

The complaint

Mr S complains that a car that was supplied to him under a conditional sale agreement with Santander Consumer (UK) plc, trading as Santander Consumer Finance, wasn't of satisfactory quality.

What happened

I issued a provisional decision on this complaint in March 2022 in which I described what had happened as follows:

"A used car was supplied to Mr S under a conditional sale agreement with Santander Consumer Finance that he electronically signed in October 2020. He says that the car's engine management warning light came on in March 2021 and that he was told by a garage that a new engine would be required and the car wasn't safe to drive. He complained to Santander Consumer Finance and it arranged for the car to be inspected by an independent expert. It then said that it had been unable to evidence that the faults that Mr S had been experiencing were inherent at the point of sale or finance inception. Mr S wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He thought that it was more likely that the car was supplied to Mr S with a developing fault but the car had then been written-off in a collision. He recommended that Santander Consumer Finance should: refund Mr S's deposit of £5,000 and 10% of his monthly payments from March 2021 until the agreement was settled to reflect his impaired usage (with interest); and pay him £300 for the distress and inconvenience that he'd been caused.

Santander Consumer Finance has asked for this complaint to be considered by an ombudsman. It says, in summary, that the car was deemed a full write-off, the insurance company has paid out the settlement figure, it's not getting the car back and the collision wasn't caused because the car wasn't of satisfactory quality".

I set out my provisional findings in my provisional decision which were as follows:

"Santander Consumer Finance, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr S. Whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it. The car that was supplied to Mr S was about four years old, had been driven for 39,994 miles and had a price of £39,998. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

Mr S says that the car's engine management warning light came on in March 2021 so he took the car to a garage and that he was told that a new engine would be required and the car wasn't safe to drive. The garage has told our investigator that

the warning light was on and fault codes for O2 sensors were evident. It says that it took out the oil filter and found significant amounts of metal fragments in the oil which would have had to have been developing prior to the car being supplied to Mr S.

Mr S complained to Santander Consumer Finance and it arranged for the car to be inspected. The inspection took place in June 2021 and the inspection report recorded the car's mileage as 42,682 miles. It said: "... the vehicle started straight away without hesitation, however, displayed a noticeable heavy misfire. The engine management light was illuminated. The vehicle displayed "restricted performance" message. We removed the engine oil filler cap and there was no evidence of any metallic swarf filings within the engine ... These faults would not have been present or developing at finance inception".

Santander Consumer Finance didn't accept his complaint but the car broke down six days after the inspection and the recovery service identified a mis-fire. There doesn't seem to be any dispute that the car's engine was mis-firing and Mr S says that he took the car to the garage in March 2021 – about five months after it had been supplied to him because of issues with it. The car had been driven for 2,688 miles between it being supplied to Mr S and the date of the inspection. Although the independent expert has said that the faults wouldn't have been present at finance inception, the garage that inspected the car has said that the metal fragments would have been an issue that was developing when the car was supplied to Mr S.

In complaints such as this one, where the evidence is incomplete, inconclusive or contradictory, I have to make my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. I don't consider it to be reasonable to expect a car that cost £39,998 to develop a significant mis-fire so soon after being supplied and after it had only been used to drive a relatively low additional mileage. I consider it to be more likely than not in these circumstances that there were metal fragments in the car's oil when the car was supplied to Mr S and that there was a fault with the car that was present or developing at that time which caused it not to have been of satisfactory quality.

The car has since been in a collision and was deemed to be a total loss by Mr S's insurer and a payment of £32,630.86 was made to Santander Consumer Finance to settle the conditional sale agreement. Mr S paid the salvage fee of £5,273.86 and the car was returned to him. I've seen no evidence to show that the collision was in any way caused by the faults with it and the insurer paid the full settlement figure so the conditional sale agreement has ended. Mr S wouldn't have received a refund of his deposit after the collision if there hadn't been a fault with the car and, as the collision wasn't caused by the fault, I'm not persuaded that he should receive a refund of his deposit in these circumstances.

The fault with the car will have affected Mr S's use and enjoyment of it. I find that it would be fair and reasonable for Santander Consumer Finance to refund to Mr S 10% of the monthly payments that he's made under the agreement for the period from March 2021 when he first had an issue with the engine management warning light to the date of the collision as compensation for his loss of use and enjoyment of the car. I don't consider that it should be required to pay interest of that amount.

These events have clearly caused distress and inconvenience for Mr S. I find that it would also be fair and reasonable for Santander Consumer Finance to pay £300 to Mr S to compensate him for that distress and inconvenience. I'm not persuaded that it would be fair or reasonable for me to require Santander Consumer Finance to

reimburse Mr S for the salvage cost of the car or to take any other action in response to his complaint”.

Subject to any further representations by Mr S or Santander Consumer Finance, my provisional decision was that I was minded to uphold this complaint. Santander Consumer Finance says that it has no further points to add but Mr S says that he's been caused a huge amount of stress and financial issues as a result of the issues with the car and it's unreasonable for Santander Consumer Finance and the dealer to not take responsibility. He says that the car was unusable immediately and was dangerous because it was misfiring, rattling and there were multiple warning lights. He says that it's unfair and unreasonable to pay over a year for a car that has resulted in a huge commotion in his life and caused a phenomenal amount of stress, migraines, phone calls, emails and costs. He says that he should be able to reject the car with a full refund.

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, including careful consideration of Mr S's response to my provisional decision, I'm not persuaded that I should change my provisional decision. I sympathise with Mr S for the issues that he's described but, for the reasons set out in my provisional decision, I consider that it's fair and reasonable for Santander Consumer Finance to refund to him 10% of the monthly payments for the period specified as compensation for his loss of use and enjoyment of the car and to pay him £300 compensation for the distress and inconvenience that he's been caused.

For the reasons set out in my provisional decision, I'm not persuaded that it would be fair or reasonable for me to require Santander Consumer Finance to refund to Mr S the deposit that he paid for the car or a larger proportion of those monthly payments, to pay him a higher amount of compensation or to take any other action in response to his complaint.

Putting things right

I find that it would be fair and reasonable in these circumstances for Santander Consumer Finance to take the actions described in my provisional decision and as set out below.

My final decision

My decision is that I uphold this complaint in part and I order Santander Consumer (UK) plc, trading as Santander Consumer Finance, to:

1. Refund to Mr S 10% of the monthly payments that he made under the conditional sale agreement for the period from March 2021, when he first had an issue with the engine management warning light, to the date of the collision as compensation for his loss of use and enjoyment of the car.
2. Pay £300 to Mr S to compensate him for the distress and inconvenience that he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 June 2022.

Jarrold Hastings
Ombudsman