

## **complaint**

Mr R complains about a second hand van supplied to him under a conditional sale agreement with Santander Consumer (UK) plc, trading as Santander Consumer Finance, ("SCF"). The complaint is brought to this service on Mr R's behalf by a family member, but for ease I shall refer below to all actions taken by Mr R.

## **background**

Mr R complains about the quality of a second hand van supplied to him in December 2013 under a conditional sale agreement with SCF. The price of the van was £7,194, and on the date of supply, it was almost four years old and the mileage was 99,897 miles. Mr R experienced problems with the van on the day he collected it. The van went into limp mode, and Mr R thought that there may be a problem with the turbo and diesel. He returned it back to the supplying dealership ("D") in January 2014 who repaired the van. But, soon the van went back into limp mode, and this occurred over and over again and the van was returned to D on many occasions for repair. Over the first year, Mr R was only able to use his van to drive around 3,500 miles. He said that he could usually only drive about a week continuously before the fault appeared again. Mr R then did a check with the van's manufacturer who did a history check on the van. The history revealed that there was a fault with the van which was made known to the dealer before the van was sold.

Ultimately SCF accepted that the van wasn't fit for purpose and has offered to unwind the agreement and to reimburse Mr R with his deposit of £1,500, his monthly repayments (£3,481.51 as at 6 November 2015) and £50 towards his postage and phone costs. But Mr R is seeking reimbursement of his out of pocket expenses:-

Insurance for 18 months - £1,600.00

Road fund licence - £247.50

AA Breakdown - £237.47 and £195 incurred by a family member using a courtesy vehicle supplied to Mr R whilst the van was being repaired

Personal Registration plate transfers (on and off the van) - £160.00

Estimated fuel costs - £120.00

### *our adjudicator's view*

The adjudicator concluded that SCF's offer to unwind the agreement, and refund the deposit, monthly repayments, and postage and phone expenses was fair and reasonable. But she didn't think it was fair to ask SCF to cover the costs of the insurance, road fund licence and fuel costs. This was because these were all part of owning and running the van which was not SCF's fault. She also didn't think it was fair to ask SCF to cover the costs for the personal registration plate transfers as this was a personal choice made by Mr R. She also didn't think that it was SCF's responsibility to pay for the breakdown cover, even though this arose as a result of the faults with the van.

Mr R disagreed and responded to say in summary that he would take the matter to court if he didn't receive all his expenses.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr R and to SCF on 18 December 2015. I summarise my findings:

I noted that Mr R had entered into a conditional sale agreement with SCF. Conditional sale

agreements are covered by the Sale of Goods Act 1979. The effect of this Act is that the agreement includes conditions that the van will be of satisfactory quality. The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes: fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

It was clear to me from the evidence provided to this service that the van wasn't of satisfactory quality when it was supplied. I noted that Mr R had experienced problems with it since the date of supply. In view of the various problems with the van, I considered that SCF's offer to cancel the conditional sale agreement, to permit Mr R to reject the van, to refund the deposit of £1,500, all the monthly repayments and phone and postage was fair and reasonable. I also said that as the conditional sale agreement was being cancelled, it should also be removed from Mr R's credit file.

But I could also see that Mr R had said that he was only able to drive the van for a week at the most before it needed repair again within the period it was in his possession. It had been faulty from the date he'd collected it and over the next 18 months. He had also lost trust in the van and its safety in view of the faults which had kept occurring. I also noted that Mr R had cancelled his tax on the van in early July 2015, and hadn't used it after that. The van was collected in November 2015. I could see that Mr R had suffered trouble and upset due to the amount of time he had spent trying to resolve the matter, and in trying to persuade SCF to deal with his complaint. So, I thought that SCF should pay Mr R £250 compensation because of all of this.

Mr R also wanted his road fund licence and insurance paid. But whilst I hadn't seen the van's mileage when it was collected, I did note that Mr R was able to drive around 3,500 miles in the first year. So, he would have needed to pay for these items in any event whilst he was using the van. But I also noted that he had ceased using the van on 1 July 2015. So, I thought that SCF should refund him any payments for his road fund licence and insurance after this date.

But I didn't know how Mr R made his payments for these items and the period his payments covered. So, subject to further clarification from Mr R on this, I thought that SCF should provide Mr R with a pro rata refund of these amounts from 1 July 2015 upon provision of evidence to SCF of such payments. I also said that 8% interest should be paid on this from the date of payment to the date of settlement.

I also noted that Mr R wanted the transfer of his personal registration plates paid for by SCF. I could see that Mr R hadn't really had the benefit of the plates on his van as it needed to be returned. And I also noted that he would incur additional costs getting the plates transferred again as the van had gone back. I didn't think that it was fair that he would have to pay the additional cost of getting his plates to be transferred because of the problems with his van. So, I thought that in these circumstances, it was reasonable for SCF to refund £160 to Mr R upon provision of evidence to SCF that Mr R had paid for this item. And 8% interest should be paid on this from the date of payment to the date of settlement.

