

## The complaint

Mr G 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. Mr G's wife is also involved with his complaint.

## What happened

A used car was supplied to Mr G under a conditional sale agreement with Santander Consumer Finance that he electronically signed in December 2019. He says that he started to have issues with the car in April 2021, including problems with starting it, the gearstick vibrating, power issues, the stop-start function not working properly and engine noise so he took the car to a manufacturer's dealer. He paid it £387.60 for the fly wheel to be replaced in May 2021 but he says that the issues with the car continued. The manufacturer's dealer replaced three injectors and an exhaust gas recirculation filter in November 2021 – for which Mr G paid £2,122.16 – but the issues continued and it then said that the car required a new engine.

Mr G took the car to a specialist garage in December 2021 which said that it felt that the engine had an ongoing issue which has slowly developed over time. Mr G complained to Santander Consumer Finance about the issues with the car in January 2022 but it said that he couldn't provide any evidence to indicate that the faults were present at the point of sale. Mr G wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He wasn't persuaded that the car demonstrated reasonable durability so he thought that it wasn't of satisfactory quality when it was acquired by Mr G. He thought that it was fair that Mr G could reject the car and unwind the agreement. He recommended that Santander Consumer Finance should: end the agreement and collect the car; refund Mr G's advance payment of £808.41 and his rentals from November 2021 and a further six weeks of payments for the period when Mr G was without a car in summer 2021; refund £2,509.76 for additional expenses; and pay interest on all of the refunded amounts.

Santander Consumer Finance has asked for this complaint to be considered by an ombudsman. It has responded to our investigator's recommendations in detail and says, in summary, that:

- the first fault was 18 months and 6,094 miles after sale and a reasonable person would expect that parts of the car might have already suffered wear and tear and that there's a greater risk that the car might need repairs sooner than a car which wasn't as road-worn when it was supplied;
- the faults weren't reported to it when they happened and it has never taken the opportunity to repair the repair;
- under the terms and conditions of the agreement Mr G was to raise any complaints to it first and if the car wasn't of satisfactory quality he should have told it of any defect promptly;

- the dealers that repaired the car have no responsibility for it under the Consumer Rights Act as it supplied the car to Mr G;
- the repairs weren't authorised by it and it seems ludicrous to hold it liable for repairs that it didn't authorise;
- Mr G has responsibility for showing that the car wasn't of satisfactory quality but he hasn't done and it strongly disagrees that a fault 18 months after sale indicates an inherent fault or that the car isn't durable;
- there's no evidence to show the fault wasn't caused by the way that the car was used or maintained by Mr G; and
- Mr G paid £16,442 for the car which is the manufacturer's lowest specification from its line and the price was roughly half the price of a new model.

### **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 agree with the outcome recommended by our investigator for these reasons:

- 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 G - 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 G was less than three years old, had been driven for 35,801 miles and had a price of £16,442;
- 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 also depend on a number of factors;
- the car was supplied to Mr G in December 2019 and he says that he complained to the dealer about engine noise in January 2020 but was told that it was normal for this type of car – but Mr G hasn't been able to provide any evidence about this;
- Mr G says that he started to have more issues with the car in April 2021, including problems with starting it, the gearstick vibrating, power issues, the stop-start function not working properly and engine noise, so he took the car to a manufacturer's dealer;
- the job card shows that the car's mileage was 41,842 and Mr G paid £387.60 to the manufacturer's dealer for the fly wheel to be replaced in May 2021 - but Mr G says that the issues with the car continued;
- he took the car back to the manufacturer's dealer and it replaced three injectors and an exhaust gas recirculation filter in November 2021 – for which Mr G paid £2,122.16 – but the issues continued and the manufacturer's dealer then said that the car required a new engine;
- Mr G took the car to a specialist garage in December 2021 which said: *"On investigation for the vehicle we believe that the engine will need replacing ... We feel that after listening to the customer's issues and experience the engine has an ongoing issue which has slowly developed and got worse over time ... We suspect that the [cylinder] bores are scored which is causing the problem"*;
- Mr G then complained to Santander Consumer Finance in January 2022 but it said that he couldn't provide any evidence to indicate that the faults were present at the

point of sale – I consider that Mr G should have contacted Santander Consumer Finance about his issues with the car in April or May 2021 – but I don't consider that its response to his complaint was likely to have been any different if he'd contacted it at that time – and I don't consider that it has been adversely impacted by Mr G's failure to contact it when I consider that he should have done;

- this is a finely balanced complaint because Mr G had the car for nearly 18 months and was able to drive it for about 6,000 miles before the flywheel was replaced in May 2021 – but he's had significant issues with the car;
- I don't consider that it's reasonable to expect that a car of this age and mileage – and with a price of £16,442 - should need the flywheel, three injectors and an exhaust gas recirculation coolant filter to be replaced – and for it to also be recommended that a new engine is required;
- Mr G says that there have been issues since the car was supplied to him, the manufacturer's dealer has unsuccessfully tried to deal with the issues with the car since May 2021 and says that a replacement engine is required and the specialist garage says this the issues are likely to be an ongoing issue which has slowly got worse over time and that the cylinder bores are scored;
- taking account of all of the evidence that's been provided, I consider it to be more likely than not that the car wasn't as durable as it was reasonable for Mr G to expect it to be and that, for that reason, it wasn't of satisfactory quality when it was supplied to him;
- I'm not persuaded that it would now be appropriate for the car to be repaired and I find that it would be fair and reasonable in these circumstances for Santander Consumer Finance to allow Mr G to reject the car and to take the other actions described below.

### **Putting things right**

I find that Santander Consumer Finance should end the conditional sale agreement and arrange for the car to be collected from Mr G – both at no cost to him. The conditional sale agreement shows that Mr G made an advance payment of £808.41 for the car to be supplied to him. I find that it would also be fair and reasonable for Santander Consumer Finance to refund the advance payment made by Mr G to him, with interest.

Mr G hasn't been able to use the car since November 2021 and I find that it would be fair and reasonable for Santander Consumer Finance to refund to Mr G the monthly payments that he's made under the agreement since then, with interest. There was also a period of about six weeks from May 2021 when Mr G was unable to use the car because of the issues with it and wasn't provided with an alternative car. I find that Santander Consumer Finance should also refund to Mr G the monthly payments that he's made under the agreement for that six week period, with interest. I consider that it's fair and reasonable for it to keep the other monthly payments that he made under the agreement as payment for the use that he's had from the car.

Mr G paid £387.60 for the car to be repaired in May 2021 and £2,122.16 for it to be repaired in November 2021. Those repairs were required because the car wasn't of satisfactory quality and they didn't remedy the issues with the car. I find that it would be fair and reasonable for Santander Consumer Finance to reimburse Mr G for those payments, with interest.

## **My final decision**

My decision is that I uphold Mr G's complaint and I order Santander Consumer (UK) plc, trading as Santander Consumer Finance, to:

1. End the conditional sale agreement and arrange for the car to be collected from Mr G – both at no cost to him.
2. Refund to Mr G the advance payment that he made for the car.
3. Refund to Mr G the monthly payments that he's made under the agreement for the period since November 2021 and for the six weeks from May 2021.
4. Reimburse Mr G for the repair costs of £387.60 and £2,122.16 that he's incurred.
5. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.

HM Revenue & Customs requires Santander Consumer Finance to deduct tax from the interest payment referred to at 5 above. Santander Consumer Finance must give Mr G a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 October 2022.

Jarrold Hastings  
**Ombudsman**