

The complaint

Mr L is unhappy that a car supplied to him under a conditional sale agreement with Santander Consumer plc T/A Santander Consumer Finance (SFC) was of an unsatisfactory quality and that it was not as described.

When I refer to what Mr L and his representative has said and what SFC have said, it should also be taken to include things said on their behalf.

What happened

In June 2023, Mr L was supplied with a used car through a conditional sale agreement with SFC. The cash price was £22,850.00, he paid an advance payment of £1,850.00 and the agreement was for 60 monthly payments of £459.70 giving a total amount payable of £29,432.00. At the time of supply, the car was around six years old, and the recorded mileage was 51,186. In addition, he paid £399 for an extended warranty.

Mr L complained that from shortly after acquiring the car it had an oil leak, there was a smell of burning and white smoke was coming from the exhaust. In August 2023 the car was returned to the dealer who supplied the car and they replaced the sump plug.

Two weeks later he realised the car was still leaking oil and white smoke was still coming from the exhaust. The supplying dealer said the car was now outside of the three-month warranty and the problem should be referred to the extended warranty provider, who requested a diagnostic report. This was obtained and provided to them. The extended warranty provider declined the claim but following further contact the supplying dealer agreed to pay half the costs, which would leave Mr L to pay the remaining half. Although Mr L was not happy with this, he agreed in order to move the repair along.

In February 2024 Mr L made a complaint to SFC and he provisionally made a booking for repairs with a specialist garage as they had a long waiting list. Due to Mr L's working arrangements, he had asked SFC to liaise with his representative. This did not happen, and that complaint was closed so Mr L had to make his complaint again in April 2024.

While waiting for the repairs the car windscreen had to be replaced and in the course of replacing it the technician informed Mr L's representative that the glass in the front side windows was illegal due to the strength of the tint, which should allow 70% of light to pass through but was only allowing 50% of light to pass through.

In June 2024 the car was taken into the specialist garage which had been booked to complete the repairs. These were identified as an oil leak from around the gear box and engine area which would require the removal of the gearbox and exhaust fumes entering the cabin due to a faulty exhaust clamp from the catalytic converter to the turbocharger. The repair cost was estimated at £982.02. This increased when the work was carried out by £170 (+ VAT) additional labour costs due to the condition of the engine. Mr L paid £689.34, and the dealer paid £496.68. The car mileage was recorded as 57,857.

The garage who completed the work contacted Mr L's representative to inform them it appeared that car engine had been replaced and was not the original. The garage said they identified this because the engine was not sat on all the holding brackets, screws securing the engine in place had been cross-threaded and there was a chunk missing out of the engine. They also reported the engine had been marked with yellow paint which they said is how second-hand engines are often marked when sold to prevent parts being removed and returned. Mr L has supplied photographs of the damaged engine parts and yellow paint.

Mr L's representative found the engine number on the engine in the car and compared it with the engine number recorded in the V5C logbook they had been given when they acquired the car, and found the numbers were different. In June 2024 Mr L's representative added the issues of the engine and window tints to the complaint with SFC and asked to reject the car as he was concerned about the safety and history of the car, and not knowing the mileage that either the car or engine had travelled.

SFC did not uphold Mr L's complaint and provided their final response letter in July 2024. They said that as Mr L had not been able to provide job cards for the initial work completed by the dealer who supplied the car, they had no evidence that the car was not of satisfactory quality at the point of sale. SFC noted that the dealer had agreed to pay 50% of the repair costs and said as no courtesy car had been provided, they would refund the Normal Monthly Instalment for the week the car was in for repair, which equated to £114.87. They also said they would pay a further £250 for inconvenience. SFC made no reference to the level of window tints or the replacement engine.

Mr L was unhappy with this response, so he referred his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that as Mr L was not made aware of the second-hand engine this made a material difference to the car history and that Mr L would not have entered the agreement if he had been aware. Given this they said Mr L should be allowed to reject the car, have their deposit and the cost of repairs returned and that SFC should pay an additional £250 for the distress the misrepresentation had caused.

SFC didn't agree with the investigator. They said that Mr L was not able to provide proof of issues occurring within the first six months of the car being in his possession and that the dealer who supplied the car was not aware that the car had an engine replacement with a used engine. They also said that the car was six years old and had completed 51,186 miles and so some wear, tear, and deterioration to some of the parts would be expected.

