

The complaint

Mr F is unhappy with the quality of a car supplied to him under a conditional sale agreement by Santander Consumer (UK) Plc ("SCF").

What happened

Mr F acquired a used car under a 36 month conditional sale agreement with SCF in July 2022. The car was six years old and cost around £28,780. As part of the agreement, Mr F paid a deposit of £9,000 and agreed to pay 60 monthly payments of £415.20. The car was supplied from a dealership I'll refer to as "D" and was collected by Mr F in August 2022. At the time the car was supplied to Mr F, the mileage was 58,305.

Mr F says a couple of weeks after he collected the car, the engine light appeared. He said he contacted D, who told him not to worry and that D ultimately decided not to repair the car.

In November 2022, Mr F complained to SCF and said he wanted to reject the car. He told SCF he had the car inspected and it needed around £6,000 worth of repairs, due to the turbo needing replacement, engine problems and the exhaust being faulty. SCF told Mr F it would instruct an independent organisation, that I'll refer to as "S", to inspect the car. However, after doing his own research, Mr F said he was unhappy with S and said he would obtain his own independent report.

SCF issued its response to Mr F's complaint in January 2023. It said it offered to instruct S to inspect the car, but Mr F declined this. And since this, Mr F hadn't provided his own independent report. So, it said it couldn't complete its investigation. Whilst it didn't uphold Mr F's complaint, it said if Mr F provided his own independent report, it would be happy to review it.

Unhappy with this, Mr F referred his complaint to this service. He reiterated his complaint and said to put things right, he wanted to reject the car and he wanted SCF to provide him with a full refund. He also said he had incurred costs such as having to borrow another car and paying to insure it, as he was unable to use the car he acquired under the conditional sale agreement. Mr F said he wanted SCF to compensate him for any distress and inconvenience caused.

Mr F provided this service with an email from an independent garage from December 2022 confirming that the car needed a new turbo, various gaskets and a silencer. He also provided a diagnostic from a different independent garage from November 2022 which confirmed there were six present fault codes stored on the car. These were found to result in a faulty turbo. The diagnostic confirmed the turbo needed to be repaired.

Our investigator looked into Mr F's complaint and said she didn't think the car was of satisfactory quality when it was supplied to Mr F. She said the diagnostic report from November 2022 confirmed the turbo needed to be repaired. Our investigator didn't think the turbo was durable and so, she recommended that SCF repair the car. She didn't recommend rejection because SCF had one chance to repair the car, which it didn't have the opportunity to do yet.

Our investigator recommended that SCF arrange for the repair of the car and refund all the monthly payments made by Mr F since November 2022, which is when Mr F stopped using the car. She also recommended that SCF refund Mr F £42 for the cost of the diagnostic in

November 2022, plus insurance costs and pay Mr F £300 for the distress and inconvenience caused.

Mr F agreed and SCF agreed.

However, following this in late October 2023, Mr F contacted this service and let it know that his chosen repair garage hadn't received any funds, despite SCF contacting the garage a number of times to obtain their account details. Mr F said he wanted to reject the car and said he had only received a payment of £300 for the distress and inconvenience.

Our investigator reviewed the complaint and agreed that Mr F should be entitled to reject the car. She asked SCF to end the agreement, collect the car from Mr F and pay a refund of the deposit. She recommended SCF also refund all the monthly payments made by Mr F since November 2022, when Mr F stopped using the car. She also recommended that SCF refund Mr F £42 for the cost of the diagnostic in November 2022 and insurance costs.

Mr F agreed. However, SCF said it had already processed the refund for the repairs and the amount recommended for reimbursement to Mr F, as per our investigator's initial recommendations. It said as a result of this, it should be entitled to proceed with the original recommendation to repair the car.

As SCF remained in disagreement, the case was passed to me to decide.

I issued a provisional decision on 24 January 2024, in which I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr F was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've read and considered the whole file and acknowledge that both parties have raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

Mr F complains about a conditional sale agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr F's complaint against SCF.

In this case, neither party appears to dispute that the car had faults with the turbo. I'm satisfied, having reviewed all the supporting information, that the car was of unsatisfactory quality at the time it was supplied to Mr F.

The outstanding issue for me to decide is how SCF should put things right.

