

## **The complaint**

Mr H complains that a car he acquired by way of a conditional sale agreement with Santander Consumer (UK) plc trading as Santander Consumer Finance was not of satisfactory quality.

## **What happened**

Mr H entered into a conditional sale agreement with Santander on 27 April 2020 to acquire a car from a dealer I'll refer to as 'X.' He paid approximately £9,500 for the car.

He says that about five months after he acquired the car, he was driving on a dual carriageway when the car suddenly lost power, the oil warning light came on, he heard knocking sounds and noticed white smoke coming from the exhaust. He says he pulled into the side of the road when it was safe to do so. He arranged for the car to be recovered from the roadside shortly afterwards. Mr H says there was no prior warning that this was going to occur. There hadn't been any warning lights or other indication that such a 'catastrophic moment' would occur.

Mr H had the car recovered and asked his own garage to check it. He was told that the car needed a new engine and a new turbo. The expected cost was around £6,200. Mr H complained to X but he says he didn't get a satisfactory response. He complained to Santander. He said the car wasn't of satisfactory quality and asked Santander to unwind the agreement.

Santander investigated his complaint. It asked an independent expert to inspect the car. The independent expert's report said that the engine had seized. The expert said the cause of this was consistent with general in-service wear and deterioration to the turbo charger unit. The engine oil had been depleted due to it bypassing through the turbo charge causing consequential damage to the engine. The expert concluded that he would not consider the car would have displayed this fault to be present or developing at this level at the point of sale. And, he thought the repair costs had increased due to car drive on.

Santander asked the expert to comment on the fact that only around 1,600 miles had been travelled since the date the car was delivered to Mr H. The expert said it was fair to say, given the mileage since the date of delivery, that the cause would be the responsibility of X but the car did appear to have been driven on and X couldn't be liable for the increased costs of repair which had resulted from the driving on.

Santander asked X to comment on whether it had serviced the car before it had been delivered. X confirmed this. Santander said that after considering the expert's report and the further comments from X, it was unable to evidence that the car was not of satisfactory quality at the point of supply.

Mr H didn't agree. He referred his complaint to our service. At this stage, Mr H decided to sell the car in its current state and early settle the agreement with Santander. He early settled the agreement by paying Santander £6,383.66 on 1 March 2021 and

credited the proceeds of the sale of the car (£2,650) to Santander on 5 March 2021. He says he purchased another car in May 2021 as he needed a car to go to work.

Our investigator looked into his complaint. She thought Santander hadn't acted fairly. She said there was a major fault with the car. It was less than six months since Mr H had acquired the car. The cost of repairs would be around two thirds of what he had paid for the car. She didn't think there was enough evidence to say he had starved the car of oil.

Our investigator said that in order to resolve the complaint, Santander should take the following actions:

- Mr H sold the car for £2,650 - this should be deducted from the settlement figure of £9,033 and the difference should be refunded to him plus 8% simple interest.
- Mr H had the car from April to October 2020 so this usage time should be deducted from the final settlement figure.
- Our investigator hadn't been provided with any evidence that Mr H was without his car for any amount of time, so she hadn't included a refund for this amount.
- £150 should be paid to Mr H for the distress and inconvenience caused.

Santander didn't agree. It provided further statements from X and evidence to show that the car had been serviced before it was delivered to Mr H. It said that after the expert had inspected the car, Mr H had continued to drive it – causing further damage - and this would've affected the sale price he'd obtained. It said he hadn't reported any defect within thirty days and that meant he had no rejection rights under the Consumer Rights Act 2015 (CRA).

Our investigator didn't change her view. So, the complaint was passed to me to decide. I issued a provisional decision in which I said:

### ***What I've provisionally 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.*

*Under the relevant legislation which applies to car finance agreements, specifically the CRA, Santander can be held liable if the car wasn't of satisfactory quality at the point of supply. The CRA says that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking account of the description of the goods, the price paid or other consideration for the goods (if relevant) and all other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history.*

*When Mr H entered into the conditional sale agreement the car he acquired was six years old. The mileage was recorded as 52,859 miles. Mr H paid £9,995 for the car. Given the age of the car, the mileage and the price paid, I would've expected there to be some wear and tear.*

*Mr H says that just five months after taking delivery of the car it broke down. He says this was a sudden event. He had it taken to a garage to get checked. I've looked at the invoice which was issued following this check. It records:*

*“complaint of smoke, lack of power and rattle, found turbo worn out, oil sump empty and crank knocking.”*

