

## **The complaint**

Mr M is unhappy with how Santander UK Plc (“Santander”) handled a quality of service claim he made to them

## **What happened**

Mr M took his car to a garage I shall call “S” on 30 May 2023 for a diagnostic check after it suffered from oil leakage as well as smoke emitting from its exhaust.

S offered to repair the car at a cost of £1,200 along with a one-year warranty which Mr M accepted. It was subsequently collected by Mr M on 2 June 2023 and he was assured by S that any smoke still visible from the exhaust would clear soon after.

Unfortunately the issues with the oil leakage and smoke emissions persisted over the following weeks. Mr M’s subsequent visits to S resulted in the car oil levels being topped up but no further repairs. Mr M was advised to keep adding oil as needed and on his last visit to the garage in July 2023 was provided a further five litres of oil to address the issue.

Mr M was dissatisfied with how S had dealt with the persisting issues with his car and took it to another garage which I shall call ‘L’. They diagnosed the issues and said the car needed to have its remaining oil drained and replaced as well as repairs made to its gasket and rocker cover. Mr M paid a further £850 to have the matter addressed – he subsequently collected the car on 28 July 2023 and there were no further issues.

Mr M then contacted Santander in August 2023 who considered whether a Consumer Credit Act 1974 (“CCA”) section 75 claim (“S75”) against them should be upheld.

Santander then responded to Mr M in October 2023 regarding the outcome of the claim. They felt that this couldn’t be progressed unless Mr M was able to provide an independent inspection report showing the repair conducted by S wasn’t to the standard expected.

Mr M said that he was unable to drive the car in July 2023 after S continued to fail to address the issues and so had to take it to L for remedial work. Santander appreciated Mr M’s position but still felt they had insufficient evidence to show the original repair wasn’t to the standard expected. Santander said that they also couldn’t consider the remedial work invoiced by L as evidence that the earlier work by S was of an unreasonable quality.

M didn’t agree and therefore the complaint was referred to our service in December 2023.

Our investigator looked at the complaint and addressed the fact that Mr M was entitled to both a chargeback claim against S as well as a S75 claim for the breach of contract with regard to the quality of services provided.

In terms of the chargeback claim, he noted that Santander had chosen not to raise this but he didn’t consider this unreasonable due to the lack of an independent inspection report.

While he sympathised with Mr M's situation, he agreed that Santander was still entitled to an independent inspection report regarding the initial repairs by S to determine if they had been below the standards expected.

Mr M didn't agree with the investigator's outcome and so the case was referred to me for review and decision.

Earlier this month I issued a provisional decision. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Santander aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr M paid for the initial repairs using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

#### *Chargeback*

There is no requirement for Santander to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether Santander acted fairly.

I note that Mr M's chargeback claim would fall under 'goods/services not as described'. While Santander chose not to raise a chargeback claim, I've considered whether this is fair and also what would've likely happened had it chosen to do so.

Mr M made a number of visits to S so that they could address the oil leak. His subsequent decision to visit L and pay further repair costs suggests the matter remained unaddressed and so the prior repairs were unsuccessful. While Santander accepted these circumstances in its Final Response Letter to Mr M, they said they needed an independent inspection report to show the car remained faulty following the initial work by S.

While Santander chose not to raise a chargeback, I'm not persuaded this was appropriate here. When considering the merits of a chargeback complaint, it isn't mandatory for an independent inspection report to be provided if the circumstantial evidence clearly shows the services weren't as described.

Mr M took his car in for repairs for an oil leak and it'd be reasonable to expect the issue to be addressed for the service to be considered 'as described'. Mr M provided evidence of his correspondence with S showing the issue hadn't been resolved as well as photographs of his car oil indicator where it showed the levels to be low.

He then subsequently took the car to L and paid for further repairs which were then successful. This does suggest the previous repairs had likely failed.

I don't agree that an independent inspection report would be necessary in the face of such substantial evidence. I also note that L provided email confirmation to Mr M on 6 January 2024 where they felt the oil leak hadn't been repaired appropriately by S nor had new parts been used. Santander has questioned this evidence saying that L didn't belong to an appropriate Motor Scheme and in addition as they'd completed the subsequent repairs, they weren't in a position to provide an independent report.

However I don't think these objections are reasonable when considering this statement does marry with the other evidence submitted by Mr M. Santander hasn't disputed Mr M's experiences with S nor the fact that the car's issues were addressed following L's repairs

It's clear the oil leak persisted following the service provided by S, and in addition the fact bottles of oil were provided by S to continue topping this up, likely to address the continuing leak, further confirms this. This would've meant the repair service provided by S were unsuccessful. I therefore consider Mr M is likely to have had a successful chargeback claim, had this been raised by Santander.

While I appreciate that S may have disputed the chargeback claim, this is one that would've been best suited for further arbitration, and where the evidence should've shown that Mr M was entitled to a full refund of the repair costs incurred with S.

I therefore don't think Santander has handled Mr M's chargeback claim fairly and should refund the sum of £1,200 for the unsuccessful repairs by S. I also think an additional £150 compensation would be fair for Santander failing to raise the chargeback claim when Mr M bought the matter with them.

### *Section 75*

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to assess a valid claim, Santander would've needed to consider all relevant evidence with regard to the alleged breach of contract. However in this case I don't think a S75 claim would've been necessary as a chargeback claim should've succeeded. Therefore I won't be commenting on this further.

Santander responded to my provisional findings to say they had nothing further to add.

Mr M responded to my provisional findings to say he disagreed with the compensation awarded for the distress and inconvenience suffered. He says the £150 awarded is not enough for the impact this had on him. He says £1,200 would be more appropriate (at £100 a month for each month he's been waiting for a resolution).

### **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.

While I appreciate Mr M's comments with regard to the amount of time taken for this matter to be resolved, it wouldn't be appropriate to consider the time the complaint was at this service. I see the complaint was referred to us in December 2023 as the matter had not been resolved satisfactorily by Santander.

Mr M contacted Santander in August 2023 to raise a claim for the service provided by S. It's at this time that I would've expected them to raise a chargeback claim, and in terms of the S75 claim, an outcome was provided in October 2023 where they said they couldn't proceed without an independent inspection report. Therefore I can't see that Santander unreasonably delayed the claim itself. As the matter wasn't subsequently resolved, it was referred to this service at the end of the year.

With this in mind, I think the decision to refund the £1,200 repair costs is appropriate and has been welcomed by Mr M. In terms of the compensation for the distress and inconvenience suffered, I don't think the claim process was unreasonably delayed by Santander but there should be compensation for the fact a chargeback wasn't attempted at all. An award of £150 would be appropriate here and is in line with what we'd award in circumstances such as this.

### **My final decision**

For the reasons above I uphold the complaint. Santander UK Plc must:

- Refund £1,200 to Mr M for unsatisfactory repairs conducted by S.
- Pay an additional £150 for the distress and inconvenience this matter has caused him.

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.

Viral Patel  
**Ombudsman**