

## The complaint

Ms S has complained about the quality of a car she acquired under a conditional sale agreement with Santander Consumer (UK) plc T/A Santander Consumer Finance (SCUK).

## What happened

The events of the complaint are well known to the parties so I'm not going to go over everything again in detail. But in summary, Ms S acquired a used car under a conditional sale agreement with SCUK in January 2022. The agreement was for 49 months. The cash price of the car (and extras) was around £57,600, it was around three and a half years old, and the mileage was around 35,000. There was an advance payment of £2,000 and Ms S was required to make monthly repayments of around £900 for 48 months followed by a final payment of around £24,000.

Ms S said she noticed a problem straight away with a tyre warning light and she said the dealer told her it wasn't anything to worry about and to contact it if there were further problems.

Ms S said she experienced several issues over the next few months including the rear camera not working; flickering main screen and delay in loading; a strange smell coming through the air conditioning; EML light coming on; and the tyre pressure sensor coming on intermittently. I understand Ms S tried to reject the car through the dealer around this time. The dealer wanted the chance to put things right.

A report was carried out in June 2022 noting some issues including error messages for the camera (requires new camera); EML throttle housing issue (needs new housing); heater screen and in control screen flickering (needs new cable overlay harness); brake discs worn; roll bar bushes worn (needs new bushes and clamps); rear pads wearing unevenly. And works were to be carried out. I understand Ms S continued to want to reject the car and she contacted SCUK around August 2022. The dealer said Ms S couldn't reject the car because the faults had been fixed. SCUK didn't uphold the complaint.

Ms S took the car in again in November 2022 because the screen was still flickering, and the front forward lower suspension arm bushes were perishing. She also said the Bluetooth kept disconnecting and there was a beep coming from the tow bar not fully closing. The tow bar issue was resolved, and it looks like there was also another software update. The report noted the bushes were perishing. Ms S referred her complaint to our service to consider.

An independent report was carried out in July 2023 and the mileage was around 49,000. The report noted Ms S had complained about several issues since acquisition and that the latest issues were bubbling paintwork and problems with the air conditioning. The report concluded reported faults had been repaired and that there were fault codes present but the expert didn't think the car would have been unfit for purpose at the point of supply.

Ms S didn't think the first report inspected everything, and another report was carried out in August 2023, and it looked at the camera intermittently working; flickering main screen; delays in loading; corrosion with the front lower arm bushes perishing and splitting. The

expert couldn't find all the faults. They said the lower arms should be replaced but it wasn't immediately necessary and fault codes should be rescanned. But the expert didn't think the car was unfit for purpose at the point of supply.

Ms S supplied further evidence the screen was still flickering and not working properly. She also sent us a diagnostic report that was carried out indicating there were several fault codes present.

Our investigator looked into things and thought the initial repairs hadn't resolved all the issues. She said Ms S should be able to reject the car and recommended SCUK:

- End the agreement at no further cost to Ms S.
- Collect the car from Ms S when convenient.
- Refund the £2,000 deposit plus 8% simple annual interest from the date the payment was made to the date of settlement.
- Remove any adverse information about the agreement from Ms S's credit file.
- Pay Ms S £300 compensation.

Ms S was disappointed with the amount SCUK would retain but she broadly accepted things. I can't see we received a substantive response from SCUK, so the complaint was passed to me to make a decision. Due to the further delays with no response from SCUK Ms S requested we consider further compensation.

I wrote to SCUK to see if it wanted to accept the investigator's assessment and I supplied some further evidence of the diagnostics Ms S had carried out, along with job cards. But I've not received a substantive response from it.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Ms S and SCUK that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Ms S acquired the car under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.*

*The Consumer Rights Act 2015 (CRA) covers agreements like the one Ms S entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. SCUK is the supplier of the goods under the agreement and is therefore responsible for dealing with a complaint about their quality.*

*The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.*

*In Ms S's case, the car was used when it was supplied and had already covered around 35,000 miles. So I think the reasonable person would have different expectations of it compared to a new car. But I'm conscious it cost around £57,600. So I don't think a reasonable person would have expected it to have any significant issues with it when it was acquired.*

*It doesn't seem to be in dispute there were faults with the car. In July 2022 the reverse camera needed to be replaced at a cost of over £500. The throttle housing needed to be replaced at a cost of over £500. An overlay harness needed to be fitted to fix a flickering screen at a cost of around £200. And rear bushes and clamps needed to be replaced at a cost of around £150.*

*In August 2022 when the car had a service work was carried out to sort out the tow bar not fully closing. There were further updates because the screen was flickering, and the front suspension arm bushes were perishing.*

*The faults I've mentioned above were apparent within the first few months of Ms S being in possession of the car. She managed to cover about 5,000 miles in the car within those months, but she said she experienced faults with it almost straight away. Based on what I've seen, I think it's likely those faults were present or developing at the point of supply. I don't think a reasonable person would expect, at that time, to have to replace the rear camera, throttle housing and overlay harness given the age and mileage of the car considering it cost nearly £60,000. The bushes may have been something that simply needed to be replaced due to normal wear and tear, but I think the other faults at least made the car of unsatisfactory quality. And so I think there was a breach of contract in relation to the implied terms about the quality of the goods. Ms S complained about other faults such as with the air conditioning and paintwork, but I've not seen enough evidence these made the car of unsatisfactory quality.*

