

## **The complaint**

Mr J has complained that he is unhappy with the quality of a car he acquired in November 2021, using a loan from Santander Consumer (UK) Plc ("Santander").

## **What happened**

Mr J acquired a used Audi in November 2021, using a fixed-sum loan agreement with Santander. The car was four and a half years old, with a mileage of 75,625. The cost of the car was £18,700, of which Mr J borrowed £13,700 over a term of 60 months, with a monthly repayment of £287.57.

Mr J said that, on the day he took delivery of the car, it began to show problems. When travelling home, a warning message appeared on the dashboard indicating a problem with the Diesel Particulate Filter, and Mr J saw that the auto stop/start feature wasn't working. During the same journey, another dashboard error message appeared, saying Mr J should take the car to the nearest workshop. He also said there was a loss of power, and the car began to shake when travelling above 40mph, and it struggled to reach 70mph.

Mr J contacted the dealership about the issues and the car was collected for repair in early December 2021 and returned some two weeks later. However, the repair was not successful, and the car was collected again in mid-January 2022 for repair. It was returned to Mr J in March 2022. Mr J also said that between November 2021 and January 2022 he took the car to several garages for diagnostic tests, for which he had to pay.

At the end of January 2022, Mr J complained to Santander that the car wasn't of satisfactory quality. Santander kept in contact with Mr J, and issued its final response letter in early March 2022, saying that it was upholding Mr J's complaint and that he wouldn't need to pay anything towards the repair costs. However, I understand Mr J wanted to reject the car.

The day after the car was returned to Mr J in March 2022, he said that he noticed that the car was damaged, in that body work had been scratched and there was an issue with the passenger window. Mr J contacted Santander to report these issues the same day.

In May 2022, Mr J reported to Santander that further issues had arisen, these being a fault with a brake sensor that had just started, and that the seatbelts weren't operating correctly. Santander commissioned an independent report to look at these issues, and the inspection was carried out in June 2022. The mechanic concluded that the issues had arisen after the point of supply, and neither were they related to any previous repairs. Based on the independent report, Santander didn't uphold the second complaint.

The following month, Mr J said that the car developed an oil leak, and this repair cost him £1,000 to repair privately. In August 2022, Mr J said the car began to shake mid-journey and eventually shut down in the middle of the road. The car wouldn't restart, so he and his father had to push the car back home.

Mr J raised this with Santander, and then brought his complaint to this service. He wants to reject the car and thinks it would be fair for Santander to refund all of the payments he's

made, along with his deposit and the cost of the diagnostic tests. Mr J has also said the car has caused him a lot of stress because of the constant issues and repairs in comparison to the value of the car.

Our investigator looked into Mr J's complaint, and thought that it should be upheld in part, in that Santander should have compensated Mr J to a greater extent for the first repair. However, he didn't think the other aspects of the complaint should be upheld. Santander accepted the investigator's findings, but Mr J didn't agree, and asked for the complaint to be reviewed by an ombudsman.

### **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 decided to uphold part of Mr J's complaint, but not all of it. I'll explain why.

Because Santander supplied the car under a finance agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was around four and a half years old with a mileage of 75,625 when Mr J acquired it. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I set out above the information that Mr J and Santander provided about the sequence of events. And Santander sent in copies of the loan agreement, notes of its contact with Mr J, and the independent report.

With regard to the first repair, which involved an issue with the Diesel Particulate Filter and a related issue with the Exhaust Gas Recirculation, Santander upheld the complaint under the CRA. So I'm satisfied that the car wasn't of satisfactory quality at the point of supply.

Santander covered the cost of the repair as it should have done. However, our investigator thought that Santander should have compensated Mr J to a greater extent (and Santander accepted these findings) and, having reviewed all of the evidence afresh, I have reached the same conclusion. I have set out the details below, but in summary, I consider it fair for Santander to reimburse Mr J for the cost of the diagnostic reports, and to refund the proportion of his monthly payments for the period when he was without the car. I also consider it fair for Santander to refund part of Mr J's monthly payments between November 2021 and January 2022 because the faults affected his use and enjoyment of the car, and I consider 60% a fair proportion. Santander should add compensatory interest to these amounts. I also consider it fair for Santander to pay Mr J £250 to reflect the distress and inconvenience caused to him in trying to get the problem correctly diagnosed and repaired.

I now turn to Mr J's second complaint, involving the condition of the car on its return in March 2022 (scratches that were not present earlier), and issues with the brakes, the passenger window, and the seatbelt operation.

As I noted earlier, Santander commissioned a report from an independent company to look at these issues. Having looked carefully at the report, I can see that the mechanic concluded that, while there were some faults evident, these had developed after purchase and were not related to any previously unsuccessful repair.

The presence of faults does not automatically mean that the car was not of satisfactory quality on acquisition – for example faults can develop through normal wear and tear, and the need to replace certain parts at the end of their normal lifespan. And I'm conscious that Mr J's car was, by this point, about five years old with a mileage of around 78,000. On this basis, it's not unreasonable for the issues identified by Mr J to have arisen, and based on the evidence I've no reason to think they were due to anything other than reasonable wear and tear.

Mr J mentioned scratches that he said had appeared when the car was returned after repair. There's no information about how these scratches occurred, although I note Mr J suspects they happened when the repair took place. The dealership is independent of Santander, and therefore I can't fairly hold Santander responsible for any remedial action.

The third element of Mr J's complaint relates to the oil leak and subsequent breakdown of the car in July and August 2022. However, I have no evidence to suggest the cause of the oil leak, or the breakdown. In relation to the oil leak, I note that there's nothing on the independent report to suggest a leak was present or developing, and I think it's likely it would've been spotted if it had been present at the point of supply. On the evidence I have, I can't fairly say that the oil leak or breakdown are attributable to anything other than wear and tear.

Overall, whilst I consider that Santander should have compensated Mr J to a greater extent for the initial repair, I don't consider that I can fairly hold Santander responsible for the issues which have arisen more recently. So I've decided to uphold Mr J's complaint in part.

### **Putting things right**

Santander should:

- Refund the monthly payments made by Mr J covering the periods 2 -15 December 2021 and 16 January – 17 March 2022;
- Refund 60% of Mr J's monthly payments for the period November 2021 – January 2022 when Mr J was otherwise in possession of the car, but it wasn't performing as it should;
- On receipt of valid receipts/invoices, refund the cost of all diagnostic tests incurred by Mr J in relation to the DPF and EGR fault;
- Pay 8% simple yearly interest on these refunded amounts from the date Mr J paid them to the date of settlement\*;
- Pay a further amount of £250 in recognition of the distress and inconvenience caused to Mr J in dealing with the DPF and EGR fault.

*\*If Santander considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

**My final decision**

For the reasons given above, I have decided to uphold Mr J's complaint in part. Santander Consumer (UK) Plc should pay Mr J the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 June 2023.

Jan Ferrari  
**Ombudsman**