

## The complaint

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

## What happened

In November 2021, Mr B was supplied with a used car through a conditional sale agreement with Santander. He paid an advance payment of £5,200 and the agreement was for £6,537 over 60 months; with monthly payments of £137.22. At the time of supply, the car was around seven years old, and had done 59,508 miles (according to the MOT record for 15 November 2021).

In June 2022, Mr B complained to Santander that there were issues with the diesel particulate filter (DPF), the exhaust gas recycling (EGR) valve, and the air conditioning. As a result of this complaint, the car was repaired by the supplying dealership at no cost to Mr B. However, in September 2022, Mr B experienced further problems with a radiator leak, the DPF warning light having come on, and the car being difficult to start.

Mr B complained to Santander again, and they arranged for the car to be inspected by an independent engineer. This inspection took place in December 2022 and, while the engineer couldn't find any issues with the DPF or EGR systems, they did find that the air conditioning was inoperative. Santander offered to repair the car, but Mr B wasn't happy with this, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said it wasn't disputed there was a fault with the car, nor that an attempt to repair this had already been made. Given that the repair attempt was unsuccessful, the investigator said that Mr B should now be allowed to reject the car. As Mr B had had use of the car when it was in his possession or had been supplied with a courtesy car while it was being repaired, they said that Santander didn't need to refund any of the payments Mr B had made. However, the investigator said that Santander should refund the deposit, plus interest, and pay Mr B an additional £150 for the distress and inconvenience he'd been caused.

In early April 2023, both Santander and Mr B agreed with the investigator's opinion. Around a month later Mr B contacted us to explain that Santander hadn't carried out the agreed actions and that they'd recorded missed payments for May 2023 on his credit file, something that resulted in his credit card providers reducing his credit limits. Santander said they'd contacted Mr B, leaving him a voicemail asking him to arrange for a suitable time for the car to be collected. But he didn't do this.

The car was collected on 2 June 2023, but Mr B remained unhappy with the missed payments recorded on his credit file, which now included a missed payment for June 2023, and that they hadn't refunded the deposit he paid. On 23 June 2023 Santander asked Mr B to confirm the bank details where he wanted the deposit to be refunded to, which he provided on 3 July 2023.

Mr B confirmed that his credit file had been corrected, but he said he'd not received any refund. He also provided evidence of the credit limit changes he had on his different credit cards:

- the limit on credit card one had reduced to £3,650 on 5 August 2022, and again to £750 on 5 May 2023
- the limit on credit card two had reduced from £11,000 to £8,050 on 9 August 2022
- the limit on credit card three had reduced to £1,600 on 5 May 2023

While Santander said they'd refunded the deposit in early July 2023, this wasn't the case, and they continued to keep the agreement open, chase Mr B for outstanding payments, and report further missed payments to the credit reference agencies. However, things were resolved in September 2023, and they offered Mr B an additional £300 compensation for what had happened. Mr B didn't respond to this offer.

Mr B explained how he remained unhappy about what had happened, which included delays in the Financial Ombudsman Service replying to his correspondence. He said that he'd been caused emotional and financial distress for over a year, which has seriously affected his day-to-day life and exacerbated his medical conditions.

Given what's happened, this matter has been passed to me to make a final decision.

### **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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 B 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 Consumer Rights Act 2015 ('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 B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B 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.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. I can see from the evidence that Mr B is extremely unhappy with how Santander handled his complaint, especially with them not responding to his complaint emails. However, and while I appreciate this will come as a disappointment to Mr B, complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Santander handled his complaint hasn't been considered as part of my decision and won't form part of any remedy considerations.

It's also clear that Mr B is unhappy with how we dealt with this matter, and that delays were caused by (in part) two separate investigators who were dealing with this matter leaving the service. We have a separate process for dealing with complaints about how we deal with matters so, if he hasn't already, Mr B will receive a separate answer on this. As such, this also won't form part of my decision or any remedy consideration.

Turning to the car itself, it's not disputed there was a problem, nor that this fault made it of an unsatisfactory quality when it was supplied to Mr B. 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.

### **Putting things right**

Both Mr B and Santander have agreed with the initial investigator's opinion on what should be done to remedy the faults with the car. And it's my understanding that, albeit after some unacceptable delays, these recommendations have all been carried out. As such, it's reasonable for me to accept this as part of my final decision, and I won't make any further comment on this.

The evidence is clear that, following both parties' acceptance of the initial investigator's opinion, Mr B stopped making payments to Santander. Santander not only reported missed payments to the credit reference agencies in the period between agreeing to and collecting the car from Mr B, but they also continued to report missed payments after collecting the car.

I've no doubt this had an impact on Mr B and would've been a stressful situation, especially as he had to continually chase Santander about this. Mr B has also provided evidence of his credit limits on credit cards being reduced in November 2022 and May 2023, which he strongly believes was as a result of Santander's actions.

However, I haven't seen anything to show me, for example a letter from the credit card providers, to show me the credit limits were decreased solely because of Santander reporting missed payments – while this is a potential reason for reducing a credit limit, the limits on two of the three cards were reduced on 5 May 2023, and from the credit file information Mr B has provided this shows that Santander only reported the first missed payment in May 2023.

What's more, I've noted that Mr B had a reduction in the credit limit for two of his cards in August 2022, some 9-months before the first missed payment. I also haven't seen a full copy of Mr B's credit file to show me that the only adverse item was the missed payments reported by Santander. As such, I'm not satisfied that the reporting of the missed payment in May 2023 was the sole reason Mr B's credit limits were reduced.

However, as I've already said, it's clear that Mr B has been impacted by this incorrect reporting of missed payments, as well as being constantly chased for payments he wasn't due to make. This has had a significant impact on him, and I've considered this when looking at how I think Santander should compensate him for this.

Santander have offered an additional £300, which is in line with what I would've directed had no offer been made. So, in these circumstances, I think that Santander should pay this. However, I would expect this to be paid promptly, and Santander should be held accountable for any further delays.

Therefore, if they haven't already, Santander should (without any undue delay):

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr B;
- remove any adverse entries relating to this agreement from Mr B's credit file;
- refund the deposit Mr B paid (if any part of this deposit is made up of funds paid through a dealer contribution, Santander is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refund, calculated from the date Mr B made the payment to the date of the refund<sup>†</sup>; and
- pay Mr B an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

In addition to this, Santander should also:

- pay Mr B an additional £300 to compensate him for the significant distress and inconvenience caused by the delays following their acceptance of the initial investigator's opinion; and
- if this payment is not made within 14 working days of Santander being advised of Mr B's acceptance of my final decision (should he choose to accept it) they should also pay 8% simple yearly interest on this amount, calculated from the date they were advised Mr B accepted to the date the payment is made.

<sup>†</sup>If HM Revenue & Customs requires Santander to take off tax from this interest, Santander must give Mr B 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 B's complaint about Santander Consumer (UK) Plc trading as Santander Consumer Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 May 2024.

Andrew Burford  
**Ombudsman**