SFC provided further information from the supplying dealer, who said the car was inspected by their company technician who has 30 years plus experience and that the car had passed an MOT. The dealer also confirmed that the car had been repaired by them in August 2023 and that subsequent work had been completed by a third-party garage. The dealer noted that the car had travelled 11,000 miles since their MOT to June 2024.

Because SFC didn't agree, this matter has been passed to me to make a final decision.

My initial conclusions are set out in my provisional decision. In it I said I thought Mr L's complaint should be upheld but I reached a slightly different conclusion to our investigator about how it should be settled, and I explained my reasoning as follows:

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 (if appropriate) what I consider was good industry practice at the time. Mr L was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr L 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, and the description of the goods. 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.

I also need to decide in this case whether the car Mr L acquired was misrepresented to him by SFC. A misrepresentation is a false statement of fact, or omission, which induces a person into entering a contract when they would have acted differently, had they known the truth.

To make a finding of misrepresentation, I would need to be satisfied that Mr L was told a false statement of fact or was misled by the omission of information that caused him to enter a contract he would not have entered into otherwise.

I will first consider the faults Mr L has complained of. If I thought the car was faulty when Mr L took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it would be fair and reasonable to ask SFC to put this right.

I have noted the response from the dealer who supplied the car saying Mr L had completed 11,000 miles in 12 months, however this figure appears to be incorrect. Based on the mileage recorded by the specialist garage who repaired the car it had travelled 6,668 miles in the 12 months since Mr L acquired it. Also, as Mr L's complaint relates to faults occurring shortly after acquiring the car as well as information he was not given about the car before acquiring it, I am not persuaded the mileage completed by Mr L is relevant.

First, I considered if there was a fault with the car and I've considered evidence provided by both sides. Mr L says he noticed an oil leak within two weeks of acquiring the car as well as a burning smell and white smoke from the exhaust and that the dealer replaced the sump plug around two months later. SFC said they did not uphold Mr L's complaint as he was unable to provide job cards for this work, and the dealer also failed to provide SFC with evidence of this repair when asked.

As the work was completed under warranty, rather than Mr L directly paying for it, I would not necessarily expect Mr L to have copies of job cards or to have any invoices. Mr L did provide evidence to SFC of phone calls and visits to the dealership he made on the dates he had said, from mobile phone bills and the car tracking system, as well as photographic evidence of oil leaks on his drive from CCTV footage. So, I am satisfied that a fault was

identified and raised in the first thirty days that Mr L had the car. The dealer has also confirmed that they completed a repair in August 2023 which matches the dates and information provided by Mr L.

Mr L said that the repair did not resolve the leaking oil or smell of burning and white smoke from the exhaust. The specialist garage the car was taken to identified and repaired an oil leak from the engine, and fumes entering the cabin from a faulty clasp. As the specialist garage found the same issues as those raised by Mr L when he took the car in for repair with the supplying dealer, I am persuaded that the first repair had failed.

In a later email from the specialist garage, following a request for further information from Mr L's representative, they said:

"Although it is not possible to prove these issues were there at the time of purchase, due to the level of experience we have with these vehicles, we would find it highly unlikely that these issues were of a "sudden onset" nature. However, we must stress that this is only an opinion and is not based on any diagnostic or evidential factors."

The CRA says a consumer has 30 days to reject faulty goods. After this, they have a right to ask the trader to repair the goods or replace them. And if the goods are still faulty after one attempt at repair or if repair is not completed in reasonable time, they have a final right to reject goods or receive a price reduction up to the full value of the goods.

The CRA is clear that, if the single chance at repair fails, then the consumer has the right of rejection. However, this doesn't mean that the consumer is required to reject the car, and they can agree an alternative remedy i.e., further repairs to the car. Section 23 of the CRA says that if the consumer requires the trader to repair or replace the goods the trader must do so within a reasonable period of time and without significant inconvenience to the consumer.

Based on the information provided and the findings of the specialist garage I think it is likely that the fault with the oil leak was present when Mr L acquired the car in June 2023 and that the first repair did not resolve the issues Mr L had raised. The further repairs were not carried out until June 2024, and then only because Mr L arranged them, with the dealer only committing to pay 50% of the costs, and ultimately paying less than 50%. So, I think SFC failed to meet the requirement to provide the repair within a reasonable time and without significant inconvenience and so it would be fair to ask SFC to put things right.

