

The complaint

Mr S complains about a car he acquired with credit provided by Santander Consumer (UK) Plc.

What happened

In May 2023, Mr S entered into a regulated conditional sale agreement with Santander Consumer in relation to a used car. Its cash price was £26,990, Mr S paid a deposit of £7,000, the amount of credit was £19,990, the total amount payable was £33,255.40, and this was to be repaid in 60 monthly instalments of £437.59.

On collecting the car, Mr S noticed that the rear suspension was dropping. This turned out to be because the original springs had been replaced with aftermarket springs that did not meet the manufacturer's standards. Mr S also found that the brakes were corroded and that the multimedia system didn't work. He told Santander Consumer about this in June. Meanwhile, he bought a second car, because the undeclared modification of the rear suspension (and not the front suspension) made the car uninsurable.

These problems were confirmed by two independent inspections which were carried out by different firms. The report commissioned by Santander Consumer concluded that the problem with the rear suspension had been present when the car was collected, but that the other problems had not been. Nevertheless, Santander Consumer did not accept that the springs had been replaced.

Mr S brought this complaint to our service in August 2023. One of our investigators upheld it. Based on the evidence of the two firms that had inspected the car, and also another report from a third firm (commissioned by Mr S), he concluded that the rear suspension springs had indeed been replaced, and that as a result the car was unsafe to drive. He recommended that the springs be replaced with ones which meet the manufacturer's specification, as recommended in the report which had been prepared on Santander Consumer's own instruction. He said this should be done at no cost to Mr S. He also said that Santander Consumer should pay for the report by the third firm, as Mr S had paid for that (once Mr S had provided an invoice showing how much he'd spent on it).

Santander Consumer accepted the investigator's opinion. At first, Mr S did not, because he had wanted to reject the car altogether and end the finance agreement. He withdrew his complaint. But around three weeks later, he changed his mind and this complaint was re-opened. However, Santander Consumer then said it was not prepared to repair the car until Mr S had paid off his arrears under the agreement. The investigator persuaded Santander Consumer that the repair and the arrears were separate issues, and Santander Consumer agreed that it would pay for the repair after all.

However, in January 2024 Santander Consumer defaulted Mr S's account, terminated his agreement, and demanded that he return the car immediately. Mr S therefore decided that he no longer needed the car to be repaired. Then in February, Mr S told our service that the car had been collected on behalf of Santander. By then, this case had already been referred for an ombudsman's decision.

I wrote a provisional decision which read as follows.

What I've provisionally 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 would like to take this opportunity to apologise to both parties for how long it has taken for this case to be assigned to an ombudsman.

All three experts agree that the rear suspension springs were not of satisfactory quality and needed to be replaced, and that this was a fault which was present at the point of sale. In particular, the expert instructed by Santander Consumer wrote:

"The rear coil springs were blue in colour¹ with no visible brand naming however we would consider that this would appear to be an aftermarket unit."

"The vehicle is not fault free."

"We consider the faults in relation to the suspension fitment would have been present at the time of purchase."

"We would recommend that the rear suspension springs require replacement to an OE type unit to meet the manufacturer's specification..."

So I uphold this complaint. It only remains for me to decide what would be fair redress.

Having regard to the Consumer Rights Act 2015, my starting point is that Santander Consumer was entitled to replace the suspension springs, as recommended, before Mr S would be allowed to reject the car and end the agreement. But of course that remedy is no longer available, because Mr S no longer has the car.

The arrears, and the arrears recovery actions taken by Santander Consumer, are outside the scope of this complaint. But I can't ignore what has happened, because the usual remedy is now impossible. So, without commenting about the rights or wrongs of the parties' conduct concerning the arrears, I will need to find an alternative remedy for the mis-sale of the car.

I have read Santander Consumer's internal agreement notes, which set out the history of the agreement and of the contact between the parties between May and August 2023. There is an entry dated 18 August 2023 which says that on that date, Santander Consumer contacted Mr S and told him that they had received the report from the expert they had instructed, and the report said that the dealer was responsible for the suspension issue. As I've said, I have read that report and that is indeed what it says. So I'm satisfied that Santander Consumer had enough evidence to uphold Mr S's claim, and that its staff knew that was the case.

Yet when Santander Consumer contacted the dealer to tell them this, the dealer pushed back and insisted that there was nothing wrong with the car, and that this was merely a case of buyer's remorse. I think that Santander Consumer should have dismissed that defence out of hand, because it was entirely inconsistent with the findings of the independent report. But unaccountably, Santander Consumer told Mr S in its final response letter that *"the*

¹ In response to some follow-up questions by Santander Consumer, the expert said that in his experience the manufacturer's springs are black.

conclusion of the independent inspection we carried out was that the vehicle had not been modified.” In light of the actual conclusion of that report, which I have quoted above, that is not tenable.

I have considered Santander Consumer’s argument that the springs did not prevent the car from passing its last MOT. But nevertheless, in light of the conclusions of its own expert in the original report and in its response to the follow-up questions, I remain of the view that the car was not of satisfactory quality at the point of sale, and that the fair remedy for that (but for the subsequent events) would have been to replace the springs. (I am reinforced in that view by the fact that Mr S’s insurance provider told him that it would not cover a car with modified suspension.)

So I think that the fair remedy now would be to unwind the agreement and put Mr S back in the position he would have been in but for the mis-sale, as far as possible, and subject to a deduction for his use of the car before he stopped driving it.

Mr S drove 4,165 miles in the car before the inspection carried out by Santander Consumer’s expert. There will be a deduction of £1,874 for that usage.

I am therefore minded to order Santander Consumer to:

- Remove any negative information about the agreement from Mr S’s credit file;
- Cancel the arrears;
- Refund the deposit and all payments made under the agreement – minus £1,874 – and pay interest on the sums refunded at 8% a year from the dates of payment to the date of settlement.

Responses to my provisional decision

Santander Consumer did not accept my provisional decision. It made the following points:

- Mr S had only made two monthly payments on the agreement, before stopping;
- As a result, the car had been repossessed in February 2024.

I already knew all that – I mentioned the arrears and the repossession in my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here. But I make no findings about the repossession, or about any other actions taken for the recovery of the arrears.

For the avoidance of doubt, the deposit and the two monthly payments add up to £7,875.18. Subtracting £1,874 gives £6,001.18.

Mr S provided evidence that he had paid £250 for the third report.

My final decision

My decision is that I uphold this complaint. I order Santander Consumer (UK) Plc to:

- Remove any negative information about the agreement from Mr S’s credit file;
- Cancel the arrears;
- Refund the deposit and both payments made under the agreement – minus £1,874 (which comes to £6,001.18);
- Pay simple interest on that refund at the rate of 8% a year from the date the deposit was paid to the date of settlement; and
- Pay Mr S £250 for the inspection and report he paid for, with simple interest at 8% a year from 12 October 2023 to the date of settlement.

If Santander Consumer considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if he is entitled to. Mr A should refer back to Santander Consumer if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 May 2024.

Richard Wood
Ombudsman