

## The complaint

Miss H is unhappy that a car supplied to her under a conditional sale agreement with Santander Consumer (UK) Plc ("SCUK") was of an unsatisfactory quality.

When I refer to what Miss H has said and what SCUK has said, it should also be taken to include things said on their behalf.

## What happened

On 28 June 2023, Miss H was supplied with a used car through a conditional sale agreement with SCUK. The agreement, which included the car price and charge for credit, was £23,995, payable at £399.92 per month for 60 months. At the time of supply, the car was around four years old, and had done around 92,000 miles.

The day after the car was supplied to Miss H, she contacted the dealership to say there was a fault warning displayed. Miss H provided a photo of the display which said, "*Engine fault: repair needed*" and the mileage shown was 92,216. The dealership advised Miss H to take the car to a local garage. The garage diagnosed a fault with the turbo, amongst other things, and said the engine may need replacing.

Miss H told the dealership what the garage had said, and she asked to reject the car. The dealership asked for the opportunity to repair, which Miss H agreed to, and it collected the car on 8 August 2023. The dealership informed Miss H about the faults it had fixed, none of which included the turbo. Miss H was without her car until it was returned on 4 September. She wasn't provided with a courtesy car, so she incurred additional travel costs.

On 21 December Miss H called out a recovery service because the car was making noises similar to those made when she first got the car. The recovery service said the problem was a failed turbo. Miss H contacted the dealership again and it told her to arrange repairs with a local garage under the warranty. The local garage thought the problem was electrical so, two weeks later, the car was recovered to a repair centre. Miss H contributed £368.49 towards the repair, and she stopped making the payments towards her credit agreement.

After the electrical repair, the repair centre told Miss H that the car still didn't work, and it diagnosed that the turbo had failed. The cost of repair was quoted as over £5,000 and the warranty would've only covered less than half the cost.

Miss H complained to SCUK stating that the car wasn't of satisfactory quality. SCUK arranged an independent inspection which found that the car wouldn't have been of satisfactory quality at the time of supply. Despite this, SCUK didn't agree with Miss H's complaint and issued a default notice for the payments in arrears. Miss H confirmed that the dealership recovered the car.

In its response to Miss H's complaint, SCUK said the dealership received the car in a "dismembered condition" so it wouldn't attempt repairs. SCUK also said that as the incomplete repairs were done by a third party rather than the dealership, and it hadn't

worked on the turbo, it didn't think it had any liability. Miss H didn't agree, so she brought her complaint to us.

One of our investigators said that the reports indicated there was a fault with the car that had been present since supply, and the dealership and SCUUK had been given a chance to repair. Therefore, she thought that Miss H was entitled to reject the car and SCUUK should end the agreement with nothing further for Miss H to pay. Our investigator also thought it was reasonable for SCUUK to reimburse the contribution Miss H made to the repair, including interest; refund the monthly payment she made when the car was being repaired, and pay £400 compensation for the distress and inconvenience caused. Our investigator recommended that SCUUK should remove adverse information about Miss H from its records in relation to this matter

Miss H responded to say she thought SCUUK should also pay her travel costs and the balance of another loan.

SCUUK responded with a counteroffer in which it said it would write off the credit agreement arrears of £3,199.36 and remove adverse credit information instead of paying compensation, reimbursing the repair cost or refunding the monthly payment.

Because neither Miss H nor SCUUK agreed, this matter has been passed to me to make a final decision.

### **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 what I consider was good industry practice at the time. Miss H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss H entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Miss H took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask SCUUK to put this right.

### **Fault**

Miss H wanted to reject the car because she thought the faults had been present from the date of supply. Although SCUK didn't dispute the presence of other, since repaired faults, it didn't agree that the turbo would've been faulty from the date of supply.

The evidence shows that, although one garage reported that the turbo was working, at least four engineers reported that it was faulty, as follows:

- Local garage - 22 July
- Well-known recovery service - 21 December
- Local repair centre - 8 January
- Independent inspection - 15 February

#### Independent Engineer's Report

I've seen a copy of the independent engineer's report, dated 13 March 2024. In this report, the engineer concluded,

*Based on the evidence which is available to [us] ... with regards to the mileage and the date of reported sale and failure, we would consider that the faults regarding the DPF and turbo charger are faults that would have been present or in development at the point of vehicle sale.*

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied that it is reasonable to rely upon this report, and I'm persuaded that the car was not of satisfactory quality when supplied.

#### Single Chance at Repair

Section 24(5) of the CRA says,

*... a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*

This is known as the single chance of repair and it applies to all issues with the goods, and to all repairs. That means it's not a single chance of repair for the dealership **and** a single chance of repair for SCUK – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection.

