

The complaint

Mr V is unhappy that a car supplied to him under a conditional sale agreement with Santander Consumer (UK) Plc was of an unsatisfactory quality.

What happened

In November 2022, Mr V was supplied with a new car through a conditional sale agreement with Santander. He paid an advance payment of £2,000 and the agreement was for £22,895 over 49 months; with 48 monthly payments of £389.50 and a final payment of £9,130.50.

In February 2023, the car broke down due to a problem with the gears. It was recovered to the supplying dealership and repaired. While the car was being repaired, Mr V was supplied with a like-for-like courtesy car.

The car broke down again on 15 May 2023, due to the same issue with the gears. It was again recovered to the dealership for repair, but Mr V contacted Santander and asked to reject the car. Santander said Mr V couldn't reject the car, as this was the first time they were aware there of any issues. And they said the dealership would repair the car instead. Mr V was supplied with a courtesy car for the period of this repair – around four weeks – but the courtesy car was much smaller than the car supplied by Santander.

Mr V wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said they were satisfied there was a fault with the car, and that an attempted repair by the supplying dealership had failed. Because of this, he thought Mr V had the right to reject the car under the Consumer Rights Act 2015 ('CRA'). So, he said that Santander should take the car back; end the agreement; refund the deposit Mr V paid, plus statutory interest; and pay Mr V an additional £200 for the inconvenience he'd suffered.

Santander didn't agree with the investigator. They said the car had now been repaired and returned to Mr V, and there was no indication that the second repair had failed. So, they thought Mr V had *"a change of heart about keeping the vehicle, which is now in working order."* They also said that, because Mr V hadn't raised the issue with them until May 2023, the second chance at repair was actually their first opportunity to repair the car, and they've asked for an ombudsman to make a final decision.

After Santander asked for an ombudsman's decision, Mr V advised us that the car has developed an additional fault, albeit one not related to the gear issue.

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 done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr V was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Santander are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Santander can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr V to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr V took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Santander to put this right.

In this instance, it's not disputed there was a problem with the car's gears, nor that this fault was present when the car was supplied to Mr V. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Santander should do to put things right.

I've seen Santander's case notes for 15 May 2023, when Mr V first contacted them about the issues he was having. And it's clear from this that a failed repair had already happened, and that Mr V was now looking to reject the car. I've also noted Santander responded to Mr V's complaint the day after they received it – before a second attempt at repair had taken place.

Section 24(5) of the CRA says *“a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.”* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Santander – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

In this instance, the single chance of repair took place in February 2023 by the dealership. And this repair failed. So, when Mr V contacted Santander in May 2023, asking to reject the car as the single chance of repair had failed, Santander were in breach of the CRA by telling Mr V that they also had the opportunity to repair the car – the CRA doesn't require Mr V to advise Santander of the fault *before* the dealership attempted repair.

Given this, I'm satisfied that Mr V still has the right to reject the car. And, as he told Santander that he wanted to reject the car as soon as the fault reoccurred, it can't be said that he'd just had "*a change of heart about keeping the vehicle.*"

It's also the case that Mr V is now complaining about further faults with the car. And, while these may be unrelated to the issues with the gears, this doesn't mean that Santander have another chance to repair these faults.

So, given all the above, I think that Mr V should be allowed the opportunity to reject the car.

Putting things right

Mr V has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking Santander to refund any of the payments he's made.

However, it's clear that Mr V has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. And he was further inconvenienced by being provided with a courtesy car that wasn't suited to his needs, which only happened because Santander denied him his rights under the CRA. So, I think Santander should compensate him for this. The investigator had recommended Santander pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Santander should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr V;
- remove any adverse entries relating to this agreement from Mr V's credit file;
- refund the £2,000 deposit Mr V paid;
- apply 8% simple yearly interest on the refund, calculated from the date Mr V made the payment to the date of the refund †; and
- pay Mr V an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr V a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr V's complaint about Santander Consumer (UK) Plc. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 16 October 2023.

Andrew Burford
Ombudsman