

## The complaint

Mr J is unhappy with the end of contract charges being applied by Santander Consumer (UK) Plc trading as Santander Consumer Finance, after they had supplied him with a car under a conditional sale agreement.

## What happened

In March 2020, Mr J was supplied with a used car through a conditional sale agreement with Santander. He paid an advance payment of £250, and the agreement was for £12,242 over 60 months; with monthly payments of £262.47.

In July 2023, Mr J contacted Santander to terminate the agreement. At this point he'd paid 39 payments which, with the advance payment, totalled £10,486.33. So, Santander agreed to a voluntary termination and arranged to collect the car.

The car was a non-runner and had damage that fell outside of normal fair wear and tear. Due to this, it was sold at auction as a non-runner. In October 2023, Santander advised Mr J that the car had sold for less than expected at auction and he was liable for £2,623 costs.

Mr J complained to Santander about these costs, but they thought they'd acted in line with the terms of the agreement he'd signed. So, Mr J brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Mr J was responsible for the cost of the car being recovered, as well as the costs of both repairing the mechanical faults with the car and the damage that fell outside of normal fair wear and tear. So, they didn't think Santander had acted unfairly by charging Mr J £2,623.

Mr J didn't agree with the investigator's opinion. He said that Santander never referred to the terms of the agreement, nor did they tell him the implications of the car being a non-runner. Instead, they advised him *"I'd be liable for the repairs to get the car running for auction."* However, Santander didn't repair the car and sold it as a non-runner.

I issued a provisional decision on 17 September 2024, where I explained my intention to uphold the complaint. In that decision I said:

*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 J 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.*

*I've seen a copy of the agreement Mr J signed on 1 March 2020. In signing this he agreed to the terms of the agreement, which included:*

**TERMINATION: YOUR RIGHTS**

*You have the right to end this agreement. To do so, you should write to the person you make your payments to. They will be entitled to the return of the goods and to half the total amount payable under this agreement, that is £7,999.10. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more ...*

*4.1 You will be responsible for any loss or damage to or deterioration of the goods except through wear and tear. You will keep them in good condition and regularly serviced. You will carry out any repairs and replace parts where necessary.*

*8.1 You can terminate this agreement as described in the notice headed 'Termination: Your Rights' ... you must return the goods to us at your own expense in good repair and condition (other than fair wear and tear) ...*

*8.2 If you require us to collect the goods from you we may make a charge not exceeding the amount shown in clause 9.5.3 below as a contribution to our collection costs. If you fail to take reasonable care of the goods you will have to pay our costs of repairing and/or refurbishing the goods.*

*9.5.3 £70.00 for goods collection on voluntary termination pursuant to clause 8.2 above.*

*Based on this, I'm satisfied that Santander made Mr J reasonably aware of his rights on termination, and that he would have to pay for any damage to the car that fell outside of fair wear and tear guidelines. These guidelines are laid down by the British Vehicle Rental and Leasing Association ('BVRLA') and confirm that "vehicles should be returned in a safe, legal and reliable mechanical condition, capable of passing an MOT test."*

*As I've said above, at the time he asked Santander about terminating the agreement, Mr J had paid Santander in excess of £10,000, and there were no outstanding payments. So, he was entitled to reject the car in line with the terms quoted above. This would mean that Mr J would be liable for the costs of any damage that fell outside of normal fair wear and tear, which would include the costs involved in putting the car into a state where it was possible for it to pass an MOT test.*

*I've seen that, after the car was collected, it was inspected for damage that fell outside of the BVRLA guidelines. In their opinion, the investigator detailed all of the damage that fell outside of these guidelines and explained why this was so. I've noted that Mr J hasn't disputed any of this damage was present when the car was returned, so I won't detail the extent of the damage to the car here. However, there was extensive damage to the car, and the inspector said this would cost £1,671.70 to repair.*

*I've also seen evidence that Santander had the car inspected to see what was required to fix the mechanical faults i.e., what work was needed to make it capable of passing an MOT test. This confirmed an issue with the brake vacuum pump, likely caused by deterioration of the timing belt. The cost of repairing this was £880.44 parts and labour (including VAT). I've noted that, in their opinion, the investigator incorrectly referred to these costs as being £643.70 – this is the costs of the parts only, excluding VAT.*

*Finally, in line with the terms of the agreement, Santander are able to charge Mr J £70 for the collection of the car. This was also confirmed in the termination letter of 11 July 2023.*

*As such, the total cost to collect and repair the car was £2,622.14.*

*In his complaint, Mr J has continually raised the issue that Santander told him he was liable for the cost of repair prior to auction, and that he would have to pay for the car to be fixed before it was sold. As I've stated above, these costs are £2,622.14. While Santander chose to sell the car at auction unrepaid, this doesn't alter the costs Mr J is liable to pay as Santander are only charging for the repair costs, and not the costs between the outstanding balance at termination and the sale price of the car at auction – it was Santander's choice to send the car to auction unrepaid and to therefore stand any loss of value by doing so.*

*It's also the case that, before collecting and inspecting the car, Santander wouldn't have known what the costs of repair were, so they wouldn't have been able to provide Mr J with this figure before he agreed to reject the car.*

*As such, given the above, I'm satisfied that Santander have acted reasonably in dealing with the rejection how they did, and in charging Mr J for the cost of collecting and repairing the car – charges they were entitled to apply in line with the agreement.*

