

The complaint

Mr H complains about a new car he acquired through a conditional sale agreement with Santander Consumer (UK) Plc ('Santander'). Mr H says that Santander is not being fair in how it has handled the rejection of the car due to some faults it had. He thinks the compensation that he has been offered for the faulty car should be far higher.

What happened

Mr H's complaint concerns two cars he acquired in 2023. Mr H acquired the cars using a conditional sale agreement that was started in January 2023. The first vehicle Mr H acquired had a retail price of £98,000. Mr H paid a £50,000 deposit meaning £48,000 was financed. This agreement was to be repaid through 36 monthly instalments of £1,543.24.

The first vehicle Mr H acquired was involved in an accident and was 'written off' by his insurers. Mr H's insurers then used a third party network to source a new car for him. A similar car was found for Mr H in July 2023. I've seen a copy of the vehicle replacement information which shows that the new car had a retail price of £129,040.45.

I've seen an email dated 29 June 2023 which is part of the ongoing correspondence about the replacement car in which Mr H says that *'I received an order form for the new car. Happy to sign that and do the money transfer, can you just confirm first that [insurance company] and the finance company have green lighted everything.'*

Mr H paid further amounts to the car supplier for some alterations in the specification of the new car. Santander agreed to supply the new car without changing Mr H's finance agreement and Mr H acquired the second car.

In July 2023, this car developed a fault, and a repair was undertaken to it. As soon as Mr H received the car back it developed a fault again. As Mr H had owned this car for under six months he told Santander that he wanted to reject it and he made a complaint about the quality of the car.

I understand that Mr H has returned the car to a dealership and Santander now has possession of it. It has been repaired.

Santander considered this complaint, and it has upheld it. It said in its final response that Mr H should be allowed to reject the car and unwind the finance agreement. It has offered to:

- Return Mr H's initial deposit of £50,000 plus interest at the rate of 8% simple and less a fair usage charge of £1,135.80.
- Return the instalments that Mr H has paid, plus interest of 8% simple which was £22,356.44.
- This made a total refund of £71,528.65.
- It offered to pay £250 for any distress and inconvenience Mr H has suffered.
- In later correspondence it says that it will amend Mr H's credit file to its pre-contractual state

Mr H doesn't agree with this, and he has continued to complain to Santander. He has complained about how the rejection of the second car has been undertaken and he thinks this has financially disadvantaged him. In summary he, and his legal representatives, have made a complaint on the basis that:

- When the first vehicle was replaced the finance agreement should have ended.
- And when he rejected the second vehicle, he lost the opportunity to own the higher priced vehicle.
- Mr H thinks he should receive the amounts due under the unwinding of the finance plus the difference in the retail price of the two vehicles.

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

Our Investigator didn't uphold Mr H's complaint. He said that refunding the amounts Mr H had paid to the finance agreement, plus his deposit, was correct as this put him back in the position he would have been in had he not taken the finance. He shouldn't be refunded any further amounts due to the higher price of the second car as this value isn't connected to the amounts that he has gained or lost due to the finance agreement.

Mr H didn't agree with the Investigator. He said that it wasn't fair that Santander had benefitted from owning a higher value car. He also said that:

- He did pay further amounts for the new car. He paid about £7,000 to the vehicle replacement network.
- He had potentially lost over £30,000 due to the rejection of the higher valued car. Santander will receive this money through the various car transactions.
- It should have been pointed out that he was financially at risk due to the transaction that took place between his insurer the supplier of the new car and Santander.

There was some further correspondence between our Investigator, Mr H and his legal representative. I don't think any material new issues were raised in this correspondence.

I have noted our Investigator has said that Mr H should contact the vehicle replacement company in respect of any amounts that he paid to it. And she has explained, in some detail, how Mr H's contract with Santander operated and how allowing Mr H to reject the car was an appropriate remedy under the Consumer Rights Act 2015 ('CRA'). And that any change in value of the car was something to be resolved between Santander, Mr H's insurers and the business that supplied the car.

I have read all of this but ultimately the position did not change in that Mr H thinks he should receive further compensation as above. And Santander are unwilling to pay more than the offer it made to unwind the contract. Santander has confirmed that the offer it has made is still available.