Our investigator initially found that the car should be repaired. Both Mr F and SCF agreed to this recommendation in mid-September 2023. Having reviewed this case, I agree that a repair is fair and reasonable in the circumstances. I say this because whilst Mr F says he told D he wanted to reject the car within a couple of weeks of being supplied the car, the supporting information provided suggests the first time Mr F asked for rejection was in November 2022. By this date, Mr F had the car for around three months and so, SCF had one chance to repair the car. Mr F didn't dispute that SCF had one chance to repair when our investigator made the initial recommendation for repairs.

I've seen a copy of SCF's contact notes following the recommendations being agreed by Mr F in mid-September 2023. In around early October 2023, Mr F provided SCF with an invoice for repairs at his chosen garage. The total cost of repairs was around £5,700.

However, the invoice didn't have any payment instructions. I can see from SCF's call notes, that it contacted the chosen repair garage a number of times to try and obtain the payment bank details. It seems the bank details were received by SCF around three weeks after it received the invoice from Mr F.

So until this point, I don't think SCF acted unfairly. It didn't have the required details it needed to process a payment for the repairs and neither can I see that SCF caused any avoidable delays up until this point.

However following this, there was a delay of around a month. I don't think this is unreasonable given Mr F was expecting to wait around four weeks after accepting our investigator's recommendation for SCF to pay for the repairs to the car. SCF took around four weeks to make the payment to the garage after it received its details. And so, I don't think the delay is unreasonable, given it's likely there may have been internal audit processes SCF needed to carry out. So I don't think SCF acted unfairly when making a payment for the repairs to Mr F's chosen garage.

Having said this, the repairs were only part of the recommendations made by our investigator. SCF had the details for Mr F's bank account and I can see that it calculated that it would need to pay Mr F around £7,700 in early October 2023. This was for the monthly payments, insurance costs, diagnostic costs and interest that our investigator recommended. SCF made a separate payment to Mr F for the £300 distress and inconvenience recommended by our investigator in mid-October 2023. But it didn't make the payment of around £7,700 until early December 2023. So, I consider it caused an avoidable delay of around two months for the payments due directly to Mr F. I think it acted unfairly and caused a delay in respect of the payments it had agreed to pay Mr F.

I can see that Mr F complained to SCF about the delay in it making the payment to him. In December 2023, SCF agreed it had caused delays and apologised for the poor customer service. It paid Mr F a further £300 for the delays caused. I consider this amount to be fair and reasonable for the two month delay SCF caused when making a payment to Mr F.

I understand that Mr F wants to reject the car and I can see that our investigator also made this recommendation following the delays. However, I don't consider this to be appropriate now given the events that have taken place.

I say this because SCF made the payment to Mr F's chosen repair garage within a reasonable time of it becoming aware of the garage's bank details. I don't consider that any unreasonable delays were caused in this respect by SCF. In addition, SCF has already made all the payments it agreed to under our investigator's initial recommendations. This means the garage was able to repair the car since early December 2023 when it received the funds for the repair from SCF.

It appears the car has not yet been repaired, as Mr F wishes to reject the car. But I've already explained why I'm not currently persuaded that rejection is a fair remedy. I also don't think Mr F has mitigated his loss here, as had the car been repaired after the garage received the payment from SCF, I expect that Mr F wouldn't have likely incurred any further losses since December 2023.

It follows that I'm currently minded to decide that I don't think Mr F is entitled to reject the car.

My provisional decision

My provisional decision is I intend to uphold Mr F's complaint. I'm minded to instruct Santander Consumer (UK) Plc, if it hasn't already done so, to put things right by doing the following:

- Pay for the cost of the repairs to the car directly to a garage chosen by Mr F;
- Refund any finance instalments paid by Mr F from November 2022 until the date of

settlement;

- *Pay Mr F the cost of obtaining alternative car insurance between November 2022 until the date of settlement;*
- *Pay Mr F £42 for the diagnostic test;*
- *Pay Mr F 8% simple interest on these amounts from the date of each payment until the date of settlement;**
- *Pay Mr F a total of £600 for the distress and inconvenience caused; and*
- *Amend any adverse information reported to credit reference agencies about this conditional sale agreement.*

If Santander Consumer (UK) Plc considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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.

SCF didn't respond. Mr F responded. In summary, he said:

- he spoke to D and they let him know they gave their bank details to SCF upon request. He doesn't believe that SCF delayed the payment due to the delay in receiving bank details. He thinks the delay of more than a month is unreasonable, as SCF provided him with conflicting reasons as to when the payment would be made.
- he would like call recordings between D and SCF to be provided to show SCF requested D's bank account information multiple times. He also said SCF had tampered with calls provided under a data subject access request ("DSAR") he made.
- he paid two further instalments in October 2023 and December 2023, which he says should be included in the recommendations.
- he should be able to reject the car, as he says repairs were not carried out within a reasonable amount of time and without significant inconvenience to him.

