

## **The complaint**

Mrs L complains the car subject to her agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance (SCUK) was misrepresented to her. She also believes the car wasn't of satisfactory quality.

## **What happened**

In June 2023, Mrs L entered into a 60 month conditional sale agreement for a used car. The car's cash price was £21,855. It was around three years old and it had travelled around 28,500 miles. She paid a £308 deposit and the rest was financed with a loan with SCUK. The monthly payments were around £350.

According to Mrs L the car was returned to the dealership on a few occasions as the engine inspection and powertrain warning lights were showing and the auto start/stop function wasn't working.

In July 2023, a fault code relating to the NOX trap sensor was found. It was also said a diesel particulate filter (DPF) regeneration was needed but couldn't be carried out until the NOX sensor was changed. The sensor was replaced in August 2023 and it was said further investigation may be required afterwards.

In September 2023, Mrs L complained to SCUK that there were still faults with the car. She said the engine management lights were coming on and the supplying dealership told her the car needed to be driven on the motorway once a month but she was later told it needed to be more frequent than that.

SCUK arranged for an independent inspection to be carried out. The report said no faults were found and the car was performing commensurate for its age and mileage. It said the auto start/stop function wasn't working but put this down to the limited road test.

Following these findings, SCUK didn't uphold the complaint as no faults were found. They also said Mrs L had signed a document from the dealership that said she was buying a diesel vehicle and she was aware of the DPF requirements. Mrs L says she stopped driving the car in September 2023 and has been relying on public transport and cabs.

Unhappy with their response, the case was referred to our service. The investigator recommended the case was upheld. She said there was not enough evidence there were faults. However she believed the car had been mis-represented as it wasn't fit for Mrs L's intended purpose. To put things right, she said SCUK should allow rejection, end the agreement, refund the deposit and the monthly instalments from September 2023 and pay £250 compensation,

SCUK disagreed. In summary, they said:

- The inspection found no faults with the car;

- The engine management lights were coming on because she hadn't covered many miles in the car since acquiring it and the DPF needed to regenerate;
- There wasn't enough evidence to say the car had been misrepresented to her. The dealership had asked how she planned to use the car;
- Rejection would be disproportionate;
- Mrs L was provided with information prior to entering into the agreement about caring for a diesel car.

In March 2024, I issued a provisional decision outlining my intentions to uphold the complaint. I said:

*"Mrs L 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 L acquired a car that was around three years old and had travelled over 28,500 miles. As this was a used car with significant mileage and age, it's reasonable to expect parts may already have suffered notable wear and tear when compared to a new car or one that is less travelled. There's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.*

*Another relevant law I've taken into account when looking at this case is section 56 under the Consumer Credit Act 1974. It says the creditor (SCUK) can be held responsible for antecedent negotiations by the broker (the dealership) before the agreement was entered into. Meaning what was said about the car. Here, the dealership acted as the credit broker so SCUK can be held liable for information the dealership provided at the point of supply, that Mrs L had relied on.*

*When thinking about satisfactory quality, I not only need to consider whether the car was fit to be used as a vehicle but I also need to take into account whether it's fit for the purposes intended by Mrs L and whether the dealership knew or ought to have reasonably known that.*

*In this case, it was Mrs L's son who primarily spoke to the dealership about acquiring the car. All discussions were by phone, neither Mrs L nor her son saw the car before it was delivered to her.*

*I've been provided with a call between the dealership and Mrs L's son. Having listened to it, it's clear this isn't the first conversation but instead a continuation of discussions. They talk about the delivery so it would appear this was after the agreement had been entered into. Unfortunately I haven't been provided with a copy of the initial calls or notes about what was discussed about the car before Mrs L agreed to buy it so I can't say for certain what was said.*

*In the absence of these calls, I've relied on the evidence on file. As part of my investigation, I've gathered information from Mrs L and her son about the events leading up to the purchase.*

*Her son says he and other family members had bought cars from that dealership without any issue so he felt confident in his mum buying one from them also. He said he didn't specify it needed to be a diesel but made it clear he wanted a safe and reliable car for his mum and she needed it to travel to work which is around a five mile journey.*

*In summary, Mrs L said:*

- *She hasn't had a car for around 10 years and knows very little about cars or finance agreements;*
- *She decided to get a car to travel to work and for general leisure purposes (seeing friends and family);*
- *She's a nervous driver and panics easily. She doesn't like driving long distances or at high speeds;*
- *She doesn't know the difference between driving a diesel or petrol car she just signed the agreement to say she would drive it on the motorway once a month;*
- *She has relatives who have diesel cars and they haven't experienced issues like she's reported;*
- *On the day of collection, her friend advised her the car may not be suitable as she doesn't drive often and not at high speeds;*
- *Within days of acquiring the car, she contacted the dealership to say she didn't believe the car was suitable for her as she does short journeys only;*
- *She was told it needed to be driven once a month for at least 15 minutes at 40mph and above;*
- *The car was returned to the dealership due to issues with the engine management lights and a part was replaced;*
- *She stopped using the car in September 2023 and since then she's been paying for cabs and public transport to travel to and from work.*
- *She is unable to walk long journeys and this situation is greatly impacting her physical and mental health.*

