

The complaint

Mr S complains that the car he acquired through a conditional sale agreement wasn't of satisfactory quality.

What happened

Mr S entered into conditional sale agreement with Santander Consumer in May 2023 to acquire a car. He says that after a couple of months he experienced major issues with the car and while he contacted the dealership, he didn't get a response. He contacted Santander Consumer to assist, and it contacted the dealership about repairs, but the dealership refused.

Santander Consumer issued a final response letter dated 4 October 2023. It said that following Mr S's complaint it arranged for an independent inspection of the car. The report said that it didn't consider the faults with the car to have been developing at the time of supply. Santander Consumer noted the timing of the issues raised and that Mr S's mileage wasn't excessive, and it went back to the inspector to reconsider the conclusion. The inspector responded saying they didn't think that Mr S would have been able to drive the mileage he had without identifying the issue sooner if the fault had been developing at the point of supply. Based on this Mr S's complaint wasn't upheld.

Our investigator upheld this complaint. He said that based on the evidence from both parties there were faults with the car. He considered the comments in the inspection report but said that a leak in the engine bay had been noted but the engineer wasn't able to identify the source of this. Further investigation was said to be needed in regard to the engine leak, camshaft assemble and engine misfire. Based on the information available our investigator didn't think that, on balance, the car was of satisfactory quality when supplied due to it not being sufficiently durable. Because of this he recommended that Mr S be allowed to reject the car and be refunded his deposit and all payments made from 3 August 2023 (from which point Mr S could no longer use the car). He also recommended that Mr S be paid £300 compensation for the distress and inconvenience he had been caused.

Santander Consumer didn't agree with our investigator's view. It reiterated that the inspection report didn't find that the fault was inherent at the point of supply.

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 S acquired a car through a conditional sale agreement. Under the regulations, Santander Consumer can be held liable if the car supplied wasn't of satisfactory quality. Satisfactory quality takes into account factors such as the age, mileage and price of the car. In this case the car was registered in October 2019 and had been driven around 31,000 miles when Mr S acquired it. The car's price was £107,000.

Mr S reported in August 2023 that the car had broken down and he had been told there were

issues with the turbo, cam shaft and engine with a new engine potentially being required. The independent inspection arranged by Santander Consumer in August 2023 reported the engine misfiring, a fluid leakage, the engine management light being on and other fault codes. Based on this evidence from both parties I accept that there are faults with the car. The outstanding issue is whether the evidence supports the car not having been of satisfactory quality at the point of supply.

Mr S experienced major issues with the car three months after acquisition. When issues arise within the first six months it is generally expected that the supplier is required to show that the issues identified weren't present or developing at the point of supply. Therefore, I find it reasonable that an independent inspection was carried out.

The independent inspection was carried out on 22 August 2023. At that time the car's mileage was recorded as 34,611. The inspection reported the car's general condition as average and reported the issues recorded above. In the engine bay it found the nearside engine bank was wet, but it couldn't confirm whether this was coolant or engine oil due to poor access within the engine assembly. It noted the car had been driven around 3,600 miles by Mr S and said it didn't consider the issues present with the car to have been developing at the point of supply. The inspector then provided a further statement saying it was highly unlikely that the car would have been able to cover 3,600 miles without the condition being evidenced much sooner and that based on this and the condition seen at inspection they concluded that the issues with the car weren't present at the point of supply.

I have assessed the inspection report conclusions and also noted the other comments within the report. These say that the inspector is unable to confirm whether the leak is oil or coolant and that further investigation is recommended. It also recommends that further investigation in workshop conditions is undertaken in regard to the camshaft and engine misfire. While I note the comment about the issues being identified sooner had they been present at supply, considering there are multiple areas that require further investigation and that Mr S only had the car for three months I find this does raise concerns that issues may have been developing at supply. Or, even if that isn't conclusive, noting the mileage Mr S has covered, the age of the car, the time Mr S had the car and the price he paid, I do not find that it is reasonable that the car should have experienced major issues. Therefore, on balance I do not find that the car supplied to Mr S was sufficiently durable and so I agree with our investigator that the car wasn't of satisfactory quality at supply.

Given the nature of the issues raised and that further investigation is needed in regard to multiple issues, I think the fairest outcome to this complaint is for Mr S to be allowed to reject the car. When we recommend rejection, we would expect the agreement to be terminated with no further liability for Mr S and his deposit to be refunded along with interest. In this case Mr S hasn't been able to use the car since 3 August 2023 and so he should be refunded any payments he has made from that date.

Mr S has noted that he paid an additional amount for paint protection film and he has provided an invoice for this and for the refurbishment of the alloy wheels. I note Mr S thinks this cost should be refunded and I have considered his comment about this enhancing the car which he is now returning. But, as this payment wasn't part of the original agreement and was a choice of Mr S's and I cannot say for certain the extent to which this impacts the value of the car, I do not require Santander Consumer to refund this cost.

I do however acknowledge that the issues with the car have caused Mr S distress and inconvenience and taking into account Mr S's testimony I agree with our investigator that he should be paid £300 compensation because of this.

Putting things right

Santander Consumer (UK) Plc should:

- end the agreement with nothing further to pay;
- collect the car (if this has not been done already) at no further cost to Mr S;
- refund the deposit paid by Mr S;
- refund all payments from 3 August 2023 until the date of settlement;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £300 for the distress and inconvenience that's been caused due to the faulty goods;

My final decision

My final decision is that I uphold this complaint. 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 S to accept or reject my decision before 15 April 2024.

Jane Archer
Ombudsman