

## **The complaint**

Mr V complains about the quality of a used car he acquired through a conditional sale agreement with Santander Consumer (UK) Plc ('Santander'). He says that the car was faulty when he bought it and he has had multiple issues with it. He wants to end the agreement and for Santander to take the car back.

## **What happened**

Mr V acquired a used car in March 2023. The car had 66,053 miles on the clock. It was first registered in 2015 and so was about eight years old at the time of sale. It had a cash price of £18,995.

Mr V paid a £2,000 deposit meaning £16,995 was financed. The agreement was to be repaid through 60 monthly repayments of £356.74. Based on the statement of account an outstanding balance remains due. If Mr V made repayments in line with the credit agreement, he would need to repay a total of £23,404.

Below is a summary of the issues complained about by Mr V and the investigation and repair work carried out. I've taken this from the information provided by Santander, Mr V and the dealership and garages that have worked on the car.

Mr V says that in the first few days of driving the car he noticed that the coolant level was low. The dealership found out that the water pump and thermostat housing was leaking, and I understand it made a repair to this part of the car.

When the car was returned to Mr V, he says he noticed some damage to the wheels including some paint 'overspray' and some possible earlier accident damage and subsequent repairs. He also carried out an HPI check which showed that there was finance on the car provided by a different business.

This other business that was noted as having finance on the car has confirmed that it has no interest in it. I understand it has taken steps to correct the record.

Mr V says the car was still leaking coolant and so it was looked at again by the dealership in October 2023. The invoice from the dealership shows that it thought the previous repair to the water pump and thermostat housing were satisfactory. The car had covered 72,380 miles at this point.

Mr V has complained to Santander about these faults saying he was dissatisfied with the car. Santander has had an independent inspection of the car completed. The independent report, produced in October 2023, said that there may be a fault with the head gasket, but this could be due to wear and tear. It didn't identify any other faults – including with the engine cooling system.

Santander went on to consider Mr V's complaint, and it didn't uphold it. It said that the independent report showed that there may be problems with the head gasket, but these

were likely due to wear and tear. There wasn't a fault shown with the cooling system. So, it didn't think that the car was of unsatisfactory quality when it was supplied to Mr V.

Mr V didn't agree with this and brought his complaint to the Financial Ombudsman Service.

On 27 February 2024, Mr V had the car looked at again by an independent garage. This showed that the problems with the water pump and thermostat housing were still present. He has also provided photographs that show what looks like coolant leaking in both the engine compartment and under the car.

Our Investigator went on to uphold Mr V's complaint. He said that the thermostat and water pump housing were repaired (free of charge) very soon after the car was supplied. So, this meant the car was not likely to be of satisfactory quality. But an invoice from a subsequent independent garage, from the 27 February 2024, shows that this fault is still present. Santander has already tried to repair this, and this repair seems to have failed. So, it should now end the agreement and compensate Mr V.

Santander didn't agree with the Investigator. It said there was no evidence that Mr V wanted to reject the vehicle within the first 30 days and the independent report showed no evidence that the water pump and thermostat had failed again. Because Santander didn't agree, this case 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it. Santander as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car's history.

The CRA quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

This car was first registered in 2015, it had about 66,000 miles on the clock when Mr V got it. The cash price was about £19,000 at that time. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr V should have been able to use it for a reasonable period of time before it needed significant work.

### **Was there a fault with the car and was it of satisfactory quality**

It does seem reasonable to say that the car was faulty when it was supplied to Mr V. This is because it was leaking coolant very soon after he acquired it (within the first month) and a repair was made to the thermostat and the water pump housing. I agree that because the car needed to be repaired so soon after Mr V acquired it that it wasn't of satisfactory quality.

The dealership has made a repair to the car and the crux of this complaint is whether this repair has fixed the problem or not. If the fault is still present, then Mr V would have the right under the CRA to finally reject the car as Santander has repaired it once and it is still not of satisfactory quality and so does not conform to the contract.

I can see that shortly after the first repair to the thermostat and water pump housing, the dealership, and an independent repair company looked at the car and found that the coolant issues has been rectified.

But Mr V has continued to say that he was having problems with the car. And he went on to provide a report from another garage which showed the problems with the thermostat and the water pump were still present. And the photographs he has provided also support what he says about the ongoing coolant problems. So, I think it's reasonable to say the car is still faulty.

I can't say for certain why the dealership, and then the independent reporting company, thought the fault had been repaired, even though Mr V was still saying that coolant levels were dropping. It may have been that the repair was substandard and has failed relatively quickly. But in any event, I think that the car still has problems with the coolant system and so Mr V should now have the option to reject it as it has already been repaired once.

Mr V has used the car throughout the term of the agreement so far. But the car has been faulty, and he has needed to take action to not further damage it, such as topping up the coolant frequently. I think it's fair for him to pay for the time he has been able to use the car, but a refund of 15% of his payments for the length of the agreement would be fair to reflect that his usage of the car has been impaired.

As our Investigator outlined Mr V has paid for some repairs and diagnostics related to the issues the car has. I won't detail all of these again, as no party commented on this part of the Investigators recommendations, but the total amount he paid was £161.92. This should also be refunded to him.

And I think this has all caused Mr V some distress and inconvenience. He has had to take the car to various garages multiple times to get the car problems investigated and repaired. I can also imagine it would have been very frustrating and stressful for the problem to keep re-occurring as it did. So, I think the £150 suggested by our Investigator for the distress and inconvenience he experienced is fair.

### **Putting things right**

I uphold this complaint and Santander now should:

- End the agreement with nothing further to pay.

- Collect the car at no further cost to Mr V.
- Refund Mr V's deposit of £2,000.
- Refund 15% of all payments paid under the agreement due to the impaired use Mr V has had of the car.
- Refund Mr V £161.92 that he paid for investigations.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay £150 for the distress and inconvenience caused by the faulty goods.
- Remove any adverse information from Mr V's credit file in relation to the agreement.

If Santander considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons I've explained, I uphold Mr V's complaint.

Santander Consumer (UK) Plc should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 3 January 2025.

Andy Burlinson  
**Ombudsman**