

## The complaint

Mrs M complains Santander Consumer (UK) Plc trading as Volvo Car Financial Services (SCUK) supplied her with a car that she believes wasn't of satisfactory quality at supply.

## What happened

In January 2021, Mrs M entered into a 48 month hire agreement for a new car. The monthly payments were around £300.

In the months that followed, she reported a number of issues with the car and some repairs were carried out. In summary:

Date	Fault	Mileage	Action taken
November 2021	Crankshaft	5,690	Repair under warranty - replaced crankshaft, clutch, control cylinder and flywheel
April 2022	Oil leak	7,700	Repair under warranty – clutch and rear crankshaft seal replaced
December 2022	Clutch (worn)	11,300	Repair paid by Mrs M- told fault was due to driving style. Replaced clutch, flywheel and release bearing
March 2023	Steering column	13,000	Replaced under warranty
April 2023	Clutch	13,100	Mrs M told she needs to pay. Repairs not carried out

Given the number of faults since taking possession of the car, Mrs M said she has lost faith in it and she doesn't believe it's fit for purpose. She wants to reject the car and be compensated for the costs incurred and the distress and inconvenience caused. She complained.

SCUK said the faults to the crankshaft, thrust bearing, clutch and steering column had been repaired under warranty at no cost to Mrs M. However in regards to the latest faults with the clutch, they said that was due to Mrs M's driving style and it wasn't due to a manufacturing defect.

Unhappy with their response, she referred the complaint to our service. Our investigator recommended the complaint wasn't upheld. She concluded there was insufficient evidence the car wasn't of satisfactory quality at supply. Mrs M disagreed and maintained her position. In January 2024, issued my provisional decision outlining my intentions to uphold the complaint. I said:

*"I'm aware Mrs M has referred a similar complaint to another alternative dispute resolution (ADR) scheme. However as that complaint was about the actions of the dealership rather than SCUK, I won't be commenting on it.*

*Mrs M 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.*

*Mrs M was supplied with a brand-new car. So I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.*

*Based on the evidence presented to me including job cards and information from the parties involved, it's clear there were faults with the car including the crankshaft, oil leak, clutch and steering column. It appears the initial fault was the crankshaft and that was reported after the car had travelled less than 6,000 miles. I don't believe a reasonable person would expect to experience such a fault in a brand new car having travelled such low mileage. In my opinion, the crankshaft failed prematurely which is most likely to indicate there was a fault present or developing at the point of supply. In light of the same, I find the fault with the crankshaft meant the car wasn't of satisfactory quality at supply meaning there was a breach of contract.*

*Where this happens and it's outside the short term right to reject the car (30 days), the CRA allows for one opportunity for repair which is what happened here. A repair was carried out under warranty at no cost to Mrs M in November 2021.*

*Thereafter it's evident there were further faults with the car including an oil leak and problems with the steering column and clutch. For similar reasons as mentioned above, I wouldn't expect a brand-new car to experience such significant issues after only approximately 18 months and having travelled only 13,000 miles. I note in this relatively short period of time there have been three replacements of the clutch and a fourth is now needed.*

*The dealership and SCUK have said the fault with the clutch is down to driving style however I haven't been provided with sufficient documentary evidence to support this. Equally, there's no indication they've considered whether there were any other potential reasons why the clutch keeps needing to be replaced despite the wider history of the car's faults.*

*Mrs M says she is an experienced driver of over 20 years. She said she's had cars of the same manufacturer and manual transmission as this car in question and she has never experienced such an issue with the clutch. In the absence of any documentary evidence to contradict this, I accept what she's said in good faith. On balance, I'm not persuaded the fault with the clutch was down to her driving style as alleged. I find it's more likely than not there is an inherent manufacturer fault with the clutch.*

*I've already set out above the expectations of a new car. When thinking overall about the timeline of events including the number of faults and repairs (three under warranty), I'm not persuaded the car was of satisfactory quality at supply. The CRA says if there has already been one opportunity to repair and there is still a problem, rejection should be allowed which is what I think should happen in this case. Mrs M says she has lost faith in the car and given the circumstances I can understand why. She hasn't driven the car since April 2023 and it's remained at the dealership ever since.*

*Therefore to put things right, I intend to say SCUK should allow Mrs M to reject the car and end the agreement. The car is already being held at the dealership so there is no need for SCUK to collect it from Mrs M directly. SCUK should refund the advance payment of the spread rentals on a pro-rata basis (so Mrs M isn't paying for any period she won't be hiring the car).*

*Although there were faults, it's clear Mrs M has had use of the car. When she stopped driving it in April 2023, it had around 13,000 miles therefore it's fair she pays to reflect that. I find SCUK are entitled to the monthly instalments from the agreement's inception to April 2023. Mrs M shouldn't be charged for any monthly payments beyond that time. If she has made payments, these should be refunded.*