*The garage stated the engine and turbo needed to be changed and the estimated cost of the repairs would be just over £6,200.*

*When Mr H reported this to Santander it commissioned its own independent report. That report also recorded that after the engine was started there was a noticeable heavy knocking from the bottom of the engine, there was a screeching noise from the turbocharger area and white smoke from the exhaust, which was excessive. The report also concluded that the engine, turbocharge and sundries needed to be rebuilt.*

*So, there is no dispute about the fault with the car or the action that needed to be taken to repair it. But, the issue I have to decide is whether the fault was present or developing at the point of supply – that is the date and time when Mr H took delivery of the car.*

*Santander said the vehicle had been serviced and passed its MOT before the sale. In these circumstances, it said it was unable to evidence that the car was not of satisfactory quality at the point of supply. It said the car had been driven whilst starved of oil which in turn caused the engine to seize. So Santander thought the fault was caused by the car being “driven whilst starved of oil”.*

*Having thought about everything here, I’m not persuaded the vehicle was of satisfactory quality at the point of supply. I’ll explain why.*

*The independent report stated that in the opinion of the engineer the fault was caused due to:*

*“general in service wear and deterioration to the turbocharge unit causing depletion of oil due to engine oil bypass through the turbocharge and consequential engine damage which would not have been present or developing at this level when the car was acquired.”*

*Santander noted that the mileage covered during the period since Mr H acquired the car had been less than 2,000 miles. It asked the independent expert to comment further. He said:*

*“It would be fair to say that due to the mileage covered, the initial cause could be the responsibility of the selling agent, however, car does appear to have been driven on.”*

*Having read the comments of the independent expert, I’m satisfied, on balance, he did conclude that there was a fault developing at the point of supply. I say this because the independent expert referred in his initial report to the fault either not being present or “developing at this level” and then in his subsequent report he referred to “the initial cause being the responsibility of the selling agent.”*

*Santander has referred to what the independent expert said about the car having been driven on. It also relies on the fact that the dealer has provided evidence the car was serviced and passed its MOT shortly before it was delivered to Mr H.*

*The mileage on the car when the independent expert inspected it was 54,474 – just 1,615 miles had been travelled since the date of the MOT. The garage that checked the car recorded that when the vehicle was recovered there was no engine oil in the*

engine. The engine oil level would've been checked as part of the MOT. But, after only 1,615 miles it had been depleted and the oil sump was empty. Given the passage of time and the low mileage covered, I don't think that could've been caused because Mr H "starved" the car of oil.

The independent expert thought the engine oil had been depleted due to bypass through the turbo charger. He thought this would've been noticeable because there would've been knocking, oil pressure lights and smoke.

Mr H says he did notice knocking, oil pressure lights and smoke – but only at the point in time when the car broke down. And, having thought about it, I don't think he would've been able to drive the car on if the issues the independent expert has indicated were being experienced prior to that date. There's no evidence that any of these warnings (knocking, oil pressure lights or smoke) had presented themselves prior to the date when the car stopped.

Santander has also suggested there is evidence to indicate Mr H drove the car on and this impacted the sale price he achieved. It has referred to the mileage on the car, noted at its next MOT, on 22 April 2021. At that date the mileage was 55,527. Santander says this means the car was driven on, even after the independent inspection. And, it says the value of the car would've decreased as a result.

I'm not persuaded however that the mileage at the date of the next MOT means Mr H drove the car on. Mr H says he didn't have the car repaired and he sold it on 5 March 2021. He's provided evidence to show the proceeds of sale being credited to his account on that date. He sold the car for £2,650. But, taking account of the passage of time between the date of sale and the date of the MOT, I don't think the mileage recorded at the date of the MOT on 22 April 2021 is persuasive evidence that Mr H drove the car on.

So, having considered everything here, my provisional decision is that the car was not of a satisfactory standard at the point of supply. Taking account of the description of the goods, the price paid and all relevant circumstances I'm persuaded a reasonable person wouldn't have considered the car to have been of satisfactory quality. I'm also satisfied, on balance, that Mr H did not drive the car on and the damage to the vehicle was not made worse as a result of his actions.

### **What needs to be done to put things right**

The CRA sets out the remedies that are available to a consumer when a vehicle is not of satisfactory standard. In this case Mr H gave Santander the opportunity to inspect the car. It did not accept liability and Mr H subsequently sold the car, without having it repaired. He sold it for £2,650 and paid this amount to Santander. He also repaid the agreement early – he paid a further £6,383.66 to Santander.

