

## **The complaint**

Mr M complains about the quality of a car he got using a conditional sale agreement with Santander Consumer (UK) Plc and how he was treated, when the agreement was ended.

## **What happened**

In November 2021, Mr M took out a conditional sale agreement with Santander to pay a dealer for a used car. The cash price of the car was around £87,500 and it had travelled around 22,000 miles since it was first registered in October 2018.

Over the first four weeks of driving the car, Mr M reported some faults to the dealer. The dealer couldn't replicate the faults, but a repair was made to a USB port. A few weeks later, Mr M says he experienced a problem with the car's differential and paid a third party to make the repairs. Mr M also says the dealer offered to reimburse him for the repair cost, but he has yet to receive any payment.

By May 2022, Mr M noticed a problem with the engine and after trying to sort his concerns out with the dealer, he complained to Santander about the quality of the car. Mr M also complained that the dealer gave him misleading information about the car's service history.

Mr M says he needed the car for everyday use, so took it to a garage accredited by the car's manufacturer. He says he was told the car's engine needed to be rebuilt at a cost of £30,000.

After receiving news of the repairs needed to the car, the dealer wrote to Mr M to say Mr M had driven it for around four months, knowing there was a problem with the engine. Because of that, the dealer said they were denied the chance of inspecting the car and Mr M had likely caused further damage. The dealer offered to help Mr M find a new engine, but didn't accept the car was of unsatisfactory quality. Additionally, the dealer said they didn't mislead Mr M about the car's service history.

To try and resolve the problem, Mr M took the car to a different mechanic to start the repair work. By May 2023, the mechanic had repaired the car and Mr M paid £3,000 towards a total cost of £15,208. However, when the mechanic was road testing the car, it was seized by police because the mechanic didn't use his trade plates and because the car didn't have a valid MOT test certificate. Furthermore, Santander repossessed the car and started the process of selling it at auction.

Mr M subsequently made another complaint to Santander and asked them to return the car.

In their final response to the complaint, Santander said Mr M had breached the terms of the conditional sale agreement, by allowing it to be driven by an uninsured third party. Santander also said that Mr M hadn't shown where the car was of unsatisfactory quality. Mr M didn't accept Santander's response and brought his complaint to us.

One of our investigators looked into Mr M's case and found that Santander had treated him fairly. She said Santander were able to repossess the car, given Mr M had allowed it to be

driven without insurance and a valid MOT test certificate. The investigator also concluded that there wasn't any evidence to show that the car was of unsatisfactory quality at the point of sale.

Mr M didn't agree and said he had shown where the car's engine needed to be rebuilt, within a year of first getting it. He also said he had handed the car to the mechanic for repair in good faith and he wasn't responsible for the mechanic's actions during the road test.

The investigator didn't change her conclusions, so Mr M's case has been passed to me to make a final decision.

I sent Mr M and Santander my provisional decision on this case, on 28 June 2024. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

*Mr M acquired the used under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated agreements.*

#### *The car's service history*

*Section 56 of the Consumer Credit Act 1974 (Section 56) makes finance providers responsible for misrepresentations made by an agent during negotiations. In Mr M's case, Santander is the finance provider and the dealer is credit intermediary or agent.*

*To make a finding of misrepresentation I would need to be satisfied that the dealer made a false statement of fact. I would also need to find that the false statement was the key factor in Mr M deciding to get the car.*

*In Mr M's case, he says the dealer told him the car had a full service history, before he entered into the contract with Santander. In contrast, the dealer has explained that they do not advertise the cars they sell, with service history details.*

*Neither Mr M nor Santander have been able to provide us with the advert for the car. So, I cannot see if the advert was misleading. But, I'm aware that a service history for the particular make of car Mr M acquired, is available online. And I've seen a copy of the service history records. I've also considered that Mr M went ahead with the purchase and at times during his complaint, he has said he'd like the car returned to him.*

*Based on all the evidence, on balance I don't think Mr M was given incorrect information about the car's service history, which induced him into the agreement with Santander. So, I don't think Santander need to take further steps to put things right, in relation to any concerns about misrepresentation.*

#### *The quality of the car*

*Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described. The CRA then sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.*

*The CRA says that goods will be considered of satisfactory quality where they meet the standard a reasonable person would consider satisfactory. This takes into account the description of the goods, the price paid and other relevant circumstances.*

*In a case involving a car, the other relevant circumstances to take into account might include*

*things like the age and mileage at the time of supply, and the car's history. In Mr M's case, the vehicle was a used car that was around three years old, had been driven for 22,000 miles and had a purchase price of around £87,500. I can also see the car received servicing after it had been driven for 12,000 miles and shortly before it was given to Mr M. Neither of these services suggested that Mr M should have been aware of any problems.*

