

The complaint

Mr N complains that a car he acquired via a conditional sale agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

Mr N has been assisted in bring his complaint by a representative, however for ease of reference I'm only going to refer to Mr N as the credit agreement is in his name.

What happened

In January 2020 Mr N entered into a 37-month conditional sale agreement for a used car. The car was around three years old with a mileage of about 30,000. The car was a premium brand and cost £80,000. Mr N made an advanced payment of £10,000 leaving £70,000 to pay via credit. There were to be 36 monthly payments of £941.78 and one payment of £46,451 to be made in the 37th month.

In February 2020, Mr N complained to the supplying dealer that the car's windscreen wipers and AC unit didn't function properly, and he raised rejecting the car with them. Mr N says that the dealership initially agreed to this, but then later changed their view. He complained to Santander.

Santander has dealt with the dealership's handling of Mr N's request to reject the car as a separate complaint by Mr N, and so I'm not addressing this particular matter further.

In regard to the car's faults, the dealership said there was loose wiring which caused the issues. These were repaired at no cost to Mr N.

In light of the complaint about the quality of the car, Santander arranged for the car to be independently inspected. This was carried out in May 2020. The independent engineer found that the car's AC unit and wiper system were functioning correctly.

In June 2020 Mr N raised new concerns due to a tyre pressure warning light illuminating and an intermittent hydraulic suspension fault. A second independent inspection was conducted in August 2020 which included a test drive of 545 miles. The independent engineer reported that the handbrake wasn't functioning, that there was a fault with the tyre pressure sensor, that there was an issue with the suspension and an issue with the transmission which was thought likely to be due to wear and tear.

Santander sent Mr N its final response letter in respect of these issues with the car in September 2020. It said it was upholding his complaint but that as the dealership had agreed to repair the issues with the car it considered this to be a fair solution. It confirmed this view with Mr N in December 2020.

In April 2021 Mr N made a further complaint to Santander about issues he was experiencing with the car. He told Santander that he had himself arranged for an independent inspection of the car to take place in February 2021 and that this had found that the left-hand rear coil spring had broken just above the pigtail. The independent engineer had also recorded that they weren't able to rule out the possibility that this fault was connected with the previous

issues found with the suspension.

Santander says it contacted the supplying dealership and was advised that repairs had been carried out to the car following the results of this inspection. It requested that the car be inspected one more time. Mr N declined this further inspection. Santander says that in light of this, it closed Mr N's complaint as it wasn't able to ascertain if there had been any failed repairs to the car.

In April 2021 Mr N contacted Santander and raised ongoing issues with the car, he also explained that due to a change in his circumstances, payments under the agreement would be difficult for him.

In May 2021 Mr N sold the car for £65,142.23 which was around the trade price for the car. He settled the outstanding finance with Santander.

Mr N complained to this service as he said that Santander had acted unfairly in not allowing him to reject the car and cancel the agreement due to it not being of satisfactory quality at the point of supply. He said he should be reimbursed his advance payment of £10,000 together with reimbursement of the monthly payments he'd made when he'd been unable to use the car.

Our investigator recommended that Mr N's complaint should be upheld. He said it wasn't disputed that there had been satisfactory quality issues with the car since Mr N had acquired it. And that it would have been fair for Santander to agree the car could be rejected in February 2021 following the third independent inspection. Our investigator said that although Mr N had agreed for the dealership to repair the fault with the coil spring this was likely only to have been due to his belief that Santander wouldn't allow him to reject the car. He had been however been seeking rejection since February 2020.

Our investigator said that he thought Mr N's actions had been reasonable in selling the car on in order to mitigate his losses. But said that as he thought Santander should have allowed rejection before that point, it should return Mr N's advance payment; reimburse 5% of the monthly payments made under the agreement from May 2020 to February 2021 due to the technical issues with the car; reimburse all of the monthly payments from February 2021 until the date the agreement had been settled; reimburse the cost of the independent report arranged by Mr N in February 2021 and finally pay Mr N £300 in compensation for having to deal with the faulty car.

Mr N agreed with our investigator's view, but Santander disagreed. It said it didn't accept the sales price that Mr N had reportedly achieved for the car as it thought it was more likely than not Mr N had received a higher figure for the car. It also disputed that Mr N was entitled to reject the car and said it was unfair he be reimbursed his advance payment. Santander also queried why Mr N should receive all of the monthly payments he'd made from February 2021 until the settlement of the agreement.

As the parties were unable to agree the complaint has been passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Mr N is a regulated consumer credit agreement this service is able to consider complaints relating to it. Santander is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was around three years old and had a mileage of about 30,000. So, some issues of maintenance and repair would be expected over time and unlike a new car it wouldn't be expected to be fault free.