I appreciate Mr F feels strongly about his complaint and has provided extensive submissions throughout his complaint. I've read and considered the whole file and acknowledge that Mr F has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

Having reviewed the complaint, Mr F has requested this service provide him with call recordings between D and SCF. Our investigator has directed Mr F to SCF to obtain these. Mr F also says is unhappy with the information he has already been provided by SCF under a DSAR request he made. However, he'll need to pursue his complaint about the information he's received from the DSAR outside this service.

As part of Mr F's response, he has provided a signed letter from D, dated January 2024. This states that D provided bank details straight away to SCF. However, SCF has provided an email chain from D dated 27 October 2023. The email states, "*Please see bank details attached*". The attachment is a letter from D which provides D's bank details. So I'm satisfied that SCF only received D's bank details on 27 October 2023. SCF has also provided an internal SCF payment form initiating the payment to D. This is also dated 27 October 2023.

In light of this, I'm satisfied that SCF only received payment details from D on 27 October 2023, and that it could only initiate the payment following receipt of these details. The payment was initiated by SCF the same day it received D's bank details.

The payment was ultimately made to D on 4 December 2023. This is around five weeks after SCF received these details. I explained that after accepting our investigator's initial view, Mr F was expecting to wait around four weeks for the payment to be made for the repairs. This is in line with the communication we sent him at the time. I don't consider a delay of around an additional week to be unreasonable and neither do I consider that it caused significant inconvenience to Mr F. So I'm satisfied that Mr F isn't entitled to now reject the car. I consider a repair to be fair and reasonable in the circumstances.

In relation to what Mr F was told by SCF as to when he would receive a payment for the financial loss and compensation, I agree that SCF caused delays. My provisional decision confirmed that I considered SCF caused an avoidable delay of around two months for the payments due directly to Mr F. I also said I think it acted unfairly and caused a delay in respect of the payments it had agreed to pay Mr F. However, I noted that Mr F made a complaint about this to SCF and as a result of this, SCF agreed to pay Mr F a further £300 for the distress and inconvenience caused. I consider this amount to be fair and reasonable in the circumstances and so, it follows that I don't direct SCF to make any further payments in this respect.

Mr F has also noted that he made payments for two further instalments in October 2023 and December 2023. My provisional decision states that SCF should refund any finance instalments paid by Mr F from November 2022 until the date of settlement. This means Mr F should receive any payments he made between November 2022 and December 2023, which is the date when the payment for the repairs was made by SCF.

I can also see that SCF wrote to Mr F on 6 October 2023 and explained the breakdown of the amount it had calculated for the financial loss and compensation. SCF told Mr F it would be paying him £7,952.26. However, SCF only appears to have paid Mr F £7,730.40. SCF should recalculate any settlement payment it has made to Mr F in line with my direction to confirm whether it has made any errors in its calculations. If it has made an error and there is a difference to be paid, then it should pay this amount to Mr F with 8% applicable interest. If it hasn't made an error, it doesn't need to do anything further.

Overall, I'm not persuaded that Mr F is entitled to reject the car that was supplied to him under the conditional sale agreement with SCF in July 2022. I'm satisfied that a repair is fair and reasonable in all the circumstances of the complaint. I'm also satisfied that SCF caused delays when making a payment directly to Mr F and I think Mr F should be compensated for this.

Putting things right

For the reasons given in my provisional decision which I have outlined above, Santander Consumer (UK) Plc, if it hasn't already done so, should put things right by doing the following:

- Pay for the cost of the repairs to the car directly to a garage chosen by Mr F;
- Refund any finance instalments paid by Mr F from November 2022 until the date of settlement;
- Pay Mr F the cost of obtaining alternative car insurance between November 2022 until the date of settlement;
- Pay Mr F £42 for the diagnostic test;
- Pay Mr F 8% simple interest on these amounts from the date of each payment until the date of settlement;*

- Pay Mr F a total of £600 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this conditional sale agreement.

*If Santander Consumer (UK) Plc considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr F's complaint. Santander Consumer (UK) Plc should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 March 2024.

Sonia Ahmed
Ombudsman