*So, I think it was reasonable for Mr M to have had fair expectations about the car's quality. In other words, although I think a reasonable person would expect to need to replace some minor serviceable parts, I think they could expect the car to be relatively fault free.*

*Mr M says the car was faulty at the point of sale. He says the differential needed repair in December 2021, a few weeks after he acquired it. The invoice provided by Mr M shows that the differential was replaced at a cost of £2,200.*

*Mr M also says that extensive work was needed to the engine in May 2022. To support what he says, Mr M has provided quotes from two different garages for the work needed to rebuild the engine. One of these quotes was from an accredited garage for the specific make of car acquired by Mr M.*

*Indeed, the mechanic who eventually repaired the car has explained that the engine needed to be stripped and rebuilt. He also says the crankshaft, cylinder head and engine block needed to be reconditioned. The mechanic added that the suspension had collapsed and needed repair. These comments mirror the invoice given to Mr M in the initial quote he received from the accredited garage.*

*I think the evidence shows significant repair work was needed firstly to the differential and then to the engine. So, I think the car supplied to Mr M had a fault. If the goods provided by the supplier are not of satisfactory quality, then this is a breach of contract. In this circumstance, Santander's responsibility to Mr M was to consider his claim and decide if the car was of satisfactory quality. If it's found it was not of satisfactory quality, it would be for Santander to then offer Mr M an appropriate remedy.*

*Mr M's records show he wrote to Santander in August 2022 to complain about the quality of the car and where he says he was misinformed about the car's service history. Although the dealer disagreed and said the car was of satisfactory quality, Santander didn't reply. I think this means Mr M wasn't given an opportunity by Santander to have the car inspected and possibly repaired.*

*As neither Santander nor the dealer offered an inspection, I've considered the evidence available to decide if a reasonable person would say the car was of satisfactory quality when it supplied to Mr M.*

*The car was around three years old when Mr M acquired it and from the higher end of the market. I say this in light of the purchase price of around £87,500 and because of the make and model of the car.*

*Additionally, Mr M had possession of the car for around six months and had driven it for around 14,000 miles, before the problem with the engine happened. Although I acknowledge that the mileage driven by Mr M could be considered more than an average user, I still think the car showed a major fault with a critical part of its operation. And I think a reasonable person would say this happened sooner than can be expected given all the car's circumstances.*

*The dealer says Mr M made the fault with the engine worse, by continuing to drive it from May until October 2022. Mr M says the car stopped working in May 2022. He says he stored*

*the car until his dispute with Santander had been resolved and bought an alternative vehicle. I can also see from Santander's notes that Mr M asked for a settlement amount in May 2022 and tried to cancel his payments under the agreement. And shortly after this time, Mr M had raised his concerns with the dealer.*

*Having carefully thought about everything, on balance, I'm persuaded Mr M stopped using the car in May 2022, when he says the engine stopped working. So, I don't think Mr M worsened the fault, as the dealer had suggested.*

*In all the circumstances, I don't think a reasonable person would have found the car to be of satisfactory quality. So, I think Santander have breached the contract they had with Mr M. Taking into consideration Santander's obligations under the CRA, I think this means Mr M is due a remedy from Santander.*

*I've found that Santander nor the dealer offered to inspect or repair the car. So, I think it was reasonable for Mr M to have gone ahead with one of the quotes he was given to repair the car's engine. In light of my findings about the car being of unsatisfactory quality at the point of sale, I think it was fair and reasonable, for Mr M to have asked Santander to pay for those repairs.*

*However, Mr M's case was further complicated because of the actions of the repairing mechanic and where the police seized the car. So, I've considered that further to help decide what a fair settlement would be.*

#### *Seizure and repossession*

*Santander say Mr M breached the terms of his conditional sale agreement by allowing an uninsured third party to drive the car and by not having a valid MOT certificate. They say it follows that they could terminate Mr M's agreement and repossess the car.*

*Mr M chose to take the car to the repairing mechanic in October 2022. I've looked at the information available and I think it was reasonable for Mr M to assume he would receive an appropriate level of professionalism from the repairing mechanic. I've also considered that Mr M could not renew his insurance policy for the car, until it had passed an MOT test. Additionally, I'm persuaded that it was for the repairing mechanic to have used his trade licence plates, when testing the car for its MOT certificate.*

*I accept the police were correct to have stopped the repairing mechanic on the test drive. But, I think it was reasonable for Santander to have paused at this point to consider if Mr M had acted in a way to have jeopardised his agreement with them.*

*Having thought about all the evidence, I think Mr M's actions were reasonable, given he wanted to repair the car and needed that done, before the repairing mechanic could perform an MOT test. I also think it was for the repairing mechanic to have made sure everything was in order, before he completed a road test.*

*Overall, I think Santander had an opportunity to engage with Mr M and reach a different outcome with the repossession. So, I think it was unfair for Santander to terminate the agreement and repossess the car, after Mr M had arranged and part paid for the repairs needed to the engine.*

#### *Summary*

*I've found Mr M wasn't given incorrect information about service history of the car by the dealer. However, I've also found that a reasonable person wouldn't say the car was of*

satisfactory quality when it was supplied to Mr M. And I've concluded that Santander didn't treat Mr M fairly, when they chose to terminate the conditional sale agreement and repossess the car.