I shall now turn to the description of the car. Mr L has said he was not made aware that the front window tints were darker than the permitted level or that the car engine had been replaced when he bought the car. So, information about the car was omitted.

Mr L has provided copies of the advertisement for the car showing the dark windows and has said he was only made aware of the issue with the tints when he had to have the windscreen replaced.

Based on the evidence Mr L has provided showing the photographs of the car when it was advertised for sale, I think it is most likely the depth of tint on the front side windows when Mr L acquired the car was the same as the depth of tint the window technician found when he replaced the windscreen. The technician informed Mr L that only 50% light could travel through the front side windows and that this was less than the permitted level. The receipt Mr L supplied for £612 for the cost of the replacement windscreen is from a specialist automotive glass repair and replacement company, and so I am satisfied he was told this by someone suitably qualified and whose opinion I have no reason to doubt.

The Gov.UK website, The Highway Code, road safety and vehicle rules page, says the Driver and Vehicle Standards Agency (DVSA) use light measuring equipment to measure window tint and if the windscreen or front side windows are tinted too much, they could issue a prohibition notice stopping the car being used on the road until the tint is removed, and issue a penalty notice or court summons. It also says it is illegal to sell a vehicle already fitted with glass that breaks the rules on tinted windows.

Turning now to the engine. Mr L has provided photographs of the engine number on the engine, and the engine number recorded in the V5C, and these are different. He has also supplied photographs of yellow paint on the engine and damage to the engine.

In their email to Mr L's representative following the request for further information, the specialist garage who repaired the car said:

"...we can confirm that one of our technicians raised the query of a replacement engine with you. This issue was mentioned to you as we observed the presence of 'markers' (the presence of visible paint or similar medium) on the engine. This is commonplace with suppliers of used engines to ensure that there has been no tampering etc..."

The Gov.UK website says you must give DVLA evidence or written confirmation if you change the engine number or cylinder capacity (cc) and that your V5C update will be rejected if you do not.

It goes on to say the types of evidence that would be accepted, such as:

"a receipt for the replacement engine that includes the engine number and cylinder capacity, or written confirmation on headed paper from a garage if the change took place before you bought the vehicle."

Based on the information Mr L has provided and the balance of probabilities I think it is most likely the engine had been replaced before Mr L acquired the car and that Mr L was not made aware of the replacement engine by the dealer or provided with written confirmation of that change.

Both the tinted windows and replacement engine have meant that Mr L or his representative could have been fined or received points on their licence. The fact the engine was replaced means Mr L does not know how many miles either the engine has travelled, nor does he have any previous history for the engine. Mr L has said he would not have entered into a contract to purchase this car if he had been aware of these facts, and I am satisfied he would not have done. So, it would be fair to ask SFC to put things right.

Putting things right

Based on the evidence provided by Mr L I am persuaded he experienced faults with the car shortly after he acquired it from SFC, that the first fault failed, and further repairs were carried out only at his instigation and partially at his expense and after a considerable period of time. And so, Mr L should be able to reject the car.

Figures taken from the invoices provided by Mr L show the costs for repairs were made up as follows:

Parts	£58.35
Labour	£930.00
VAT@20%	£197.67

Less contribution paid by dealer £496.68

Total paid for repairs by Mr L £689.34

I note this figure is slightly different to that given in the investigator's view as that figure had not included the VAT that had been applied.

I am also persuaded that whilst awaiting the further repairs Mr L was made aware by other technical specialists of the tints to the front side windows being outside the permitted level and the car having a replacement engine that he was previously unaware of. These are material facts with potentially significant consequences, and I am satisfied Mr L would not have acquired this car had he been made aware of them before entering into the contract with SFC. And so, I think Mr L should be able to reject the car.

Mr L has provided comprehensive evidence detailing the issues he has faced with the car and that attempting to achieve the necessary repairs has taken considerable amounts of his time, and he has described the anxiety this has caused him.

Mr L paid £128.54 hire car costs. I can see SFC have already paid Mr L £114.87 towards this, plus £250 for inconvenience.

