

The complaint

Mr P complains about the quality of a new motorbike he acquired through a conditional sale agreement with Santander Consumer (UK) Plc ('Santander'). Mr P says that the bike wasn't of satisfactory quality as he has had problems with it since he acquired it.

What happened

Mr P's complaint is about the quality of a new motorbike he acquired. He acquired the vehicle using a conditional sale agreement that was started in June 2023. The vehicle had a retail price of £3,849 and Mr P financed all of this. This agreement was to be repaid with 37 monthly instalments of £91.57, and then a final instalment of £1,413.13. If Mr P made all the repayments in line with the credit agreement, he would need to repay a total of £4,709.65.

Below is a summary of the issues complained about by Mr P and the investigation and repair work that has been carried out by the dealership, alongside with what has happened in respect of the complaint.

Mr P has said that a sensor on the stand is defective, and this was causing the engine to 'cut out'. I understand this sensor is designed to stop the engine when the stand is down. He has also said that the bike display, indicators and lights do not always work properly, and the bike has had an engine problem. Mr P, and the dealership, have provided a timeline and comments about the bike issues which I've summarised below.

- In August 2023, the isolator switch on the stand was repaired and the LCD screen (the speedometer), which was freezing or turning off, was looked at. I understand a courtesy car was provided at this time.
- In September 2023, Mr P said there was an intermittent indicator fault. A repair was carried out, but Mr P says this didn't resolve the indicator problems.
- In November 2023, the isolator switch was looked at again. Mr P says this didn't resolve the issues with the engine cutting out, and the indicator and LCD / speedometer issues were still present.
- In December 2023, Mr P said oil was pooling in the air intake, the bike was returned for a new piston and piston rings. Mr P said the headlamp dipped beam was only working occasionally.
- Mr P has said by January 2024 the problems still largely present. There was oil in the air intake, the isolator switch was still cutting the engine out, the LCD screen was still freezing and the indicators were not lighting up fully.
- In April 2024 the bike was looked at again in respect of the isolator switch and the LCD screen issue. Mr P said he stopped using the bike at this point as he felt it was unsafe.

Mr P has provided some photographs that he says show that some of the LEDs in the lights aren't illuminating. The isolator switch has been disconnected and the LCD screen is still not working properly.

Santander, and the dealership, agree that that bike has been repaired several times since purchase. They have said:

- The speedometer and LCD display were turning off, it thinks this has now been repaired.
- The stand isolate switch has been looked at three times, it has been repaired under warranty and the second and third times it was cleaned. It has now been bypassed.
- A piston replacement, and some other engine work, was completed in December 2023.
- The indicator was staying on permanently and an indicator relay was replaced to remedy this.
- It cannot determine what, or if, there is a problem with the headlights.

However, the dealership thinks that many of these problems are due to Mr P not caring for the bike and not following basic maintenance. It has said that the bike wasn't clean at times when it looked at it, and this may be causing the problems with the stand isolator switch. And it thinks the engine problems were due to Mr P not warming the bike up enough before driving it at speed. The dealership offered to buy back the bike at market rates, but Mr P didn't want to do this.

Mr P complained to Santander about the problems he had experienced with the bike. Santander has considered this complaint, and it didn't uphold it. It said that the vehicle was booked for repair, and this will resolve the issues he was having. It said the complaint had been upheld. Mr P didn't agree with this and brought this complaint to the Financial Ombudsman Service.

After the complaint was brought to the Financial Ombudsman Santander made an offer to pay Mr P £250. Mr P didn't accept this offer.

Our Investigator went on to uphold Mr P's complaint. He said it was accepted the bike hasn't been fault free, and it required repairs. These have been carried out, but Mr P has shown it still has faults. So, he didn't think it was durable and so the complaint should be upheld.

Santander didn't agree with the Investigator. It said that the repairs to the bike have not failed, and the bike is fixed. But some of the issues repaired were due to how Mr P was using the bike, for example the stand was dirty and may have been tampered with. The engine problems may have been due to the bike not being warmed up correctly. The headlight problem has not been found. It thought the distress and inconvenience amount our Investigator recommended was too high.

Because Santander didn't agree, 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.

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 is 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 motorbike, 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 bike'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.

Here, the bike was acquired new. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn vehicle and that it could be used – free from defects – for a considerable period of time.

As I've outlined above, Mr P experienced multiple problems with the bike a very short time after he acquired it. There were problems with a sensor on the stand, with the display and speedometer, an engine problem and various problems with the lights. I don't think it's now disputed that the bike had these problems.

Again, as I've said above, as a new vehicle, it should have been free from minor defects and Mr P should have been able to use it for a long period of time before it needed significant work. But I don't think this has happened here. The bike needed repairs for several issues a very short time after Mr P acquired it. And again, this isn't disputed by Santander or the dealership.

I think these faults make it reasonable to say that the bike wasn't of satisfactory quality.

The dealership has said, and Santander has agreed, that some of the problems may have been due to how Mr P has been looking after, or driving, the bike. But even if I accept that some of the problems may be due to this (and I'm not deciding that this is the case), it doesn't seem credible or reasonable to say that all the faults were caused by Mr P and how he was driving or maintaining the bike. For example, I wouldn't have thought the speedometer and LCD display problems were due to how Mr P maintained them, I don't think he would have been expected to have performed any maintenance on these.

Overall, I don't think all of the problems with the bike Mr P faced were largely due to anything he did or didn't do. I think the bike being of unsatisfactory quality was the cause of the problems Mr P had with it.

I've thought about whether Mr P should now have a right to reject the bike, rather than Santander buying it back as it has suggested. Under the terms of the CRA, where goods do not conform to a contract, as is the case here as the bike was not of satisfactory quality, then the consumer has a final right to reject the goods after one repair, provided it still doesn't conform to the contract.

I think this applies here as the bike has undergone several repairs and, as far as I can see, some of the issues that Mr P has brought to Santander's attention have not been rectified. So, I think Mr P should now be able to reject the bike.

I understand that Mr P stopped using the bike from 30 April 2024 as he felt the issues made it unsafe to ride. I don't think this is unreasonable and Mr P should receive back any repayments he made to Santander after this time.

Mr P was inconvenienced on several occasions by having to take the motorbike back and forth to the garage. I understand he was kept mobile, but ultimately that wasn't the vehicle he was paying for. I can also imagine it would have been very frustrating and stressful for the problems to keep re-occurring as they did. I think the £350 suggested by our Investigator for the distress and inconvenience he experienced is fair.

Putting things right

I uphold this complaint against Santander Consumer (UK) Plc and it should now:

- End the agreement with nothing further to pay.
- Collect the motorbike at no further cost to Mr P.
- Refund the customer all the repayments he made from the period from 30 April 2024.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay £350 for any distress or inconvenience that's been caused.
- Remove any adverse information from Mr P'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 P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr P'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 P to accept or reject my decision before 9 April 2025.

Andy Burlinson
Ombudsman