And as the finance is still in place Mr H was due to make repayments to it and he hasn't done this. I've been provided with the default notices that have been sent to Mr H because of this.

As no agreement has been reached, the complaint was 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 was good industry practice at the relevant time.

I think it's worth saying that my consideration of the complaint is solely against Santander in its capacity as finance provider. This is the regulated activity that Santander has undertaken here. Mr H's complaint concerns several third parties such as the dealership, his insurance company and the network that arranged the supply of the second vehicle. Whilst outlining some of the actions these third parties have been involved in is useful for information purposes they don't form part of Mr H's complaint against Santander.

I can see there has been some detailed discussions in this complaint about the CRA and how Mr H's situation fits into this. I won't reproduce, or detail, all of these here as I think the outcome of this complaint rests on two key issues that are best considered by looking at whether Santander has acted in a 'fair and reasonable' way. These are should Santander have ended the finance agreement, and started another one, when the second car was sourced for Mr H. And should Mr H receive compensation due to the difference in the two car prices.

This means that I won't respond in detail to all the issues raised or refer to all the evidence and points made. I have considered everything provided, but I don't need to outline it all to reach what I think is a fair outcome here.

When Mr H's first car was written off it was agreed that he would acquire a new car under the existing finance agreement. Contracts can be amended by mutual agreement, and this seems to be what happened here. The first car on the conditional sale agreement was replaced by the second one. And I've seen the correspondence where Mr H was informed about this and agreed to it. As he has said he thought that the second car was an 'upgrade' and so there was no disadvantage in him doing this. So, I don't think the existing finance agreement needed to be cancelled and a new one started.

The crux of Mr H's complaint is that he believes he should benefit as the second car had a higher sale price. He thinks that Santander has gained financially in this transaction, and he doesn't think this is fair. Mr H has essentially said that he has lost out as he has lost the opportunity to settle the finance and take ownership of the higher priced car. I don't think this is reasonable and doesn't reflect what happened here. I haven't seen any indication that Mr H intended, or was able to, repay the finance early and take ownership of the car. And realise the higher value of this car.

And even if Mr H was able to take ownership of the car earlier it wouldn't be reasonable to say that he would receive the invoice price of the second car when it was sourced and transferred to Santander.

This is illustrated again by what happened here. I'm not suggesting that Mr H takes ownership of the second car again (although I understand that option remains open to him at this point). But it is this second car, and the current value of it, that he would be ultimately entitled to when the finance is ended. It isn't reasonable to value the car using a retail value in the past as this is not what Mr H would receive if he were to take ownership of the car in the future and then sell it.

I think it's extremely unlikely that the car is worth anywhere close to what Santander paid for it now given its history. The car would be second hand as soon as Mr H started to use it and would have started to depreciate straight away. This is often very significant at this early point in the life of a car. Added to this the car was faulty. It is this risk of depreciation and faults that Santander is subject to, rather than Mr H, within the finance arrangement.

Mr H entered into a finance agreement to acquire the car, and so Santander are the owners of the car until the finance is repaid and Mr H agrees to own the car. Mr H didn't ever own the second car and so any loss Mr H may have incurred stems from the fact that he acquired and paid towards a car that was faulty. His loss is the deposit and repayments that he has made to Santander only. And no more than this. I don't think there is any basis for the claim Mr H has made to the increased value of the second car either in law or on a 'fair and reasonable' basis.

Santander has agreed to refund the payments Mr H paid, plus the deposit and less an amount for fair usage of the car. It has added interest to these amounts, and it has also agreed to pay Mr H £250 for any distress and inconvenience this has caused him. I think all of this is reasonable and my decision is that Santander should repay these amounts.

Mr H hasn't paid all the amounts under the finance. And Santander has issued default notices for this. It has agreed to remove any adverse information from his credit file. I also think this is reasonable. And I agree that Mr H should contact the supplier of the car in respect of any amounts he paid to it. These shouldn't form part of the compensation Santander should pay to him.

My final decision

Santander Consumer (UK) Plc has already made an offer to unwind the finance and pay £250 to settle the complaint, as it outlined in its final response dated 24 April 2024. So, my decision is that Santander Consumer (UK) Plc should update and pay this offer, if Mr H decides to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 April 2025.

Andy Burlinson
Ombudsman