

## **The complaint**

Mr F complains that the car he acquired through a conditional sale agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

## **What happened**

Mr F entered into a conditional sale agreement with Santander in December 2022 to acquire a used car. He says that at acquisition the selling agent noted the gap between the bonnet and bumper, but he didn't think any more about this as everything seemed fine. Two weeks later he says he noticed a gap building between the top of the bumper and grille which hadn't been present when he acquired the car. Then, less than a month after acquisition the rear spoiler failed and could no longer be retracted. He says this issue arose after he had driven the car less than 2,000 miles. Mr F says the selling garage initially offered to pay 50% towards the repairs as a goodwill gesture but this offer has since been retracted.

Santander said that Mr F contacted it on 6 January 2023 raising issues with the rear spoiler not lowering and the front bumper being out of alignment. It arranged for an independent inspection of the car which took place on 14 February 2023. The inspection confirmed the issues raised. It then said that the issue with the bumper was likely due to light impact and that if present at supply this would have been clearly evident. Regarding the rear spoiler it said that the fault would have developed after acquisition as if it was present at the time of supply it would have been identified then. Based on this Santander didn't uphold Mr F's complaint.

Our investigator said that the faults had been confirmed by the inspection report. She noted that Mr F was aware of an issue with the bumper at acquisition and while this may have worsened since, as misalignment of the bumper was present at supply she said Mr F had accepted the car with this fault. Therefore, she didn't require Santander to cover the cost of this repair.

Regarding the rear spoiler while our investigator noted the independent inspection report said the issue developed post acquisition, she thought the spoiler should have worked without issue for a much longer period of time. Therefore, she didn't think the car was sufficiently durable and so not of satisfactory quality at supply. She recommended that Santander cover the cost of the repair to the rear spoiler and pay Mr F £250 for the upset caused by being provided with a car that wasn't of satisfactory quality. She said that while Mr F had been able to use the car since the issue with the rear spoiler occurred, the car wasn't performing as it should have and recommended that Mr F be refunded 15% of his payments from January 2023 to reflect the impaired use.

Santander didn't accept our investigator's view. It said that there were no issues with the rear spoiler at the point of supply and had there been Mr F would have noticed this much sooner. It noted that the complaint was raised more than 30 days after Mr F acquired the car.

## **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.

Mr F acquired a used car through a conditional sale agreement. Under the regulations, specifically the Consumer Rights Act 2015, the finance provider can, in certain circumstances, be held liable if the car supplied wasn't of satisfactory quality. Satisfactory quality takes into account factors such as the age and mileage of the car and the price paid. In this case the car was just over five years old and had been driven 36,774 miles at supply. The cash price of the car was £26,250.

It is reasonable to expect a used car to have suffered some wear and tear and it is possible that issues can arise shortly after acquisition that weren't present or developing at supply. However, under the regulations, the car is required to be sufficiently durable to be considered of satisfactory quality.

Mr F raised two issues with the car. The first was with a gap between the bumper and the top grille and the second was the rear spoiler failing. Mr F raised a complaint about these issues with Santander on 6 January 2023 which was more than 30 days after acquisition. Mr F has said that he first noticed the issue with the bumper after about two weeks and it was less than a month when the rear spoiler failed. Based on Santander's notes Mr F raised the issue with the selling agent on 3 January after the fault arose on 31 December 2022. Based on the information I have seen it appears likely that the reported issues occurred within the first 30 days. That said, Mr F hasn't requested to reject the car and I think that considering repair is reasonable in this case.

Mr F said he discussed repairs with the selling agent which initially offered to cover 50% of the costs but then retracted this. For me to say that Santander is liable for the cost of repair, I would need to be satisfied that the issues were due to faults present or developing at the point of supply or that the car wasn't of satisfactory quality.

Mr F says that when he was acquiring the car the sales agent pointed out that there was a bigger than usual gap between the top of the grille and the bottom of the bonnet but then implied this was normal. I can understand that as Mr F was happy with the rest of the car, he didn't pay particular notice to this. The independent inspection report said the issue with the bumper appeared to be due to light impact damage. Mr F has said he hasn't damaged the bumper and so I accept the issue was present at supply. However, while I accept that the issue with the bumper may have worsened after acquisition, as the fault was present at supply, the inspection report said this would have been clearly evident and Mr F has said he was made aware of this by the selling agent, I find that he accepted the car with this issue and so I do not require Santander to cover the cost of any repair needed to the bumper.

The independent inspection confirmed there was a fault with the rear spoiler. The inspector said that in their opinion the fault had developed since acquisition and that had it been present at supply it would have been reported at that time. The selling agent has said that their cars go through a thorough pre-delivery inspection which includes driving the car. It said that there was no issue with the rear spoiler at that time.

I have taken into account the outcome of the inspection and the selling agent's comments but, in this case, given when the issue occurred, I think this raises concerns that the car wasn't sufficiently durable.

The inspection took place on 14 February 2023. At this point the car had been driven 40,264 miles (3,490 miles since Mr F acquired it). However, Mr F explained the issue arose less

than a month after acquisition and has provided copies of a fault code from around 38,756 miles saying, '*active rear spoiler, timeout when extending or retracting the rear spoiler (blocking or sensor faulty)*'. Previous to this a fault code was recorded at around 37,538 miles saying, '*recognised blocking the tailgate*'. As the car was supplied with a mileage of 36,774 this suggests Mr F drove the car less than 2,000 miles before the problem occurred and around 1,000 miles before the initial fault code was recorded.

Taking all of the above into account, and noting also the price paid for the car, I find on balance, that the car wasn't of satisfactory quality at the point of supply due to not being sufficiently durable. Because of this I am upholding this complaint and require the repair to the spoiler to take place at no cost to Mr F. Given that I am not aware the business has had an opportunity to carry out the repair it can, if it wishes, now be allowed to carry out the repair. Or Mr F can arrange for the repair to take place and Santander would then be required to refund the cost.

Mr F has been able to drive the car and so it is reasonable that he remains liable for his payments under this agreement. However, the issue with the spoiler means the car wasn't performing as it should and so I agree with our investigator's recommendation of a 15% refund on the payments made from January 2023 to when the repair is undertaken. I also agree that Mr F has been caused stress and inconvenience by not being provided with a car that was of satisfactory quality and agree with the recommended £250 compensation for this.

### **Putting things right**

Santander Consumer (UK) Plc should:

- ensure the rear spoiler is repaired at no cost to Mr F;
- pay a refund of rentals of 15% from January 2023 to when the issue is resolved;
- pay 8% simple yearly interest on any refunded amounts from the date of payment until the date of settlement\*;
- pay a further amount of £250 for any distress or inconvenience that's been caused; and
- remove any adverse information that may have been applied from the customer's credit file in relation to the agreement.

\*HM Revenue & Customs requires Santander to deduct tax from any award of interest. It must give Mr F a certificate showing how much tax has been taken off if he asks for one.

### **My final decision**

My final decision is that Santander Consumer (UK) Plc should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 October 2023.

Jane Archer  
**Ombudsman**