

## **The complaint**

Mr B complains about a car supplied under a conditional sale agreement, provided by Santander Consumer (UK) Plc.

## **What happened**

Around June 2020 Mr B acquired a used car under a conditional sale agreement with Santander. The car is listed with a cash price of £34,453.09 on the agreement and was around two and a half years old. Mr B paid no deposit and was due to make repayments of £525.24 a month for 48 months, followed by a balloon payment of £17,437.75 if he wished to keep the car.

Unfortunately, Mr B says the car had been in a collision in 2018 but the insurer had added the 'category S' ('cat S') marker to the wrong car. He says this was updated in 2021 when he already had the car, meaning it dropped in value. He also said he'd been made aware of around a 10,000-mile discrepancy between what was recorded by the gearbox of the car and the other systems, which he thought meant the car was 'clocked'.

Mr B complained to Santander in June 2024. It issued a final response to the complaint on 12 July 2024. This said, in summary, that originally a cat S marker was put onto a car of a different make and model in October 2018. It was then amended to Mr B's car in August 2021. Santander said as this happened when Mr B had the car, the selling agent wasn't responsible. It also said over 50,000 miles had been covered in the car before the issue was raised. Santander said it was up to Mr B to carry out his own research before purchasing a car.

Santander also acknowledged the complaint about the mileage discrepancy but didn't comment on this.

Mr B remained unhappy and raised the complaint to our service.

Our investigator issued a view. She said, in summary, that there was no way Santander, nor the dealer, could've known the car should've been recorded as a cat S and so it wasn't reasonable to hold Santander responsible for this.

Mr B responded and was unhappy with this outcome. He also explained he had complained about the mileage but hadn't had a response from Santander or ourselves.

Our investigator asked Santander for its comments on this. It said it and the dealer would've been unaware the mileage recorded by the gearbox and the mileage on the odometer differed. And it said given it didn't know what was repaired or replaced following the collision, it couldn't give valid reasons for what happened. Santander also explained that it was an insurer that had recorded incorrect information about the cat S, not itself or the dealer.

Mr B then sent in some information about the mileage including MOT history, invoices, and service records. Part of this showed a garage commenting that the mileage recorded by the gearbox differed from the odometer.

Our investigator issued another view and explained she didn't think she'd seen evidence that the car had been 'clocked'. And she said the issue hadn't been noted until several years after Mr B got the car. She said she thought another garage would've spotted this if the issue was present earlier.

Mr B disagreed. He said the mileage issue wouldn't have been noticed as no repairs had been done to the gearbox. And he said he still disagreed with what our investigator said about the cat S issue.

Our investigator explained there could be multiple reasons for the mileage discrepancy, such as an admin error or a previous repair. But, she said she hadn't seen enough to make her think Santander were responsible.

As Mr B remained unhappy, the complaint was passed to me to decide.

### **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.

Having done so, I do not think this complaint should be upheld. I'll explain why.

Mr B complains about a car supplied under a conditional sale agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr B's complaint against Santander.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – Santander here – needed to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors. I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

So, in this case I'll consider that the car was used and was a round two and a half years old. This means I think a reasonable person would not have the same expectations as for a newer, less road worn one. But, it cost nearly £35,000, so I think they would still have reasonably high standards for its quality and would've expected trouble free motoring for some time.

The CRA also explains that goods supplied under a contract must "*match the description*".

I also need to consider whether a misrepresentation took place in this case. I would consider a misrepresentation to have occurred if Mr B was told a 'false statement of fact' that induced him into entering into the agreement when he otherwise would not have.

There are two main issues to consider here. I'll cover off the cat S issue first, followed by the mileage discrepancy.

#### **Cat S**

There are some facts here that I don't think are in dispute, so I'll cover these off first.

All parties seem to agree that Mr B's car is classed as a cat S. I also agree with this – I've

seen an HPI check showing:

*“Total Loss Claim, Structural Damage Category S total loss claim, Structural damage”*

And

***“Status CAT S STRUCTUAL DAMAGE”***

It also doesn't seem in dispute that this marker wasn't present when Mr B acquired the car and was only added some time later. Santander has provided testimony from an insurer explaining the marker was originally added to the wrong car due to an admin error, and only corrected when Mr B had the car for over a year. I see no reason to question this version of events.

