

The complaint

Mr G complains about the quality of a used car that was supplied through a fixed sum loan agreement with Santander Consumer (UK) Plc (Santander).

Mr G has been represented on this complaint, but to keep things simple I'll only refer to Mr G in my decision.

What happened

In January 2022, Mr G acquired a used car with a fixed sum loan agreement from Santander. The car was registered in September 2017, which means it was about four years and four months old, and had travelled 15,104 miles when it was supplied to Mr G. The cash price of the car was £15,267. Mr G made an advanced payment of £4,000, so the total amount financed on this agreement was £11,267, payable over 60 monthly payments of £221.46

In March 2022, due to a loss of power to his car, Mr G had a breakdown agency recover it to the supplying dealership. Mr G provided an invoice from the dealership, dated 25 March 2022 confirming a health check was carried out with no faults recorded. However, the invoice states that a battery terminal was secured correctly and retested and was okay.

In April 2022 Mr G's car lost power again, so was recovered to the dealer by the same breakdown agency who provided a summary report dated 8 April 2022. Mr G provided us with a copy of a complaint letter he gave to Santander on the same day, about the issues with his car and a request to reject it.

Santander arranged for an independent inspection of the car which was carried out on 8 June 2022. The inspection report concluded there were no faults with the car related to a loss of power, difficult starting or warning lights illuminated.

On 10 June 2022 Santander issued their final response to Mr G's complaint. based on the findings of the inspection report, Santander didn't uphold Mr G's complaint.

Unhappy with their decision, Mr G brought his complaint to our service for investigation. In September 2022, Mr G arranged for a third-party garage to carry out a second independent inspection and diagnostic of the car. The second inspection report advised of three chaffed wires which could cause a short circuit and make the car lose power. The report was shared with Santander.

Based on the findings from the breakdown agency and the second inspection, our investigator recommended that Mr G's complaint should be upheld. They recommended Santander allow Mr G to reject the car.

Following their review of the second independent report in October 2022, Santander offered to repair the car and pay Mr G compensation for any distress and inconvenience. Santander also advised they'd not been given the opportunity to repair the issue so Mr G shouldn't be allowed a rejection.

However, as our investigator's view remained unchanged, Santander asked that the complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated fixed sum loan agreement. As such, this service is able to consider complaints relating to it. Santander is also the supplier of the goods under this agreement and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that Santander supplied Mr G with a used car that had travelled 15,104 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be visual signs of wear and tear due to its usage, and a higher risk the car may require maintenance sooner than if it were new.

Having said that, the car was priced at £15,267 which isn't insignificant. It also wasn't a particularly old vehicle and had fairly low mileage for its age. So, I think it is fair to say that a reasonable person would expect it could be used free from any major issues for a reasonable period of time.

From the information provided it's clear to me that there was a fault with the car losing power. This is apparent from the second inspection report which advised of chaffed wires which could cause the vehicle to cut out and not restart, and from the break down reports provided by Mr G which advised of an on-going intermittent cut out non start, which required further investigation.

I acknowledge the first inspection report found no issues, however, as two separate breakdown reports have found there to be an issue that required further investigation, and the second inspection report was provided with photographic evidence of the issue, I'm persuaded a fault exists. In addition, Santander have also conceded, following a review of

the second inspection report that a problem exists that requires repair. Having found the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

The second breakdown report recorded the car's mileage as 16,696, so the issue occurred twice within the space of Mr G travelling 1,592 miles, and within three months from the date of supply. In consideration of the findings on the second inspection report, along with the age and mileage of the car, I'm satisfied in the circumstances that the car wasn't of satisfactory quality when it was supplied to Mr G.

Santander were given two opportunities in March and in April 2022 to identify the issue with the car, however they were unable to do so. They were also given an opportunity to repair the issue in March 2022, when they carried out a health check and secured the battery terminal, prior to Mr G requesting a rejection of it.

I acknowledge Santander have said that they haven't attempted a repair on the actual fault, and so should be given that chance to do so. However, on the basis that Santander were unable to correctly diagnose and repair the fault that was presented to them, I don't think it'd be fair or reasonable to take away Mr G's right for rejection following Santander's attempt at repair.

Under the CRA, Mr G would have a final right to reject if after one repair the goods were still faulty. Santander made a repair attempt when they carried out a health check and secured the battery terminal.

So, with all things considered, I'm satisfied in the circumstances, under the CRA Mr G has the right to reject his car, and so I'll be instructing Santander to allow him to do so.

Putting things right

Having found the car wasn't of satisfactory quality when it was supplied to Mr G, and that Mr G has the right to reject his car, I'll be instructing Santander to collect the car and end the agreement with nothing further for Mr G to pay, refund Mr G's deposit and repayments made from April 2022 when the car became undriveable. Mr G confirmed to our investigator in November 2022, that the car was still with the dealership and he's been unable to use it.

Mr G provided us with a copy of an invoice for £336 for the independent inspection and diagnostic that he arranged. Santander should also refund the cost of this to Mr G.

Mr G has told us about the distress and inconvenience caused to him and his family. In the circumstances I'm in agreement with our investigator that £300 compensation is a fair reflection of the inconvenience caused.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Santander Consumer (UK) Plc to:

- end the agreement with nothing further for Mr G to pay.
- collect the car at no additional cost to Mr G
- refund the Mr G's deposit of £4000.
- Refund all of Mr G's rentals paid, from April 2022 when he stopped using the car
- refund the £336 Mr G paid for an independent inspection report

- pay Mr G £300 in compensation for any distress or inconvenience caused

Santander Consumer (UK) Plc should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Santander Consumer (UK) Plc considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 January 2023.

Benjamin John
Ombudsman