Looking at the evidence, I don't think it's disputed that there have been faults with the car that were either present or developing at the point of sale. Santander says that although there were issues with the car, Mr N wasn't entitled to reject it because they were repaired by the dealership at no cost to Mr N. Mr N says there were repeated issues with the car and he lost confidence with it.

I've seen that there were three independent inspections carried out on the car. The final one conducted in February 2021 found there was a broken rear coil spring and the engineer said they were unable to rule out that this was linked to previous issues with the car's suspension system. In light of that finding by the engineer, I think it's reasonable to say that this issue is more likely than not linked to a previous fault and repair undertaken by the dealership. This means that the dealership had already had an opportunity to repair but failed to do so. And while I appreciate it appears Mr N accepted the dealership repairing this part for a second time, it appears Mr N continued to have issues with the car. I also think that Mr N is more likely than not to have only agreed to this repair because Santander had declined all his requests to be able to reject the car. I think it's likely Mr N felt he had little choice but to agree to the repair the suspension.

So, I am satisfied that as the issue with the suspension reported on in February 2021 was linked to an earlier issue, that Mr N was entitled to reject the car at that point and Santander acted unfairly in rejecting this request. This means that the agreement should have been cancelled from that point and Mr N would have been entitled to have his advance payment of £10,000 returned to him as the agreement should have been cancelled.

Usually if an agreement is cancelled then the car is returned to the finance company but here that isn't possible because Mr N has already sold the car on and settled the finance agreement. Mr N sold the car to another garage which settled the outstanding balance on the conditional sale agreement with Santander.

Santander has queried the price fetched for the car. It says the car's value was above the £65,000 price fetched and it appears the price now being sought by the selling garage is considerably higher. However, I've seen a statement from the garage confirming the price it paid for the car. I've also seen that the selling garage settled the finance with Santander.

While I appreciate that the private sales price of the car would have been higher than the

trade price it actually fetched, I don't have any evidence that Mr N has received more than he has declared. The price paid was around the expected trade price and I think it's fair that I take into account Mr N was trying to mitigate his losses when he sold it as he was concerned he wouldn't be able to make the monthly payments. The car was a high value one and so I also think a private sale would have been difficult for Mr N to arrange and so selling it to a garage was a sensible solution. I can't reasonably say that Mr N has made an undeclared profit when he sold the car.

I've seen that due to the issues Mr N experienced with the car his use and enjoyment of it was spoiled. This was a premium brand of car and I think Mr N would have suffered loss of enjoyment due to the faults he experienced with it. I agree with our investigator that a 5% rebate from each of the monthly payments made from May 2020 to February 2021 is fair and reasonable in these circumstances.

I also think it would be fair that as Mr N was entitled to reject the car from February 2021 then any monthly payments from that date should be reimbursed to him up until the date the agreement was settled. Mr N didn't wish to retain the car, his confidence in it was lost and I accept his use of it would have been restricted.

Mr N had to arrange and cover the cost of the independent inspection carried out in February 2021 which revealed the ongoing issue with the suspension. The cost of this report should therefore be reimbursed.

Finally, I think Mr N has suffered inconvenience and distress dealing with the faulty car. I think compensation of £300 in the circumstances is fair and reasonable.

So, for the reasons set out above I'm upholding Mr N's complaint.

Putting things right

I'm asking Santander to do the following:

- Refund Mr N's advance payment of £10,000 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Reimburse 5% of the monthly repayments made by Mr N under the agreement to cover the period between May 2020 and February 2021. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Reimburse all the monthly repayments made by Mr N under the agreement to cover the period between February 2021 and when the agreement was settled. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Reimburse the cost of the independent inspection arranged by Mr N in February 2021. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Pay Mr N £300 compensation for the distress and inconvenience caused by having to deal with the faulty car.

My final decision

For the reasons set out above, I'm upholding Mr N's complaint. I'm asking Santander Consumer (UK) Plc to do the following:

- Refund Mr N's advance payment of £10,000 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

- Reimburse 5% of the monthly repayments made by Mr N under the agreement to cover the period between May 2020 and February 2021. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Reimburse all monthly repayments made by Mr N under the agreement to cover the period between February 2021 and when the agreement was settled. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Reimburse the cost of the independent inspection arranged by Mr N in February 2021. Yearly interest at the rate of 8% simple is to be added to that amount from the date of payment until the date of settlement.
- Pay Mr N £300 compensation for the distress and inconvenience caused by having to deal with the faulty car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 June 2022.

Jocelyn Griffith
Ombudsman