

The complaint

Mr M has complained to Santander Consumer (UK) Plc trading as Santander Consumer Finance ("Santander") when a car he was paying for under a conditional sale agreement exhibited a fault. He says the car wasn't of satisfactory quality when he entered into the agreement.

What happened

Santander agreed credit for Mr M in May 2018 in order to acquire a car. The cash price of the car, as per the agreement, was £6,540 and Mr M paid a deposit of £3,000. He borrowed the balance of £3,540 which, plus £467 interest and charges, came to £4,007. This was to be repaid by 24 instalments of £167. So, the credit agreement was for a total of £7,007 – the deposit of £3,000 plus £4,007. (I've rounded all figures to the nearest pound for simplicity).

The credit was granted under a conditional sale agreement meaning Mr M would own the car when the credit had been repaid. Santander was the owner until that point and Mr M was, in essence, paying for the use of it. Any complaints about the quality of the car as given to Mr M then fall to Santander.

Mr M says that the car became noisy when braking and turning about two weeks after the sale and he took it back to the selling dealership to have it repaired. He says the problem immediately happened again. This time he took it to his local garage for repair because the dealership was 150 miles away and it hadn't managed to repair the car in the first instance.

A month or so later, in July, the car wouldn't start. Mr M says he contacted the dealership who told him that its 30 day warranty had ended and the car was no longer its responsibility to repair. Mr M says that he then contacted Santander, who told him that it had provided the finance but didn't deal with the repair side of things. Mr M says his car was recovered by a third-party and repaired by a specialist garage at his expense. Mr M continued to have trouble with the car relating to it starting. He says that in October 2018 the car stopped while he was on a motorway and the engine began smoking. The car was again recovered by a third-party, who brought it back to his home. Mr M says he didn't have the money to repair it and the car sat on his drive for several months. Mr M says he replaced the battery in June 2019 and subsequently a problem with the engine control unit (ECU) was diagnosed.

Mr M complained to Santander in July 2019 that the car hadn't been of satisfactory quality from the beginning of the agreement. He says he didn't have the use of it for about six months and spent money on repairs. Furthermore, Mr M says that he was sold a year's third-party warranty by the dealership and thinks that it wasn't activated when the car was purchased but at a later date. He's also said that the warranty didn't cover either the car battery or the ECU.

Mr M says that the car failed an MOT just before he bought it, and he says that "the car failing and passing its MOT would suggest the faults that caused it to fail were patched up

or temporarily fixed so it could pass." He's also said that there was a difference in the amount the car was advertised for and the amount the dealership quoted to Santander and, altogether, he feels he was taken advantage of.

When Mr M complained to Santander he asked to have the car repaired by a specialist and to have the use of a courtesy car, or to have a refund to put towards another car with a more reputable dealership. I understand that he has since repaid the credit and sold the car.

Santander says that as Mr M had the car repaired at unauthorised third-party garages and the selling dealership wasn't informed each time, it can't be certain that the faults he's complained about were present when he acquired the car. Santander also says Mr M would need to take up any complaint regarding his warranty with the dealership.

One of our investigators has looked into Mr M's complaint and didn't recommend that it be upheld. They found that the car was of an age and mileage that the issues he had with it could be down to wear and tear and not unsatisfactory quality. They also found that Mr M hadn't informed Santander about the issues he was having until he complained, and it couldn't be shown that any faults he complained about then were present at the onset of the agreement.

Mr M disagreed with this recommendation. The complaint then came to me, as an ombudsman, to resolve. I issued my provisional decision on 11 January 2021 explaining my provisional findings and why I thought Mr M's complaint should be upheld in part.

Mr M responded to my provisional decision to say he had nothing more to add on the matter and Santander has accepted it.

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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Neither party has provided any further comment or new information for me to consider and, altogether, I've found no reason to depart from my provisional findings and I'm upholding Mr M's complaint in part. I appreciate that this will be disappointing for Mr M as I am not upholding all aspects of it. I set out my reasoning in my provisional decision and for completeness, I will include this again in my final decision.