Therefore, SFC should:

- end the agreement with nothing more for Mr L to pay*
- collect the car at no cost to Mr L*
- remove any adverse entries relating to this agreement from Mr L's credit file*
- refund the advance payment Mr L paid of £2,249 (made up of £1,850 deposit and £399 for an extended warranty)*
- pay Mr L the cost of repairs he has paid £689.34 (on proof of payment)*
- pay Mr L the cost of the windscreen replacement £612 (on proof of payment)*
- pay Mr L £13.67 which is the difference between the cost of car hire paid by Mr L and the amount SFC have already refunded to him for this (on proof of payment)*
- apply 8% simple yearly interest on the refunds, calculated from the date payments were made to the date of the refund[†]*

SFC have already paid Mr L £250 for his distress and inconvenience, and I do not think they need to pay anything further for this.

[†]If SFC considers that tax should be deducted from the interest element of my award, they should provide Mr L with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

I asked both parties to provide me with any additional comments or information they would like me to consider by 25 April 2025.

SFC did not respond to my provisional decision.

Mr L said that whilst on the whole he agreed with the points raised he wanted to stress a few points before the final decision was issued. I will not repeat all of his submissions here but in summary he says:

- SFC did not respond to or recognise the information he had given to them about the engine and tinted windows in their Final Response Letter which has extended the time to resolve the issue and increased the stress he has experienced.*

- Although he and his family have used the car, they have found this to be stressful and as a result of their concerns have only used it for local journeys and have borrowed cars from family when making longer journeys.
- He originally chose the car with the intention of keeping it and has by now paid a significant amount in monthly payments which he says he will have effectively lost when the car is rejected.

The contract Mr L took with SFC was a conditional sale contract which means that each payment made includes a contribution towards the purchase price of the car and so I considered what he said about the monthly payments he has made to be fair and reasonable. I asked our investigator to approach SFC with the proposal that SFC should refund Mr L 50% of the monthly payments he has made up to the point of settlement to reflect this.

SFC responded asking for our rationale and for the current mileage of the car plus a list of current faults or issues. Our investigator provided this and asked SFC to respond with any further comments or information for consideration before 19 May 2025.

SFC have not made any further response and as such I have taken that to mean they have no further comments or information to put forward for consideration.

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've also considered again my provisional findings.

I thank both Mr L and SFC for their comments and I've considered them alongside the evidence and arguments submitted by both parties in order to decide what is fair and reasonable.

At this stage it may be helpful for me to explain that although a number of points have been raised in response to my provisional decision, I will only be addressing those issues I consider to be materially relevant to the complaint. Both parties should note however, that although I may not address each individual point raised, I have given careful consideration to all of the submissions before arriving at my decision.

I am sorry that Mr L has suffered stress and anxiety and note that SFC have already made a payment to him for the distress and inconvenience he has suffered.

I think the request Mr L made in respect of the monthly payments he has made is fair and reasonable and SFC should refund 50% of all monthly payments he has made.

Having considered all the evidence I have reached the same overall conclusion as set out in my provisional decision and for the same reasons but with the additional requirement for SFC to refund to Mr L 50% of the monthly payments he has made.

Putting things right

Based on all the information provided I am satisfied Mr L should be able to reject the car and therefore, SFC should:

- end the agreement with nothing more for Mr L to pay
- collect the car at no cost to Mr L
- remove any adverse entries relating to this agreement from Mr L's credit file
- refund the advance payment Mr L paid of £2,249 (made up of £1,850 deposit and £399 for an extended warranty)
- pay Mr L the cost of repairs he has paid £689.34 (on proof of payment)
- pay Mr L the cost of the windscreen replacement £612 (on proof of payment)
- pay Mr L £13.67 which is the difference between the cost of car hire paid by Mr L and the amount SFC have already refunded to him for this (on proof of payment)
- refund to Mr L 50% of all monthly payments made up to the date of settlement
- apply 8% simple yearly interest on the refunds, calculated from the date payments were made to the date of the refund[†]

SFC have already paid Mr L £250 for his distress and inconvenience, and I do not think they need to pay anything further for this.

[†]If SFC considers that tax should be deducted from the interest element of my award, they should provide Mr L with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr L's complaint about Santander Consumer plc T/A Santander Consumer Finance and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 June 2025.

Jo McHenry
Ombudsman