*I'm also aware Mrs M has been told she needs to pay for diagnostic fees and storage costs. Given such costs were incurred as a result of being supplied with a faulty car, I don't find she should be held liable for them. If these charges remain, SCUK should liaise directly with the dealership about this.*

*Mrs M incurred repair costs which were carried out in December 2022 (around £1,800). Upon proof of evidence, SCUK should reimburse her for the same. There's an indication that when the car was in for repair, Mrs M was provided with a courtesy and/or hire car at no cost to her. While I appreciate it wasn't a like for like car, she was kept mobile so I don't intend to say she needs to be directly compensated for this. However I will take this into account when thinking about the overall trouble and upset caused. If there were times where the car was in for repairs and Mrs M was left without transport, she must let me know and provide documentary evidence of any costs incurred as a result.*

*Mrs M has mentioned she wants to be compensated for other associated costs as a result of the faulty car however details of the same haven't been provided. If she wants me to take them into account, she will need to provide documentary evidence. I will then consider whether these costs are reasonable and should be reimbursed by SCUK. However I must point out that as I intend to say Mrs M shouldn't be held liable for any monthly instalments beyond April 2023, it's very unlikely I will say SCUK will need to reimburse hire car costs for that same period.*

*Lastly, I've thought about the likely impact of this situation on Mrs M. This includes multiple trips to the dealership, the extent of her communication with SCUK to resolve the issue, the worry of not knowing whether the car that she heavily relies on would perform as it should, having to use alternative cars, etc. When taking this all into consideration, I find SCUK should also pay £350 compensation to Mrs M for the trouble and upset caused.*

## *Summary*

*Taking everything into account, I'm not persuaded the car was of satisfactory quality at supply due to the faults including the crankshaft, oil leak, clutch and steering column. To put things right, Mrs M should be able to reject the car and be compensated as outlined above".*

### *Response to the provisional decision*

SCUK provided no further comment. Broadly speaking, Mrs M accepted the findings however she provided details of other costs she incurred which she wants to be compensated for. This includes:

- The initial deposit £500 for the car;
- The monthly instalments paid in April and May 2023;
- During the repair of the clutch in December 2022, she was only provided with a courtesy car for 24 hours meaning she had to hire one at a cost of around £537;
- As she stopped using this car in April 2023 due to its faults, she got another car. But she continued to pay insurance for it up to the present day meaning she had to pay insurance for two cars. She wants to be refunded 10 months of insurance.

### **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 thank Mrs M for her response. In my provisional decision, I've already said she should be refunded the monthly payments from April 2023 onwards as she stopped using the car. So I won't comment on this further.

Based on the vehicle order form, I can see Mrs M paid a £500 deposit, this should be refunded. As the hire car costs was a direct result of being supplied with the faulty car, this should also be refunded. I note the invoice is in the name of Mrs M's son but I'm satisfied it was hired for the benefit of Mrs M and the other drivers. I say this because she's told our service she used the car, her late husband and her son and I've seen evidence which demonstrates all three were named as insured drivers.

Concerning the insurance, Mrs B is both legally and under the terms of the agreement required to make sure the car was insured. This will cover insured events like fire, theft, etc so I won't be saying SCUK need to refund these payments while she drove the car and it was in her possession. However Mrs M stopped driving the car since April 2023 due to the faults and it has remained at the garage since. She said she's got another car meaning that also needed to be insured. I don't consider it fair she continued to pay insurance on the car she had no use of. So SCUK should provide a pro-rata refund of the insurance cost from April 2023 until the complaint is settled.

### **My final decision**

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

To put things right, Santander Consumer (UK) Plc trading as Volvo Car Financial Services must:

- End the agreement with nothing further for Mrs M to pay;
- Refund the advance payment on a pro-rata basis, plus pay 8% simple interest per year on the unused portion from the date it was paid to the date of settlement;
- Refund the £500 deposit as per the vehicle order form;
- Reimburse Mrs M for the cost of the repairs in December 2022 (upon proof of evidence)
- Refund Mrs M any monthly instalments paid from April 2023 onwards;

- Refund the hire car costs for the month of December 2022;
- Provide a pro-rata refund of the car insurance from April 2023 until the complaint is settled (upon proof of evidence);
- Plus pay 8% simple interest per year for all the above refunds from the date of payment to the date of settlement;
- Remove any adverse information about this agreement from Mrs M's credit file;
- Pay £350 compensation to Mrs M for the trouble and upset caused.

\*\*If Santander Consumer (UK) Plc trading as Volvo Car Financial Services considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 March 2024.

Simona Reese  
**Ombudsman**