I've set out in the below table the sequence of events as I understand them from what Mr M has said and the information he's provided which, he says, is as complete as possible. As the table shows, Mr M had trouble with the car very soon after he bought it and later had ongoing issues with it not starting.

Date	Event	Details
23/05/2014	Alignment issues, engine management fault	Seen on the vehicle history print - mileage at approximately 108,000 miles

24/06/2014	Engine management - fault diagnosis	Seen on the vehicle history print - mileage at approximately 113,500 miles
18/05/2018	MOT test - fail due to brakes and wheel issues	From check-mot.service.gov.uk
18/05/2018	MOT test - passed	From check-mot.service.gov.uk
19/05/2018	Car conditionally sold to Mr M	Mileage at approximately 136,000 miles
Early June 2018	Brake noise	Repaired by dealership
Early June 2018	Brake noise	Repaired by local garage
20/07/2018	Car wouldn't start	Recovered by a third-party, repaired by a specialist garage who noted "Recovered in, non-start, no crank"
?	Car wouldn't start	Mechanic diagnosed a faulty earth lead, which was subsequently replaced
October 2018	Car stopped on motorway with engine smoke	Again, recovered by a third-party who thought it might be a fuel pump issue – the car was reported as not starting and undriveable. Recovered to home.
20/06/2019	Recovered and diagnosed by S4S	Mr M paid for a new battery but there was still an issue in starting the car.
?	Final diagnosis	No life going to the fuel injectors which was diagnosed as being caused by an ECU fault

Santander was obliged under The Consumer Rights Act 2015 to ensure that the quality of the car was satisfactory, in other words that it was of a standard a reasonable person would feel was satisfactory or as expected taking into account factors such as the car's age, the mileage, the price it was sold at etc. I understand that the car was seven years old when Mr M acquired it and it had travelled over 136,000 miles.

The MOT fail details (from May 2018) provided by Mr M sourced from a government website include: weakened brake discs; imbalanced front brakes; excessive play in the wheel bearings; a tyre fouling part of the vehicle, and below-required efficiency on the service brake. I think it's reasonable to conclude that these were likely related to the noise Mr M experienced on steering and braking shortly after acquiring the car. The dealership didn't refuse to deal with these issues, albeit not very effectively according to Mr M, who then chose to have the car repaired locally.

Mr M doesn't say that these issues occurred again or that he was unable to continue to use the car. However, it does seem that the selling dealership failed to remedy a problem which was likely to have been in place when the car was sold. Indeed, the dealership appears to have accepted that these issues had been there at the outset as they had attempted to repair them. I think Mr M lost out by then paying for these repairs himself. As Santander was responsible for the quality of the car, I think it needs to pay some compensation to Mr M for the cost of these repairs specifically, even though Mr M might not have informed it of the problem at the time.

Mr M says that on at least three occasions after that the car wouldn't start and he had to have it repaired. As listed in the table, on the first occasion (July 2018) the car was recovered by a third-party and repaired by a specialist garage. The second time the car failed to start Mr M had the earth lead replaced and the third time involved a battery replacement. The car was eventually diagnosed as having a fault with the ECU.

Mr M says that the car was sold to him with this fault, and he's pointed out that this had been diagnosed earlier in the car's history in mid-2014. I can accept that there was an issue with the ECU earlier in the car's history which may or may not have been repaired since then. However, given the length of time between this earlier diagnosis and Mr M's experiences, I can't accept this as evidence which on its own supports his view of it being an ongoing issue at the time of the sale.

In order to find that Santander is at fault here, I need to find that it's more likely than not that the car was not of satisfactory quality in this regard when it was conditionally sold to Mr M. And I'm afraid that I can't conclude that in this case for a number of reasons.