*Ms S wanted to reject the car, but the CRA broadly says the trader was entitled to have a repair attempt because Ms S's request for rejection came outside of the first 30 days.*

*Repairs were attempted and this seems to have resolved a lot of the issues. But Ms S said she continued to experience problems, and she wanted to reject the car. Even though independent reports were carried out that said the car was fit for purpose, I think it's likely there's an underlying issue with the car that hasn't been resolved – in particular in relation to the screen. Ms S has shown us that the screen is still flickering. She says the climate control doesn't always work. And she's also more recently had a diagnostic report carried out that shows several fault codes. On balance, I don't think the car was brought back to conformity after the repairs in 2022.*

*The CRA sets out that (outside the first 30 days) if the car isn't of satisfactory quality, there's been a repair attempt, and the car still doesn't conform to the contract, Ms S should be able to reject it. So I agree with our investigator's assessment that Ms S should now be able to do that.*

*Therefore, I think SCUK should end the agreement with nothing further to pay, and it should collect the car at no cost to Ms S. It should also refund her deposit. One of the invoices I've seen indicated Ms S was going to part exchange a car, but I can't see that happened, based on what the conditional sale agreement sets out. If that's not right, Ms S should let us know in response to this provisional decision. SCUK should also reimburse Ms S for the diagnostics she had carried out.*

*Ms S had covered around 16,000 miles by August 2023, so she's been able to use the car. And it's fair she pays for that use. But it looks like her use has been slightly impaired for the whole time, particularly during the first few months. It must have been really frustrating to have acquired a car at significant cost, and to have so many issues with it. There's no exact science to use to work out the cost of fair use. But I think broadly, the monthly repayments Ms S has been making are fair for her to pay for the use of the car. But those payments should've been reflective of having a car that was of satisfactory quality. For the reasons given above, I don't think that happened here. I don't think the nature of the problems (after*

*the first few months at least) caused significant impairment. And I'm conscious some of the problems were intermittent. But, in the round, I think SCUK should also refund Ms S 10% of her monthly repayments up to when the more significant faults were repaired in July 2022. And it should refund Ms S 5% of repayments from August 2022 onwards when the problems don't seem as significant. I think these refunds fairly recognise the impaired use throughout the time she has been in possession of the car.*

*Finally, the matter would have no doubt caused some general inconvenience to Ms S. I've already set out what should happen for the impaired use. But Ms S has had to make various trips to garages. She tells us it was often a long wait to have the car booked in which caused further delays. She's had to attend independent inspections. It's taken a long time to resolve things for Ms S. She's been very responsive in supplying evidence of issues with the car. I think things ought to have been resolved sooner for her. Our investigator recommended £300 compensation. I'm intending to increase this slightly because I think there have been some extra delays caused by SCUK in getting things resolved for Ms S, which I think should also be reflected. So I'm intending to increase the compensation to £400.*

I can't see we received a response from SCUK. Ms S responded to say she didn't think the compensation covers the full impact on her. But she'd like to see things resolved so she was supportive of the conclusion. Ms S also wanted to clarify a few things. She said the second report in August was instigated because SCUK hadn't addressed the concerns raised to it previously. These weren't new concerns. She also said the agreement incorporated additional services for ongoing maintenance. And that she'd made over 10 trips to the dealer for repairs, which totalled over 500 miles.

### **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'd like to thank Ms S for her response. I appreciate she doesn't think the compensation goes far enough. I've separated compensation to the impaired use. No amount of money can change what happened, but I think what I'm directing SCUK to do seems broadly a fair way to put things right quickly and informally, which is how I'm required to resolve complaints.

I don't think the reason for having the second report carried out changes my decision, but I thank Ms S for the clarification. Ms S has highlighted the additional services she was paying for. As far as I can see, these were paid off monthly through the agreement and Ms S would have had the benefit of those services for that time, so I don't need to change the decision for those. And I appreciate she had to make several trips to have the car repaired. I've taken those into account when deciding how SCUK needs to put things right.

Based on what I've seen, I'm not going to depart from the conclusions I reached in my provisional decision. If Ms S decides to accept it, I hope the resolution helps the parties draw a line under things.

### **My final decision**

My final decision is that I uphold this complaint and direct Santander Consumer (UK) plc T/A Santander Consumer Finance to:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Ms S;
- refund Ms S's deposit contribution of £2,000;
- refund Ms S £54 for the diagnostics carried out on 26 August 2023;

- refund Ms S 10% of repayments from inception to July 2022;
- refund Ms S 5% of repayments from August 2022 onwards;
- pay 8% simple yearly interest\* on all refunded amounts from the date of payment until the date of settlement;
- pay £400 compensation;
- remove any adverse information from Ms S's credit file in relation to the agreement.

If SCUK considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms S how much tax it's taken off. It should also give Ms S 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 Ms S to accept or reject my decision before 15 January 2024.

Simon Wingfield

**Ombudsman**