The agreement records that the initial cash price for the car was £9,995. Mr H paid an advance sum of £185 and borrowed £9,810 from Santander. In total he's paid the following sums:

£185 (advance sum); plus  $£184.47 \times 8 = £1,475.76$ ; (monthly payments); plus  
£2,650 (sale proceeds); plus  
£6,383.66 (early settlement).  
Total = £10,694.42

*In order to determine the amount that should be refunded to Mr H, I've deducted, from the total sum stated above, the following amounts:*

- £2,650 which was the amount he received when he sold the car; and
- Six monthly payments of £184.47. He had use of the car from May to October 2020. So, for that reason, I've deducted six monthly payments (£1,106.82) from the amount he's paid.

*So, I've provisionally decided Santander should refund £6,937.60 to Mr H together with 8% simple interest on this amount from the date of payment to the date of settlement.*

*If Santander has recorded any adverse information with credit reference agencies about Mr H's account, it should remove that information.*

*Our investigator also considered the distress and inconvenience Mr H had experienced as a result of what happened. He's told us he didn't have use of the car after October 2020 and after he sold the car and repaid Santander he was only able to afford to purchase a replacement vehicle in May 2021. I accept that Mr H has been inconvenienced and I can see that it took some time to sell the car and raise the funds to repay Santander. So, I think that does need to be reflected in the compensation he should receive here.*

*Mr H has also had to progress his complaint to our service. Our investigator considered that £150 would be fair and reasonable. But, I don't think that is enough to compensate Mr H for what happened. Having considered everything, I've provisionally decided £300 would be fair and reasonable.*

### ***My provisional decision***

*For the reasons given above my provisional decision is that I intend to uphold this complaint about Santander Consumer (UK) plc. I intend to require it to:*

- Refund £6,937.60 to Mr H together with 8%\* simple interest on this amount from the date of payment to the date of settlement;
- If it has recorded any adverse information about Mr H's account with credit reference agencies, remove that information; and
- Pay Mr H £300 by way of compensation for the distress and inconvenience he experienced as a result of what happened.

Mr H responded to the provisional decision. He said he had nothing further to add.

Santander also responded to my provisional decision. It said it had no further comments to make but it disagreed with the decision. It reiterated the points it had made previously:

- It had supplied an email which provided information that the selling agent should not have liability;
- Mr H had continued to drive the vehicle after the independent expert's report showed there was a fault with the vehicle. Mr H had caused further deterioration to the vehicle which would have affected the selling price;
- The complaint had been raised more than 30 days after the vehicle was acquired. So, Mr H was not entitled to rejection rights; and

- Mr H had caused further damage to the vehicle which would have decreased its value and that was the reason why it was sold at a low price. Santander should not be liable for the shortfall.

So, I now have 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.

I've considered the responses to my provisional decision. Although Santander hasn't provided any new or further information, it has indicated why it disagrees with my provisional decision. So, I've thought again about each of the points it has raised.

- *The selling agent should not have liability*

Santander has referred to an email from the dealership which provided further information that the selling agent should not have liability. The email referred to the information in the independent expert's report dated 26 November 2020 which the dealership said stated that "the selling agent should not have liability" and "the current faults would not have been present or developing at the point of sale."

In my provisional decision I did comment on the independent expert's report of 26 November. The actual wording which the independent expert had used was different to that quoted in the email referred to. The wording in the report about the cause of the fault was as follows:

*"general in service wear and deterioration to the turbocharge unit causing depletion of oil due to engine oil bypass through the turbocharge and consequential engine damage which would not have been present or developing at this level when the car was acquired."*

[emphasis by way of underlining added]

I also noted that the report of 26 November needed to be read in the context of the further report which the independent expert provided to Santander. In that report the independent expert stated:

*"It would be fair to say that due to the mileage covered, the initial cause could be the responsibility of the selling agent, however, car does appear to have been driven on."*

[emphasis by way of underlining added]

As I said in my provisional decision, having read everything that the independent expert said, I was persuaded he did conclude there was a fault developing at the point of supply. I referred to what he said in his initial report about the fault either not being present or "developing at this level" and then in his subsequent report he referred to "the initial cause" could be the responsibility of the selling agent."

Having looked at this again I have not seen any new information which would cause me to change my view.

The dealership made other points including a reference to the service which had been completed before the car was delivered to Mr H. But, having considered the independent expert's comments, this information doesn't change my view that the fault was present or developing at the point of supply.