*It's widely accepted that diesel cars may not be suitable for town-based inner city driving comprising of short journeys and at low speeds. This is because the DPF can't reach optimal temperatures in order to re-generate. Meaning if the car isn't driven long enough, at regular intervals and at high speeds for re-generation to happen, faults with the DPF may develop.*

*RAC's website says diesel vehicles need to be driven regularly for "a good 30 to 50 minutes" at sustained speed on a motorway or A road to help clear the DPF. It also says the prime cause of blocked DPFs is short journeys at low speeds. There is a lot of information online so I won't go into full details but it's important I take this into consideration when thinking whether this car was of satisfactory quality based on Mrs L's intended use.*

*I find the onus was on the dealership to sufficiently identify Mrs L's intended use of the car and make sure the car was suitable based on that. If information wasn't voluntarily offered, I would've expected the dealership to have asked about this. In this case, Mrs L's son said he told the dealership that she would only be using it for very short journeys.*

*I've seen a copy of a document that was completed before Mrs L entered into the agreement. It asks certain questions such as how long she intends to keep the car, expected mileage, type of driving, etc. At the bottom, it says:*

*"If you have chosen a diesel we must make you aware that the vehicle is fitted with a DPF filter, this is a filter contained within your exhaust that helps to reduce vehicle emissions. To maintain this filter your vehicle will need to be driven on an extended motorway journey at least once a month".*

*SCUK has argued Mrs L signed the document so she was aware of the DPF issue and the need to drive it on extended motorway journeys once a month and she chose to proceed. While I accept that to be true that doesn't negate their obligations to make sure the car was suitable for her. I don't find simply answering these several questions was sufficient to identify Mrs L's intended use of the car, I would've expected there to be a further conversation about it but I don't have enough evidence to say that happened.*

*Had the dealership identified the car may not be suitable for Mrs L and told her of the same, I'm not persuaded she would've bought this car. This is because she hadn't been driving for a long time and she doesn't like driving on the motorway or at high speeds. Based on the above evidence, I find the dealership failed to reasonably identify this car wouldn't be suitable for Mrs L's intended purpose therefore I can't agree it was of satisfactory quality.*

*Moreover, the car was returned to the dealership in July and August 2023 which I note was only a couple of months after supply. The job cards state the NOX sensor was faulty and needed to be replaced. I don't find a reasonable person would expect such a fault so soon after buying the car and travelled so little miles. Therefore, I also don't find the car was sufficiently durable which also means the car wasn't of satisfactory quality.*

*I believe it's more likely than not the warning lights related to the fact the DPF needed to regenerate. It isn't surprising to hear such warning lights came on. This further supports my opinion the car wasn't fit for Mrs L's intended use.*

*I've carefully read the independent inspection report, it said there were no faults but notes the auto start/stop function wasn't working. It said this is likely due to the short road test (two miles) but I note Mrs L had been complaining about this issue from the outset. Nevertheless, the crux of this complaint is whether this car was fit for Mrs L's intended use but this report doesn't comment on that so I can't reasonably rely on it for that purpose.*

*Taking everything into account, I don't find the car was of satisfactory quality at supply based on Mrs L's intended use of it and the faulty NOX sensor so there's been a breach of contract. Putting things right*

*SCUK said rejection is disproportionate but having determined the car wasn't suitable, I don't consider there to be a reasonable or appropriate alternative. I agree with the investigator, rejection should be allowed.*

*To put things right, SCUK should end the agreement, collect the car at no cost to her, refund her deposit and remove any adverse information about this agreement from her credit file.*

*Mrs L stopped using the car in September 2023 and the odometer reading was around 29,985 miles. Meaning she's travelled around 1,500 miles since supply. As she's used it, I find it's fair she pays to reflect that so I won't be saying SCUK need to refund all of the monthly instalments. However they should refund the payments from September 2023 onwards as that's when she stopped using the car.*

*Lastly, I thought about what Mrs L has said about the impact this situation has had on her including multiple trips to the garage, having to arrange alternative travel and the impact on her financial circumstances and physical and mental health. I'm sorry to hear about this. Given the circumstances, I believe it's fair for SCUK to pay £250 compensation for the trouble and upset caused".*

### **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.

Mrs L accepted the findings. SCUK provided two calls between the dealership and Mrs L's son. They said the calls show the dealership asked if the car was right for Mrs L and they also outlined a disclaimer.

Having listened to the calls, I don't find it materially changes my opinion. I had already listened to one of the calls and taken it into consideration when I reached my provisional decision. While I can hear the dealership ask whether Mrs L definitely wants the car, there's no discussion whether it was suitable for her intended use.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

### **My final decision**

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

To put things rights, Santander Consumer (UK) Plc trading as Santander Consumer Finance (SCUK) must:

- End the agreement with nothing further for Mrs L to pay;
- Collect the car at no cost to her;
- Refund the deposit;
- Refund the monthly instalments paid since September 2023 onwards;
- Pay 8% simple interest per annum on the above refunds from the date of payment up to the date of settlement\*;
- Remove any adverse information about this agreement from Mrs L's credit file;
- Pay £250 compensation to Mrs L for the trouble and upset caused.

\*If Santander Consumer (UK) Plc considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs L how much it's taken off. It should also give Mrs L 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 L to accept or reject my decision before 14 May 2024.

Simona Reese  
**Ombudsman**