It has now been nearly a year since Santander ended Mr M's conditional sale agreement. Throughout this time, Santander has stored the car, with the intention of selling it at auction. In view of everything that has happened, I don't think it would be fair to now hand the car back to Mr M and expect him to continue with the repayments. Given my conclusions about the quality of the car, I think Santander should now allow Mr M to reject the car and exit the conditional sale agreement with nothing further to pay.

I can see from what Mr M says and Santander's records that Mr M had use of the car from November 2021 until May 2022. So, I think it's fair for Mr M to pay for the use he's had. Having thought carefully about this, I think it's fair for Santander to keep the repayments Mr M made under the conditional sale agreement from November 2021 to May 2022.

But, I've concluded that Mr M hasn't had use of the car since May 2022, when the fault prevented him from driving it and where it was later seized by the police in 2023. So, I think it's fair for Santander to refund all the repayments made by Mr M from June 2022 onwards.

I've concluded it was reasonable for Mr M to have asked Santander to pay him for the cost of the repairs. I've seen an invoice from the garage that repaired the differential on 1 December 2021. I'm persuaded that Mr M settled this invoice and I think it's fair for Santander to pay Mr M £2,200 to cover the cost of this repair.

I've seen from evidence provided by Mr M that the total cost for the repairs to the engine were £15,208. This cost was less than the repair quote provided by the accredited garage. So, I think Mr M has tried to get the most appropriate value he could, when he arranged those repairs.

Mr M has provided a copy of his bank statement to show he has paid the repairing mechanic £3,000. And I've seen evidence from the repairing mechanic to show where he owes a further £12,208. So, I think it's fair for Santander to pay Mr M for the cost he's incurred to repair the car's engine.

Mr M hasn't had use of the funds used to meet the repayments from June 2022 onwards. Likewise can be said for the £2,200 payment for the repair to the differential on 1 December 2021, or the £3,000 he paid to the repairing mechanic on 10 May 2023. So, I think it's fair that Santander adds interest at a rate of 8% a year simple to these amounts. I think Santander should calculate the interest to be added from the date the payments were made, to the date of settlement of this complaint.

Throughout his complaint, Mr M has told us that he's maintained the repayments made under the conditional sale agreement. But, if any adverse information has been recorded by Santander about Mr M's agreement, I don't think it would be fair for Mr M to experience the consequences of that. So, I think Santander should remove any adverse information about the conditional sale agreement from the records held about Mr M with credit reference agencies.

Finally, I can see where Mr M has been able to get a different car for his everyday use which has reduced the amount of trouble he has experienced. But, I think Santander has caused Mr M a level of distress and inconvenience, when the car was repossessed.

So, I think it's fair for Santander to make a payment to Mr M to reflect that. In all the circumstances, I think it's fair for Santander to pay £250 to Mr M, for the distress and

*inconvenience he has experienced.*

Mr M responded to the provisional decision and accepted it. Santander responded to the provisional decision and had nothing further to add.

### **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.

As Mr M accepted my findings and Santander didn't make any further comments, I see no reason to depart from the conclusions I reached in my provisional decision.

### **Putting things right**

For these reasons, Santander Consumer (UK) Plc should:

1. Allow Mr M to exit the conditional sale agreement with nothing further to pay;
2. Remove any adverse information about the conditional sale agreement from the records held about Mr M with credit reference agencies;
3. Refund the repayments Mr M has made under the conditional sale agreement, from June 2022 to the date of settlement of this complaint;
4. Pay Mr M £2,200 for the repair cost to the differential;
5. Pay Mr M £3,000 for the part payment he made for the cost of the engine repair;
6. Pay Mr M £12,208 for the remaining cost of the engine repair carried out by the repairing mechanic;
7. Add interest at a rate of 8% a year simple to parts three, four and five of this settlement, from the dates they were paid, to the date of settlement of this complaint; and
8. Pay Mr M £250 for the distress and inconvenience caused.

Santander must pay these amounts within 28 days of the date on which we tell them Mr M accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Santander deducts tax from any interest they pay to Mr M, they should provide Mr M with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and require Santander Consumer (UK) Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 August 2024.

Sam Wedderburn  
**Ombudsman**