

## The complaint

Ms H is unhappy that a car supplied to her under a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance, was of an unsatisfactory quality.

## What happened

On 27 June 2018, Ms H was supplied with a used car through a conditional sale agreement with Santander. She paid a £1,500 deposit and the agreement was for £26,000 over 49 months; with 48 monthly repayments of £471.66 and a final payment of £8,911. At the time, the car was just over three years old and had done 55,626 miles.

Ms H said she started having problems with the car within a week of taking possession of it – the automatic transmission was juddering and jolting when changing gear. This was investigated by three different garages, between August 2018 and March 2019. And in March 2019 the supplying dealership replicated the problem with the car after an extensive test drive.

Ms H complained to Santander about the problems with the car, asking if she could reject it. But the dealership had agreed to replace the transmission, at no cost to Ms H, and Santander said this was a reasonable remedy in the circumstances. A reconditioned transmission was fitted but, in May 2019, Ms H complained that she was still experiencing the same issues.

Santander arranged for an independent engineer (the engineer) to inspect the car, and this inspection took place in July 2019. Ms H paid half of this inspection cost. The engineer said the transmission appeared to be operating normally, but identified two issues – a harsh gear engagement when selecting drive from reverse, which the engineer said was caused by Ms H's driving style; and a fluctuation in gear selection at speed, which the engineer said was maybe a characteristic of the transmission. The engineer suggested further checks should be carried out.

Ms H arranged for the car to be inspected by an specialist in automatic transmissions (the specialist). This inspection took place in August 2009, and the specialist said there were problems with the transmission that'd been caused by it not being calibrated correctly. The specialist recommended the transmission was replaced. Because Santander wouldn't let Ms H reject the car, she brought this matter to us for investigation.

Our investigator said, because of the problems Ms H was experiencing with her car from the outset, she thought the fault with the transmission was present when the car was supplied to her. So she said the car wasn't of a satisfactory quality when it was supplied. And, based on the reports from the engineer and the specialist, she also thought the repair that'd been done by the dealership in April 2019 had failed to fix this issue.

Ms H stopped using the car in May 2019 because she was concerned that continuing to drive it would cause more damage. And the investigator said the specialist had said this was likely to be the case. So the investigator thought Ms H should be allowed to reject the car and end the agreement with Santander. She said that Santander should also refund Ms H's deposit and all of her payments from June 2019; reimburse her inspection costs and pay her £300 for the stress and inconvenience she'd suffered. The investigator also said that Santander should pay interest on everything but the £300 payment.

Because Ms H had got a replacement car, to keep her mobile, thought she should also be reimbursed for her insurance and road tax from June 2019; the costs relating to transferring her personal number plate from this car to the other one; the costs of a replacing the battery because it'd gone completely flat; the MOT costs; and recovery and other transport costs. Ms H also said the stress and anxiety caused by this situation resulted in her being signed off work; and the resulting deterioration on her health meant that a medical procedure she was to undertake was delayed. So she thought the £300 payment was inadequate and should be in the region of £2,000 to £3,000.

The investigator said that, given all of the circumstances, it'd be fair for Santander to refund Ms H her insurance and MOT costs from June 2019, refund the cost of the new battery, and refund the recovery costs. But she didn't think that the road tax costs should be refunded, as Ms H could've declared the car as being off road once she stopped using it, and no more road tax would've been payable. She also said Ms H would've incurred the number place transfer costs at the end of the agreement, so she didn't think these should be refunded. And she thought the stress and inconvenience payment also covered Ms H's transport costs.

The investigator explained that we were unable to consider Santander's handling of Ms H's complaint and that, although Ms H had chosen to obtain formal legal representation to deal with Santander, she was able to deal with matters herself. So Santander weren't responsible for Ms H's legal costs. The investigator also explained why this wasn't a clear-cut case and why Santander weren't completely unreasonable in declining the claim. So, while she appreciated the additional stress the complaints process put on Ms H, she didn't think that the recommended £300 payment needed to be increased.

Santander said Ms H has complained about the same issue, despite having had two gearboxes in the car. And the dealership was only able to replicate the issue *"after several hours of testing and driving the vehicle in an abnormal manner ... this was only done after the customer was unable to get a report from other garages."* They also said that Ms H had the gearbox reset by another garage, which *"resets the gearbox's learning of the driver's patterns and driving style and so this could've contributed to the issues the customer had."*

Santander also said the engineer said the issue was a result of Ms H's driving style.

In reply the investigator said the transmission being replaced doesn't mean that an underlying fault can't still be present in the car. So she didn't think Santander's comments changed her view. She also explained the additional costs she thought Santander should pay Ms H.

Ms H accepted the investigator's amended recommendations, but Santander didn't. They referred to the engineers comment that the transmission was operating normally and that *"a more relaxed gear selection method resolved the issue."* So they consider this to be a problem with Ms H's driving style and not a mechanical fault. And they asked for an ombudsman 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 have 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.

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. Ms H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Santander are responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description and other relevant circumstances.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Santander can show otherwise. So, if I thought the car was faulty when Ms H took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Santander to put this right.

It's not disputed that Ms H was having problems with the car from shortly after it was supplied to her, or that the dealership fitted a reconditioned transmission unit on 12 April 2019 to try and fix this. But Ms H was still having problems with the car and Santander arranged for the engineer to inspect the car.