I had seen no evidence of fuel costs for the fuel used in taking the van to be repaired, so I didn't make an award for this aspect of Mr R's complaint. I also noted that the AA expenses weren't incurred by Mr R, but by a family member. So, I didn't think that it would be fair for SCF to refund these.

Subject to any further representations by Mr R or SCF my provisional decision was that

I was minded to uphold this complaint in part. I intended to order Santander Consumer (UK) plc, trading as Santander Consumer Finance to:-

1. Cancel the remaining finance at no additional cost to Mr R;
2. Refund £1,500 for Mr R's deposit. Interest should be calculated on this sum at 8% simple per annum from the date of Mr R's payment to the date of settlement;
3. Refund all of Mr R's monthly repayments under the finance agreement. Interest should be calculated on these sums at 8% simple per annum from the date of Mr R's payment to the date of settlement;
4. Pay Mr R £50 compensation for postage and phone expenses;
5. Provide Mr R with a pro rata refund of any payments for his road fund licence and insurance for the period after 1 July 2015, subject to further clarification from Mr R on the period for which his road fund licence and insurance have been paid, and upon provision of evidence to SCF of such payments. Interest should be calculated on these amounts at 8% simple per annum from the date of Mr R's payments to the date of settlement;
6. Refund £160 to Mr R for the transfer of his personal registration plates upon provision of evidence to SCF that Mr R paid for this item. Interest should be calculated on this amount at 8% simple per annum from the date of Mr R's payment to the date of settlement;
7. Pay Mr R £250 compensation for trouble and upset caused; and
8. Remove any reference to the conditional sale agreement from Mr R's credit file.

If SCF considered that tax should be deducted from the interest element of my award, it should provide Mr R with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

SCF disagreed with some of the aspects of my provisional decision and responded to say using the above numbering:-

2. It didn't agree to refund the £1,500.00 deposit, as this had already been refunded to Mr R. It had an email confirming this and Mr R had confirmed it had been refunded to him during a telephone conversation with it.
5. It didn't feel it would be fair to refund Mr R for the road fund licence and insurance, as these were payments that would be incurred from owning any vehicle, satisfactory quality or not. It said that it was Mr R's responsibility to make sure that the vehicle was taxed and had insurance and that these fell within the running costs of owning a vehicle. It also said that if Mr R cancelled the Road Fund Licence, he would get a refund for the remainder of the time he had paid for.
6. The transfer of the personal registration plate was optional. Mr R chose to pay the costs to transfer the registration plate. Due to this it didn't feel it would be fair for SCF to repay the optional fee.
7. It didn't feel that £250.00 compensation was fair. It felt that what Mr R had previously been offered was fair and in proportion to his complaint.

Mr R responded to say that he had received a refund of the deposit. He also said that the insurance ran from December 2013 to 1 July 2015, and the road tax ran from December 2013 to December 2014, and that these should be refunded. He also said that the breakdown costs should be repaid as they wouldn't have been incurred if the vehicle had been working.

## **my findings**

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

As I note that Mr R has already received a refund of his deposit, I will not include this in my decision.

With regard to the road fund licence and insurance, I would have reasonably expected Mr R to meet the costs of these whilst he had use of the van until July 1 2015. But as the van ceased to be used from July 1 2015, I think it's fair that SCF provide Mr R with a pro rata refund of these costs for the period from 1 July 2015.

With regard to the transfer of the personal registration plate, I think that it's fair that SCF refunds the cost of this for the reasons set out above. I also think that compensation of £250 is appropriate for the reasons shown above. But I don't think that the breakdown costs should be refunded as these were incurred by a third party, and not by Mr R.

So, other than the refund of the deposit, I am satisfied that the proposed resolution in my provisional decision is fair in all the circumstances, and I find no basis to depart from my earlier conclusions.

## **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Santander Consumer (UK) plc, trading as Santander Consumer Finance to:-

1. Cancel the remaining finance at no additional cost to Mr R;
2. Refund all of Mr R's monthly repayments under the finance agreement. Interest should be calculated on these sums at 8% simple per annum from the date of Mr R's payment to the date of settlement;
3. Pay Mr R £50 compensation for postage and phone expenses;
4. Provide Mr R with a pro rata refund of any payments for his road fund licence and insurance for the period after 1 July 2015, subject to further clarification from Mr R on the period for which his road fund licence and insurance have been paid, and upon provision of evidence to SCF of such payments. Interest should be calculated on these amounts at 8% simple per annum from the date of Mr R's payments to the date of settlement;
5. Refund £160 to Mr R for the transfer of his personal registration plates upon provision of evidence to SCF that Mr R paid for this item. Interest should be calculated on this amount at 8% simple per annum from the date of Mr R's payment to the date of settlement;
6. Pay Mr R £250 compensation for trouble and upset caused; and
7. Remove any reference to the conditional sale agreement from Mr R's credit file.

If SCF considers that tax should be deducted from the interest element of my award, it should provide Mr R with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 February 2016.

Roslyn Rawson  
**ombudsman**