- *Mr H had continued to drive the vehicle after the fault had been reported*

In my provisional decision I commented about what the dealer had said about the vehicle being driven on after the fault was reported. Having considered all the information provided I provisionally decided, on balance, that the evidence did not support this conclusion.

When the independent expert inspected the car Mr H had only travelled 1,615 miles since the date he'd acquired it. After that date Mr H said he wasn't able to drive the car because of the nature of the faults that it had. He's referred to knocking noises and smoke from the exhaust. On balance, I didn't think it was likely he would've driven the vehicle when it was in this condition. It wasn't clear what the mileage was when he sold the car on 5 March 2021. The next MOT was 22 April 2021. At that date the mileage was recorded as 55,527.

On 26 November 2020, when the independent expert inspected the car, the mileage was recorded as 54,474. So between that date and the date of the next MOT the car travelled 1,053 miles. Mr H said he had not driven the car on. And, as I've said in my provisional decision, I was persuaded, on balance, it was likely the mileage covered after the date of the independent expert's inspection took place subsequent to the sale of the vehicle by Mr H in March 2021.

- *Mr H was not entitled to reject the vehicle*

Santander has referred to the Consumer Rights Act 2015 (CRA). It says that because Mr H didn't complain within the first 30 days after acquiring the vehicle, he isn't entitled to rejection rights.

It is the case that the vehicle was delivered to Mr H on 7 May 2020. He raised his complaint shortly after the vehicle broke down on 17 October 2020.

The CRA sets out the remedies that are available to a consumer when, as in this case, a car is not of satisfactory quality. These include, among others, a short time right to reject and a right to ask for repair or replacement. It is the case that the short term right to reject must be exercised within 30 days of acquiring the car. But, in his complaint to Santander dated 24 October Mr H explained that he was asking Santander to remedy the situation. He described the fault and provided an estimate for the repairs. In these circumstances, the CRA provides that where the goods were of unsatisfactory quality Santander could repair or replace them – but it must do so within a reasonable time.

The CRA says that any question as to what is a reasonable time is to be determined taking account of the nature of the goods and the purpose for which they were acquired.

In this case, Mr H told Santander he'd acquired the car "very much as a second car for his family." The car had broken down as he was driving to his work in October 2020. He says that after the car broke down he had to borrow a car to travel to work. In these circumstances, I think it was reasonable for Mr H to decide to sell the car in March 2021 and purchase a replacement shortly after that date. He was without use of the car he'd acquired under the finance agreement for around five months after it had broken down and he wasn't able to drive it.

It is also the case that Santander was aware that he intended to sell the car. There is a note of a conversation with Mr H in December 2020, shortly after Santander had issued its final response letter. During that conversation Mr H indicated he wanted to “get rid” of the car and terminate the agreement. The records indicate that Mr H had “rejected” the car. Santander advised Mr H to “repair and sell” the car. It told him he had to settle the agreement in full. I’m satisfied that at this point, Santander had made clear to Mr H it was not accepting liability and was not going to repair or replace the vehicle.

Mr H did settle the agreement in full. But, he didn’t repair the vehicle before it was sold because of the cost involved and because he believed that Santander was liable. In these circumstances, I think it was fair and reasonable for Mr H to sell the vehicle, in the condition it was in, and seek compensation from Santander for his loss.

- *The low selling price for the vehicle was due to the vehicle being driven on after the fault was identified.*

I’ve already commented above about the suggestion that Mr H drove the car on. As I’ve said above, I’m not persuaded that he did do that and so I do not think the selling price was “low” because of Mr H’s actions.

Having looked at everything again, there’s nothing that persuades me to change my view about the actions that I think need to be taken to resolve this complaint.

### **My final decision**

For the reasons given above, I uphold this complaint about Santander Consumer (UK) plc trading as Santander Consumer Finance. I now require it to:

- Refund £6,937.60 to Mr H together with 8%\* simple interest on this amount from the date of payment to the date of settlement;
- If it has recorded any adverse information about Mr H’s account with credit reference agencies, remove that information; and
- Pay Mr H £300 by way of compensation for the distress and inconvenience he experienced as a result of what happened.

*\*If Santander Consumer UK plc considers that it’s required by HM Revenue & Customs to take off income tax from any interest due to Mr H it should tell him how much it’s taken off. It should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & if appropriate.*

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 28 September 2022.

Irene Martin  
**Ombudsman**