

## The complaint

Mr M 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 September 2021, Mr M was supplied with a used car through a conditional sale agreement with Santander. He paid an advance payment of £10,000 and the agreement was for £36,000 over 60 months; with monthly payments of £723.55.

Mr M said he started to experience problems with the car on the drive home. He took the car to a local garage, who advised him the alloy wheels were bent and cracked, which was affecting the handling of the car and causing the tyres to deflate. Mr M took the car back to the supplying dealership in September 2021, and, after some discussion and investigation, they arranged for the wheels to be straightened and welded.

Mr M says that, following this, he had to have the wheels repaired on multiple occasions, as well as repairs that directly related to the issue with the wheels, at an overall cost of £5,486.90. However, Mr M didn't return the car to the dealership for these repairs, or make them aware of the issues, instead arranging and paying for these himself.

In November 2023, Mr M replaced the alloy wheels at a cost of £719. He arranged for an independent engineer to inspect the wheels that were supplied with the car. This took place on 18 December 2023, with the engineer producing a report dated 28 December 2023.

The independent engineer said the wheels supplied with the car had hairline fractures and showed signs of previous repair. They concluded that wheels splitting on the make and model of car supplied to Mr M was a known issue and *"we cannot rule out the possibility that the conditions were present or developing at commencement of hire."*

Mr M complained to Santander, but they didn't uphold his complaint. They said that, as Mr M had had the wheels repaired at a third-party garage, without advising them of the issues, they considered these to be unauthorised repairs. As such, they were unable to determine whether the faults with the wheels were present when the car was supplied. Unhappy with this response, Mr M brought his complaint to us for investigation.

Based on the evidence they'd seen, our investigator was satisfied the issue with the wheels was present when the car was supplied to Mr M, and that this made the car of an unsatisfactory quality when it was supplied. However, they didn't agree with Mr M that he should now be allowed to reject the car.

The investigator said Mr M had had the wheels repaired on multiple occasions without contacting the dealership or Santander and doing so denied them the opportunity to do something to put things right. However, since the alloy wheels had been replaced there was no evidence to show that any faults with the car still remained. So, the investigator thought it wasn't fair or reasonable to ask Santander to cover the £5,486.90 repair costs, and they

should only reimburse Mr M the £719 he spent in replacing the wheels. The investigator also said that Santander should pay Mr M an additional £300 for the distress and inconvenience he'd been caused by what had happened.

Santander agreed with the investigator's opinion, but Mr M didn't. Mr M explained in depth why he thought the issue with the wheels made the car of an unsatisfactory quality when it was supplied to him, and how he thought the dealership had failed in their duty of care by not fully inspecting the wheels at the outset. Mr M said that he didn't consider the car had been fixed, and that the replacement wheels he had put on the car was only a temporary fix – he couldn't guarantee that this would *“fully address the underlying issues with the car.”* He also thought that the full repair costs should be reimbursed to him, along with the right to now reject the car.

Mr M referred to previous decisions by the Financial Ombudsman Service which he thought offered *“relevant precedents for my case”*; and he offered to arrange for another independent inspection to show that there were still significant issues with the car's economy and handling, which he believed resulted from the ongoing issues with the wheels. Mr M confirmed in mid-May 2023 that he would arrange for this report, but that it may take a few weeks for the inspection to happen. However, three months later, Mr M hasn't provided any such report, nor has he explained why this has been delayed and when it will take place. As such, as per Mr M's request, 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 M 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. So, if I thought the car was faulty when Mr M 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. While I recognise that Mr M has made reference to other decisions the Financial Ombudsman Service has made, a crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted in any way by any decision made on a different complaint, no matter how similar Mr M feels the situation is.

Mr M has also raised the issue of how the dealership inspects cars before they offer them for sale. This is a general complaint about how the dealership acts and, while Mr M feels this has significance in how he was treated, what level of inspection the dealership chooses to carry out on any particular car is not the responsibility of Santander. As such, I won't be considering this as part of my complaint, and this is a matter Mr M will need to raise with the dealership directly.

In considering the issues with the car supplied to Mr M, it's not disputed there was a problem with the alloy wheels, nor that this fault was present when the car was supplied. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Mr M has raised additional problems with the car but, despite being given the opportunity to do so, hasn't provided any evidence of any ongoing faults i.e., the independent engineer's report he said he was arranging that shows ongoing faults with the car and/or that the replacement of the alloy wheels hasn't fixed the issue with the wheels cracking and going out of shape. Given this, I'll focus on what I think Santander should do to put things right.

### **Putting things right**

I've seen a copy of the independent engineer's report, dated 28 December 2012, the key findings of which have been referred to above. As such, I won't repeat them here. However, I have noted that the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon. And this report doesn't say there are any ongoing issues with the car, nor that the replacement alloy wheels have failed to fix the problem with the car.

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 confirm to contract.*" This is known as the single chance of repair. The CRA is also clear that, if the single chance at repair fails, then Mr M has the right of rejection. However, this doesn't mean that Mr M is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car.

In his comments on the investigator's opinion, Mr M has said that he was unaware he could take the car back to the dealership when the problems with the wheels reoccurred, after the single chance of repair had taken place. This is why he arranged for the wheels to initially be repaired at third-party garages, and eventually replaced, all at his own cost.

While I've noted Mr M's comments in this regard, when the issue with the wheels first occurred, he took the car back to the dealership for diagnosis and eventual repair. As such, I think it's reasonable to conclude that he was aware he was able to take the car back to the dealership. So, when the issue with the wheels reoccurred around a year later, I think it would be reasonable for Mr M to have at least contacted the dealership to tell them what had happened, and to ask them to do something about their failed repair. However, he chose not to do this and instead arranged for the repairs to be done himself.

In doing so, Mr M denied the dealership the opportunity to either put things right or offer him the right to reject based on the failed single chance of repair. As Mr M's actions denied this

opportunity, I don't think it would be fair or reasonable to ask Santander to reimburse him with the repair costs he incurred.

As I've stated above, a failed single chance of repair would give Mr M the right of rejection under the CRA. But he's not required to accept rejection and he can accept further repair instead. Mr M arranged for the alloy wheels to be replaced, so it's fair to say he opted for repair over contacting the dealership/Santander and asking to reject the car. And there's no evidence that the issue with the wheels going out of shape and/or cracking has continued after the wheels were replaced.

As such, it would be reasonable to conclude that repair has been successful. Given the successful repair, Mr M no longer has any right to reject the car, so I won't be asking Santander to offer this option to him. However, I do think it's fair that Santander reimburse Mr M the cost of the replacement wheels, as this is likely what they would've funded had Mr M contacted either themselves or the dealership about the ongoing issues with the car, instead of him choosing not to do this.

Finally, it's clear that Mr M has been significantly inconvenienced by what happened between September and November 2021, when he had to spend time trying to diagnose the fault with the car before the initial repair by the dealership. So, I think Santander should compensate him for this. The investigator had recommended Santander pay him £300, which is broadly 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:

- upon receipt of proof of payment, reimburse Mr M with the £719 cost of replacing the alloy wheels on the car;
- apply 8% simple yearly interest on the reimbursement, calculated from the date Mr M made the payment to the date of the reimbursement<sup>†</sup>; and
- pay Mr M an additional £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires Santander to take off tax from this interest, Santander must give Mr M 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 M'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 M to accept or reject my decision before 18 September 2024.

Andrew Burford  
**Ombudsman**