not going to amend that.

For the reasons already given, I've found the compensation of £500 to be broadly fair in recognition of the way the claim was handled by SCUK, along with the distress and inconvenience caused as a result of it supplying him with a car that I think wasn't of satisfactory quality.

Putting things right

To resolve the complaint, SCUK should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr C;
- refund Mr C's advance payment of £9,561.67;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay £100 for loss of use;
- pay £500 compensation;
- remove any adverse information from Mr C's credit file in relation to the agreement.

SCUK can deduct excess mileage charges from the refund in line with what I've said above, if applicable.

If SCUK considers it is required to deduct tax from my interest award it should provide Mr C a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Santander Consumer (UK) plc T/A Santander Consumer Finance to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2024.

Simon Wingfield
Ombudsman