

The complaint

Mr B complains about a used car he acquired through a conditional sale agreement with Santander Consumer (UK) Plc. The car was sold with a body wrap and Mr B is unhappy that very shortly after acquiring the car it showed signs of peeling. Attempts to rectify this have not been successful.

What happened

In May 2022 Mr B acquired a used car, which was financed predominantly through a conditional sale agreement with Santander. The car was first registered in November 2020 and I understand had travelled less than 5,000 miles when supplied to Mr B. The car can be described as a prestige/performance vehicle and had a cash price of over £60,000 when Mr B acquired it.

Mr B complained to Santander in February 2023 about the body wrap peeling from the vehicle and despite attempts to have this rectified, they had not been successful so the issues persisted. Santander did not uphold Mr B's complaint and explained that cosmetic damage isn't covered by the Consumer Rights Act 2015.

Unhappy with Santander's response, Mr B referred his complaint to our service, where it was upheld by the investigator. It is disappointing to note that the investigator received no response from Santander and as a result of this, the complaint was referred to me for consideration.

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 carefully considered all that the parties have said and provided, I have come to similar conclusions to the investigator for what are broadly the same conclusions.

Mr B acquired the car through a conditional sale agreement with Santander and as the supplier of the car, Santander is responsible for the quality of the car. As the investigator has already referred to, the Consumer Rights Act 2015 is relevant legislation here and this sets out expectations and requirements around the quality of goods supplied. In summary, goods should be of satisfactory quality and satisfactory quality is essentially based upon what a reasonable person would consider to have been satisfactory. In instances like this when considering the quality of a car, the age, mileage and price are some of the things that I think would be considered to be reasonable to take into account.

Mr B did acquire a used car but it was less than two years old and had travelled less than 5,000 miles when he got it. It is also worth noting that it cost in excess of £60,000. It is reasonable when considering a car of this age, mileage and price to have high expectations around the quality of the car.

The issue or defect here relates to the body wrap that I understand was applied shortly

before Mr B acquired the car. Mr B has supplied photos of the car which show the wrap is peeling/bubbling and ultimately coming away from the bodywork. There seems to be no dispute that the wrap is peeling/bubbling. Considering what I have set out about the car, how soon after acquiring the car the wrap was peeling/bubbling and what the Consumer Rights Act says about satisfactory quality, I am satisfied the car was not of satisfactory quality when it was supplied to Mr B.

I have not seen anything to indicate the wrap was a temporary addition/alteration to the car's appearance, or that Mr B was told that the wrap would start to peel/bubble within a short period of time. My understanding is that this type of alteration to the car's appearance should last a considerable amount of time. So should not have started to peel/bubble or come away from the bodywork when it did and so soon after Mr B acquired the car.

I have noted what Santander has said in its very brief final response to Mr B's complaint and that cosmetic damage is not covered by the Consumer Rights Act. The Consumer Rights Act does refer to issues that were drawn specifically to the consumer's attention, or where the consumer examines the goods and that examination ought to reveal an issue. And that essentially goods would not be deemed not of satisfactory quality if an issue is drawn to the consumer's attention before the sale, or a reasonable examination would have revealed the issue. This is not however the same as providing a complete exclusion to all cosmetic issues, which is what Santander appears to understand. If applying the same logic to Santander's argument, even a new car costing £100,000 with a scratch or defective paintwork would be excluded from the Consumer Rights Act and this is not actually the case.

As I have found that the car was not of satisfactory quality, I have next considered what should reasonably be done to resolve matters now. I note that repairs have been attempted already and that from the photos Mr B has provided post repair, those repairs appear to have been unsuccessful. In the circumstances of this complaint, and again noting previous attempts have been unsuccessful, I think it would be fair and reasonable for Santander to take back the car from Mr B and end this agreement with nothing further owed.

Mr B paid an initial deposit of £3,000 and it would be reasonable for Santander to refund this to Mr B, along with interest. Interest should be calculated at 8% simple per year from the date of payment until the date of settlement.

I also consider Mr B has suffered some trouble and upset in spending time and effort, and some cost, in attempting to get the car repaired and in bringing his complaint. I think it is also worth noting that Mr B would have suffered some loss of enjoyment while driving the car with these defects. However, considering the defects and again accepting they will have been disappointing, these defects have not prevented Mr B from using the car and he has been supplied with a courtesy car while repairs were attempted. Because of this, I think it would be reasonable for Mr B to pay for the use he has had of the car and I do not therefore consider Santander should be required to refund the monthly repayments Mr B made to the conditional sale agreement.

But, I do consider that Santander should make an additional payment of £600 to Mr B to reflect the trouble and upset he has been caused, along with the loss of enjoyment and a contribution towards the costs associated with returning the vehicle for the repairs.

Putting things right

To settle this complaint Santander should now:

- Arrange a convenient time to collect the car from Mr B and meet any costs associated with that collection.

- End the conditional sale agreement with nothing further owed and ensure no adverse information is recorded with any credit reference agencies.
- Refund Mr B's £3,000 deposit, with interest as set out above.
- Pay Mr B an additional £600, for the reasons set out above.

My final decision

My final decision is that I uphold Mr B's complaint and direct Santander Consumer (UK) Plc to settle the complaint in line with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 September 2023.

Mark Hollands
Ombudsman