*However, as I've said, Santander are only entitled to charge Mr J £2,622.14, and they charged him £2,623. While they have simply rounded the amount up to the nearest £1, this is still an overcharge that Santander should not be applying. As such, Santander should amend the amount to correct this overcharging.*

*So, I intend to ask Santander to:*

- amend the outstanding balance to £2,622.14 to reflect the amount they are entitled to charge for the collection and repairs to the car, and provide Mr J with a correct invoice.*

*If Mr J has paid the amount originally charged, then Santander should:*

- refund any surplus balance to Mr J; and*
- apply 8% simple yearly interest on the refund, calculated from the date Mr J made the overpayment to the date of the refund<sup>†</sup>.*

*However, if any outstanding balance remains, then Santander should:*

- if applicable, recover any debt back from any third-party to whom it may've been sold to OR liaise with the debt owner to ensure that all steps are undertaken; and*
- if Mr J is unable to make the payment as a single lump sum, arrange an affordable repayment plan while taking into consideration the FCA requirements to treat any customers in financial difficulties with forbearance and due consideration.*

*<sup>†</sup>If HM Revenue & Customs requires Santander to take off tax from this interest, Santander must give Mr J a certificate showing how much tax they've taken off if he asks for one.*

## **Responses**

Mr J didn't agree with my provisional decision. He said that Santander continually gave him incorrect information over the phone, providing him with neither advice nor transparency. He said that Santander misled him and failed to send him copy documents when requested.

Mr J doesn't think my provisional decision was impartial as it relied on the terms and conditions he agreed to, rather than the information Santander provided over the phone.

Santander didn't respond to my provisional 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.

As Santander haven't said anything to the contrary, I'm taking their lack of comments to mean they don't object to my provisional decision.

I want to make it clear that the Financial Ombudsman Service is an independent complaint handling organisation. We represent neither the financial business nor consumers, but instead consider each complaint on its own merits and its own individual circumstances.

I would like to reassure Mr J that, when making my decision, I've taken into consideration all the evidence provided, including the phone calls (which I have listened to). As I stated in my provisional decision, I'm satisfied the terms and conditions allow Santander to charge Mr J for the collection and repair costs of the car – in this instance £2,622.14.

In a call on 18 July 2023, Mr J called Santander about the termination of the agreement and the cancellation of the direct debit. Mr J also discussed the direct debit and collection of the normal monthly payment with Santander in calls on 1 and 11 August 2023. During these calls there was no discussion about how much Mr J may be liable for on termination

Mr J called Santander about an arrears notice letter on 8 September 2023, and Santander confirmed this could be disregarded – the agreement remained live while the termination was being processed, with no payments being due. However, these letters were automatically sent by the system, and Santander couldn't stop these.

In this call, Santander also advised Mr J that the car was being evaluated for any damages and/or repairs that were needed (given the car was returned as a non-runner). They explained that, while Mr J would be liable for any repair and refurbishment costs (which Santander said would be around £900 for the repair costs alone), he wouldn't be liable for any shortfall between the sale price of the car and the amount outstanding on the agreement at the point of termination. .

I've noted that, during this call, Mr J explained to Santander that, although he was making payments for the car, prior to its collection it wasn't in his possession for around two years, he wasn't using the car, nor had he ever been insured to drive it – someone else was. This situation was highly likely a breach of the agreement Mr J signed with Santander, as he was required to keep the car in his possession, insure it, and be its main user. However, I've not seen anything to show me that Santander ever acted upon this breach.

On 15 September 2023, Santander advised Mr J that they were still awaiting the refurbishment report, and the car hadn't been sold yet.

In a call on 26 September 2023, Santander advised Mr J that the car had been sold, and the sale proceeds had been received. They explained to him that he was liable for the refurbishment fees as well as the repair fees of around £900. Santander advised Mr J that all costs would be reviewed and confirmed to him in writing.

Mr J called Santander to chase for the final bill on 9 October 2023. In this call, Mr J said that he'd already been advised how much he had to pay, but I can't see when this was the case – he had been advised of the repair costs on at least two occasions, but he'd never been advised of the refurbishment costs for the heavy bodywork damage he'd also been told about on at least two occasions.

It seems Mr J was advised of the full costs at some point between 9 and 16 October 2023, as he called Santander on 16 October 2023 to challenge these costs and raise a complaint.

As such, I'm not satisfied that Mr J was misadvised by Santander about the termination process and his liability during any of the calls. So, Mr J's comments don't change my view and I see no compelling reason why I shouldn't now adopt my provisional view as my final decision. As such, Santander need to do something to put things right.

### **Putting things right**

For the reasons stated in my provisional decision and above, Santander should:

- amend the outstanding balance to £2,622.14 to reflect the amount they are entitled to charge for the collection and repairs to the car, and provide Mr J with a correct invoice.

If Mr J has paid the amount originally charged, then Santander should:

- refund any surplus balance to Mr J; and
- apply 8% simple yearly interest on the refund, calculated from the date Mr J made the overpayment to the date of the refund<sup>†</sup>.

However, if any outstanding balance remains, then Santander should:

- if applicable, recover any debt back from any third-party to whom it may've been sold to OR liaise with the debt owner to ensure that all steps are undertaken; and
- if Mr J is unable to make the payment as a single lump sum, arrange an affordable repayment plan while taking into consideration the FCA requirements to treat any customers in financial difficulties with forbearance and due consideration.

<sup>†</sup>If HM Revenue & Customs requires Santander to take off tax from this interest, Santander must give Mr J 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 J'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 J to accept or reject my decision before 5 November 2024.

Andrew Burford  
**Ombudsman**