Miss H reported the fault the day after she got the car. Three weeks later, the local garage diagnosed a turbo fault, and the car was in for repair from 8 August until 4 September. The turbo fault was reported as present on three separate occasions between December and February. Based on this evidence, I think it's reasonable to conclude that:

- The turbo fault was present at the time of supply.
- The turbo fault was not repaired during the single chance at repair.

Therefore, I'm satisfied that Miss H had the right to reject the car because the fault was still present in December 2023, after SCUK's single chance at repair.

#### Repair Costs

Miss H has provided evidence of her £368.49 contribution towards repairing the car. Given that I'm persuaded the car wasn't of a satisfactory quality when supplied, I think it's only fair that SCUK reimburses these repair costs.

#### Travel costs

Miss H said SCUK should pay the travel costs she incurred and which she has evidenced with receipts. Ordinarily, I'd consider whether there should be a contribution towards travel costs if payments are still being made but without use of the car. The evidence shows that Miss H stopped making her monthly payments after her November 2023 payment. Therefore, the receipts she has provided for travel after that date are simply her ongoing travel costs, which are offset by the fact that she was not paying for the car. Therefore, I see no reason to ask SCUK to reimburse Miss H's travel costs.

#### Payment Refund

The car was not available to Miss H between 8 August 2023 and 4 September 2023. During this period, Miss H wasn't supplied with a courtesy car. As such, she was paying for a car she was unable to use. For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied. Therefore, as SCUK failed to keep Miss H mobile, I'm satisfied it should refund the payments she made to it for that period.

#### Other loan

Miss H thought SCUK should pay for another loan she took out when she entered into the conditional sale agreement for her car. I can understand why she has linked the two events – the loan was to settle the outstanding finance on the car she part-exchanged. However, as it was a completely separate loan, not linked to the credit agreement supplied by SCUK, I'm satisfied that SCUK has no liability here. I'm not asking SCUK to settle Miss H's other loan.

#### SCUK's counteroffer

SCUK offered to write off the credit agreement arrears of £3,199.36 and remove adverse credit information instead of paying compensation, reimbursing the repair cost or refunding the monthly payment. It said the offer was of greater value than proposed resolution.

For the reasons I've given, the evidence persuaded me that the car was not of satisfactory quality when it was supplied. The engineers' reports indicate that the single chance at repair was unsuccessful, so Miss H would've had the right to reject the car in December 2023. This is when she stopped making payment and the arrears SCUK refers to built up.

Miss H asked to reject the car which meant that the agreement should've ended with no further cost to her. Therefore, the arrears SCUK has offered to write off are payments Miss H should not have been required to pay. For this reason, I'm satisfied that SCUK should end the agreement, cancel the charges, and ensure that any adverse information recorded in respect of this matter is corrected on its own records.

#### Condition of car

SCUK said the car was returned to the dealership in an unacceptable condition, referring to it as dismembered. I've looked at the repair invoice the dealership provided which refers to paint damage in two places at a cost of £720 to repair. SCUK said it should not need to refund the payment Miss H made as that would help towards the repair cost.

While I have no reason to doubt that there is paint damage, I can't agree that Miss H should pay for the repair in the circumstances. I haven't seen anything in the evidence to indicate that the damage was new, or that it was caused by Miss H. Nor have I seen evidence of the "dismembered condition".

### Compensation

SCUK didn't think compensation of £400 was warranted and it asked to reduce the sum to £200. I've considered SCUK's request, but I'm satisfied that £400 compensation is fair and reasonable in the circumstances.

It's clear that Miss H has been inconvenienced right from the start by having to arrange for the car to be repaired, and by this repair being unsuccessful. The car was less than four years old at the time of supply, and I think Miss H could've reasonably expected the car not to need repairs immediately. Miss H explained her individual circumstances, including mobility issues and having a young family, having to arrange and pay for some repairs, and the uncertainty of being without the car. This would not have been the case if SCUK had supplied her with a car that was of a satisfactory quality. So, I think SCUK should pay her £400 in compensation to reflect the distress and inconvenience caused.

### Car collection

I understand the dealership recovered the car from Miss H. Therefore, I won't be asking SCUK to arrange collection.

### **My final decision**

For the reasons explained, I uphold Miss H's complaint about Santander Consumer (UK) Plc and it is to follow my directions as follows:

- end the agreement with nothing more to pay;
- refund the credit agreement payment Miss H made for the period 8 August 2023 to 4 September 2023;
- reimburse Miss H with £368.49 for her contribution towards the repair;
- apply 8% simple yearly interest on the refunds, calculated from the date Miss H made the payments to the date of the refund\*;
- pay Miss H an additional £400 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality, and
- remove any adverse entries relating to this agreement from its records and provide an update to the relevant credit reference agencies so that they can amend Miss H's credit file.

\*If SCUK considers that tax should be deducted from the interest element of my award, it should provide Miss H with a certificate showing how much it has taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 January 2025.

Debra Vaughan

**Ombudsman**