This inspection took place on 3 July 2019. This report is the main point of dispute, with Santander saying it shows the issues with the car were as a result of Ms H's driving style, and not because of a mechanical issue. Having reviewed this report, I consider the important comments made by the engineer (in the opinion 'O' and conclusion 'C' sections) to be:

- O1: During the road test of the vehicle we did not detect any evidence of any issues.
- O3: We consider that the issues in respect of the selection between drive and reverse gear was most likely a characteristic of the transmission operation in the enthusiastic selection of the gear. A more relaxed gear selection method resolved the issue completely.
- O4: We did note fluctuation in transmission gear selection at high speeds ...
- O5: The condition appeared to be a software issue ...
- O6: Clearly further checks would need to take place at a suitably equipped dealer ...
- O7: However, in other aspects the transmission was operating normally ...
- O8: More generally, the transmission was found to be operating normally.
- O11: The reported slight double jerk was consistent, in our view, with drive or reverse being selected in a hasty manner ...
- O12: The condition identified with the transmission/software and the cyclic gear selection, is not uncommon on modern day transmissions ...
- C1: We would conclude the transmission appears to be operating normally.
- C4: There were no other defects apparent with the transmission apart from an erraticness at high speed in the change, which appears from our perspective to be the result of software becoming overloaded ...

It's clear to me that the engineer considered the issues Ms H was complaining about were as a result of her driving style (O3, O11). But the engineer also said there was an issue with the transmission (O12) at high speeds (O4, C4) which was because of a probable software fault (O5, C4). And it was recommended that a further inspection take place (O6).

As a result of this report, Ms H had the car inspected by a garage who specialised in automatic transmissions. This took place on 29 August 2019. The specialist said *"It's our opinion that the calibration data for the transmission is incorrect ... as there is no calibration sticker on top of the transmission recalibration would be near on impossible, given the fact that the transmission has already been worked on we would have little idea if it was original or if any of the parts had been swapped out, is our opinion that we can only recommend a replacement transmission."*

The investigator spoke to the specialist on 9 September 2020, to discuss the inspection of the car. In this call the specialist confirmed that transmissions have exact tolerances, and minute changes will change how they work. They thought that the problems Ms H was experiencing may be caused by the need to calibrate the transmission, as without this the 'gear shifts are wrong and bumpy' and the car wouldn't be 'comfortable to drive'.

Given this report and the subsequent phone conversation, I'm satisfied that there was a fault with the reconditioned transmission fitted in April 2019, likely as a result of calibration. And the fact that this isn't what Ms H complained about, which may or may not be as a result of her driving style, doesn't affect this.

Ms H has said she had issues with the car from shortly after she took possession of this. And I've seen that it went into different garages for inspection in October and November 2018 – within six months of when Ms H had the car. And this resulted in the dealership replacing the transmission in April 2019. It's my understanding that this replacement was done at the insistence of Santander, after Ms H had asked to reject the car. Given this, I'm satisfied there was a fault with the car from when it was supplied, and this fault made the car of an unsatisfactory quality.

Where goods supplied are of an unsatisfactory quality, the CRA allows for one chance at repair. And by replacing the transmission this repair has taken place. For the reasons stated above, I'm satisfied this repair has failed, and Ms H should now be allowed to reject the car.

### **Putting things right**

Ms H says she last used the car in late May 2019 and that she got a replacement car to keep her mobile. While I can't confirm exactly when the car was last used, looking at the mileage detailed in the inspections/ reports up until July 2019, and comparing this to the mileage showing on the MOT record for July 2019 and January 2021 (the July 2019 MOT expiry date was extended by six months because of the 2020 national lockdown), I'm satisfied that Ms M most likely didn't use the car from June 2019 and was using the replacement car instead – which she also had to tax, insure and keep roadworthy.

As the reasons Ms M didn't use the car was as a result of the ongoing issues she was experiencing, then she should be refunded her direct costs relating to the car from June 2019 onwards, with the exception of the road tax for the reasons given by the investigator. And this includes the cost of the MOT, and the replacement battery as the old battery had gone completely flat due to lack of use.

Ms M has also suffered some distress and inconvenience as a result of what had happened. But it's also the case that Santander have the right to reject her request to reject the car, and challenge this through our process. So, while the complaints process has added time and stress; I'm only considering the issues Ms H initially had with the car, and what happened between the failed repair in April 2020 and when the specialist report said the transmission needed to be replaced in August 2020. And I'm satisfied that the £300 recommended by the investigator is reasonable in these circumstances.

So, Santander should now arrange to do the following:

- end the agreement with nothing further to pay.
- collect the car at no cost to Ms H.
- remove all record of the agreement from Ms H's credit file.
- refund the £1,500 deposit Ms H paid.
- refund all the finance payments Ms H made since June 2019.
- On receipt of evidence from Ms H, refund her:
  - What she paid towards the independent engineer's report.
  - The cost of the specialist's report.
  - The cost of the new battery.
  - The costs of the MOTs in July 2019 and January 2021.
  - The costs of having the car recovered to the dealership.
  - The costs of her insurance for the car from June 2020 onwards.
- pay 8% simple yearly interest\* on the above, to be calculated from when Ms H made the payments to the date of the refund.
- Pay Ms H an additional £300 to compensate her for the trouble and upset she's been caused.

*\* HM Revenue & Customs requires Santander to deduct tax from the interest amount Santander should give Mr Bailey a certificate showing how much tax it has deducted If he asks for one. Mr Bailey can reclaim the tax from HM Revenue & Customs if appropriate.*

### **My final decision**

For the reasons explained, I uphold Ms H's complaint. Santander Consumer (UK) Plc trading as Santander Consumer Finance must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 2 July 2021.

Andrew Burford  
**Ombudsman**