Firstly, it is possible that the age and mileage of the car were the cause of the starting issues Mr M experienced, even though these began soon after purchase. In which case, the quality of the car was not at odds with its expected characteristics when it was sold.

It is also possible that the actions of a third-party damaged the ECU, for example in recovering the car or carrying out repairs to it. So, even considering that the problems Mr M had in starting the car were not because of wear and tear but because of an underlying fault, that fault may have been caused after he bought the car. And of course, it is also possible that the final diagnosis of a faulty ECU might not have been the cause of the earlier issues in starting the car.

I have also considered what Mr M says about contacting Santander and the dealership when he first had issues starting the car, and neither of them offered help. However, I haven't seen any evidence of this. In fact, what I have seen from Santander's customer notes is that Mr M did contact Santander around that time (June and July 2018) to make his repayments by card prior to his direct debit being set up. There is no mention in Santander's customer notes of problems with the car, which I would expect Mr M to have raised given he was discussing payment for it. Altogether, it seems to me that neither the dealership nor Santander had any involvement with Mr M's decision to have the car repaired by a third-party.

Let me say at this point that I can understand Mr M's perspective on the matter as I can see from the information he's provided and what he's told me that he spent time and money on the car before selling it in 2019. I have taken all of this into account when coming to my decision. However, altogether, I can't say that it's more likely than not that the problems he experienced in starting the car were present when he entered into the agreement. This means that Santander is not responsible for putting this right for him in this case. So I am not asking it to pay him compensation for the trouble and costs he experienced in this regard.

Mr M has pointed out that the invoice he received from the dealership had a lower value than the invoice Santander received which informed the financial agreement. I have seen both invoices. The cash price of the car is shown as £5,990 on an invoice from the dealership dated the 19/05/2018 provided by Mr M. The invoice from the dealership provided by Santander (dated the 17/05/2018) shows the cost of the car as £6,540. Also listed on this invoice is 'PDI inspection service and MOT" but no cost is specified for these items. The only other cost I am aware of associated with the car is a third-party warranty for which Mr M says he paid the dealership £300.

Irrespective of the reason for this difference in invoices, which I will not speculate on, I note that Mr M signed the financial agreement as seen i.e. with a cash price of £6,540 and a total repayment figure of £7,007 including his deposit and any interest and fees associated with the credit. The agreement is dated the 18/05/2018. I would have expected

Mr M to have raised a query around that time if it was not the amount he was expecting to repay or if he became aware of conflicting information.

Mr M has also mentioned an issue with the third-party warranty he bought from the dealership. He says the warranty wasn't registered (or incepted) at the time of the sale and that it didn't cover either replacing the battery or repairing the ECU. Even if the warranty had not been registered at the time of the sale, I can't see that this has impacted on Mr M because it seems it didn't actually provide cover for the parts of the car that he later needed to repair. I don't think these omissions are unusual as I understand this type of warranty doesn't generally cover these items.

If however Mr M expected this to be the case or was told otherwise, in other words if he feels he was mis-sold this warranty, then he would need to take this matter up with the selling dealership or with the warranty providers. I appreciate that at the time of writing the selling dealership is no longer operating. However, I cannot direct Santander to look into this as I understand that Mr M bought the warranty from the dealership and not through Santander.

What Santander should to to put things right

As I explained above, I think Santander needs to compensate Mr M for the cost of the repairs he had carried out in June 2018 to repair the braking issue with the car, which the dealership failed to do when it had the opportunity. I think Santander should pay for these specific repairs on receipt of reasonable evidence from Mr M of how much he paid.

As per this Service's usual approach to compensation, I think Santander should add 8% simple interest per annum to the agreed figure to reflect the fact that Mr M should not have been without these funds. Santander needs to deduct tax from this interest and provide Mr M with a certificate for this if he requests one.

My final decision

For the reasons I've explained, I am upholding Mr M's complaint in part about Santander Consumer (UK) Plc trading as Santander Consumer Finance and require it to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 April 2021.

Michelle Boundy
Ombudsman