I've then considered the satisfactory quality of the car, only specifically in relation to this issue. But, having done so, I've been presented with very limited information about this beyond the cat S marker. For instance, I haven't seen any description about the car's condition or quality from before Mr B entered into the contract. Nor have I any evidence about the collision including the condition of the car afterwards or what was damaged and repaired.

Considering this lack of evidence, I haven't seen enough to persuade me that being in a collision and then being repaired would, in this specific case, mean the car was automatically of unsatisfactory quality. And given the lack of other information, I've not seen enough other evidence to make me think a reasonable person wouldn't have considered the car of satisfactory quality.

I've gone on to consider if the car was not as described or misrepresented.

Santander explained the dealer wouldn't have been aware of the issue, so it wasn't responsible. But I disagree things are this simple. Given the situation, I don't doubt the dealer, and Santander, would have unlikely known about the cat S marker. But I'm satisfied the car could still have been misrepresented, or misdescribed, to Mr B regardless of whether they knew about the issue or not. This could change whether any misrepresentation was 'innocent' or not, but this wouldn't affect if Santander are ultimately responsible.

That being said, it's very important to set out exactly what the situation was at the time when Mr B acquired the car. As I've set out above, I'm satisfied the car *didn't* have a cat S marker at that point. So, if the car was for instance described to Mr B as HPI clear or not having a cat S marker, this would be factually accurate. This means there is something of a narrow window in terms of the information Mr B would have to have been given for a misrepresentation to have taken place.

It appears likely that the car had been in a collision and repaired. But, I haven't seen any evidence that Mr B was told the car specifically *hadn't* been in a collision. And, given the dealer apparently wasn't aware of the history and Mr B didn't realise the issue until some time later, this seems on balance most likely not to have been discussed at the time Mr B got the car.

It's also worth noting again that I haven't seen anything to show what Mr B was told about the car at the time. Considering all of this, I haven't seen enough to persuade me Mr B was given a description of the car that wasn't accurate. It follows I'm also not persuaded he was told a false statement of fact about it and so I find it was not likely misrepresented to him.

I will say I am not making a finding that nothing went wrong. I want to reassure Mr B I do

understand how frustrating this situation must be for him and I think it's likely he was acting in good faith. While I appreciate this will be of little solace, I think it's important to acknowledge it appears he's been very unlucky. But I needed to specifically consider if *Santander* are responsible here. Having done so, I do not think it is.

*Mileage discrepancy:*

I've seen an invoice dated January 2024 that states:

*"UNABLE TO PROCEED UNDER WARRANTY DUE TO MILLEAGE D (sic)"*

*"GEARBOX MILLEAGE 96077 – DASH MILLEAGE 85586 (sic)"*

I think it's quite clear there is a discrepancy between the odometer and the recorded mileage on the gearbox. What isn't clear is why this discrepancy is present, or when this occurred.

Mr B has said this means the mileage has been tampered with, or that the car has been 'clocked'. But I'm not persuaded this is most likely the case. I say this as there doesn't appear to be any other issues with the mileage noted elsewhere or any other evidence to suggest this happened.

For instance, I've seen the MOT history which records:

- September 2020 – 28,774 miles
- October 2021 – 46,133 miles
- September 2022 – 65,071 miles
- October 2023 – 83,760 miles
- October 2024 – 85,592 miles

I've also looked over the service and repair history provided:

- June 2020 – 17,824
- June 2020 – 18,698
- July 2020 – 22,825
- (ineligible) 2021 – 43,648
- August 2021 – 43,796
- January 2022 – 53,769
- September 2022 – 65,071
- October 2022 – 65,071
- September 2023 – 83,006
- January 2024 – 85,586

- May 2024 – 85,587

None of this appears to show up any concerns. I say this as the mileage is increasing as I might expect, at no point 'freezes' or lowers and is consistent between the MOT history and other sources.

Santander explained it's possible the gearbox was at some point replaced, which *might* also explain the issue.

I agree with our investigator that there are several possibilities as to why this issue has occurred. But, the key thing is that I've not seen enough to persuade me that this means the car wasn't of satisfactory quality when supplied, nor that it wasn't as described or misrepresented.

It's also important to note that even if I did consider it likely the mileage had been tampered with, which to be crystal clear I do not, I still wouldn't uphold the complaint. That's because the issue was only noted around three and a half years after Mr B got the car and after it had covered tens of thousands of miles. So, either way, I haven't seen enough to persuade me any issue was present when Mr B acquired it.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 June 2025.

John Bower  
**Ombudsman**