DRN-5624420

The complaint

Mr C complains about the quality of a car he acquired under a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance (Santander).

When I refer to what Mr C and/or Santander said or did, it should also be taken to include things said or done on their behalf.

What happened

In June 2024 Mr C entered into a conditional sale agreement with Santander to acquire a used car. The car was first registered in September 2018. At the time of acquisition, the car had travelled approximately 44,213 miles as per an MOT done shortly before acquisition. The cash price of the car was approximately £34,144 when Mr C acquired it. The total amount payable under the finance agreement was around £42,812. There was an advance payment of about £3,877. The agreement consisted of 60 monthly repayments each of around £648.92.

Mr C said that before he collected the car, it was fitted with a towbar by the supplying dealership, so that he could tow his caravan. The next day after collection Mr C said he had issues with one of the tyres which turned out to have a puncture. On 19 June 2024, when having the puncture fixed, Mr C was told that one of the other tyres was on the legal limit. So, on 11 July 2024 Mr C had paid £239.95 to have this tyre replaced as the dealership was not responding to him as to whether they would cover it.

While on holidays, Mr C experienced the following:

- On 23 July 2024, the aircon stopped working as it was only blowing hot air, passenger window was not working as it was making strange knocking sound, and the towbar was fitted too high which caused caravan damage due to it sitting low at the back. He also later noted that the rear passenger side window was making the same noise but not as bad as the front window he reported earlier.
- On 3 September 2024, the car went into limp mode and was not running properly. It was recovered along with the caravan back to UK by Mr C's insurance, arriving on the 24 September 2024.

Later, Mr C also told the supplying dealership that the paint on the front letters of the car was peeling and the battery was getting low when opening and closing the boot a few times. Also, the passenger heated wing mirror, rear heated screen, and front heated screen were not working properly. In addition, the car shook at low speeds. It was not running correctly which seemed to have been caused by the pipe from the turbo to the engine being disconnected. While he was sorting all these issues, the supplying dealership was telling him to use the extended warranty he paid for, which he was unhappy about.

At the end of October 2024, Mr C booked an inspection at a third-party garage because the independent inspection Santander arranged was taking a while to be completed. On 21 November 2024 the supplying dealership collected the car for repairs. On 12 December 2024 Mr C received an email from the dealership, which said the front and rear windscreens work but are slower due to stone chips, which could have happened at any point over the last six months, especially given the car was driven to the continent by Mr C. The supplying dealership also said this was the first time they were being made aware of these issues, so they said they are not responsible for fixing them. They also commented that any car of this age and mileage will inevitably show signs of wear and tear commensurate with previous use. But the dealership said the car now had:

- Two new window regulators;
- New air con compressor;
- New air intake shut off valve, pipe, and elbow;
- Tow ball height was adjusted, as requested;
- Wing mirror was also replaced;
- The wheels balanced and the dealership said they did not spot any vibration;
- New letters on the bonnet.

On 3 January 2024, Mr C picked up the car. He said that at the time the car was returned to the dealership it had only covered 3,720 miles in his possession. When he got it back it had an additional 311 miles, but the supplying dealership did pay him about £80 for fuel used by them. At the time, Mr C said he noticed the headlights had condensation in them. He also noticed damage left on the tow bar because it needed to be repositioned to the right height. He said this was only a small amount, but rust was already appearing.

Mr C was not happy with everything that has happened. He believes that he should be allowed to reject the car and that he should be refunded £236.95 he paid for the tyre, plus £204 he paid for the inspection. He also believes that Santander is responsible for the damage that was caused to his caravan and should adequately compensate him for the distress and inconvenience caused.

In January 2025 Santander wrote to Mr C and said that an independent inspection was carried out on the car, which confirmed most of the issues reported. This report was presented back to the supplying dealership to request repairs. Santander said the dealership confirmed to them that they have now repaired the issues apart from the windscreen and the tyre, which Santander said they would not be asking the dealership to repair as they felt these were not, most likely, present at the point of sale. Santander also said that they will grant Mr C £2,005.02 for the total amount of time that he had no use of the car whilst it was faulty and being repaired.

Mr C was not happy, so he referred his complaint to the Financial Ombudsman Service (Financial Ombudsman).

Our investigator considered Mr C's complaint. In summary, the investigator was of the opinion that Mr C should be entitled to reject the car as it was not of satisfactory quality.

Santander, and Mr C, did not fully accept the investigator's findings, so the complaint has been 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered good industry practice at the relevant time. Mr C acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Santander is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

In addition, I know Mr C said he is unhappy with the supplying dealership. But in this decision, I am only considering the aspects Santander are responsible for, so I cannot look at certain actions and/or inactions of the dealership. And I am only looking at the events that have been raised by Mr C with Santander, the ones they had an opportunity to address.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr C entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr C's case the car was almost six years old, with a total cash price of approximately £34,144. It had covered around 44,213 miles. So, it is reasonable to expect there to be some wear to it, and I would have different expectations of it compared with a brand-new car. As with any car, there is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. So, Santander would not be responsible for anything that was due to normal wear and tear whilst in Mr C's possession. But given the age, mileage, and price paid, I think it is fair to say that a reasonable person would not expect anything significant to be wrong shortly after it was acquired.

Mr C thinks that he should be entitled to reject the car.

The CRA sets out that Mr C has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and he would need to ask for the rejection within that time. Mr C would not be able to retrospectively exercise his short term right of rejection at a later date.

The CRA does say that Mr C would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but he would not have the right to reject the car until he has exercised his right to a repair first – this is called his final right to reject. And this would be available to him if that repair had not been successful.

First, I considered if there were faults with the car.

I can see that a third-party garage that inspected the tyres on 11 July 2024, when the car had travelled around 45,074 miles indicted that one of the tyres, even though it had 2mm tread above the legal limit, was in a perished condition and it was recommended that it be replaced.

The independent inspection that was commissioned by Santander on 8 November 2024, when the car had travelled 47,917 miles noted that:

- Nearside front and nearside rear windows were making an abnormal clunking type noise with the nearside front being most affected;
- Air conditioning was not blowing sufficient cold air;
- There were numerous fault codes relating to the turbo, nox sensor, and blocked DPF;
- The air intake pipe and its housing were insecure.

In addition, I can also see the inspection carried out by another third-party garage on 14 November 2024, when the car had travelled around 47,925 miles, said the car needed the following:

- Renewal of front intercooler pipe;
- DPF regeneration drive cycle carried out;
- Renewal of ns front and ns rear window regulator;
- Renewal of ns mirror glass;
- Renewal of front bonnet letters;
- Road test to further assess the reported vibration which was not possible due to the disconnected turbo pipe;
- Removal of the bumper for aircon investigation;
- Adjustment of the tow bar;
- Further inspection of front and rear screens for faults.

Based on all the above, I think the car was, most likely, faulty. But just because a car was faulty does not automatically mean that it was of unsatisfactory quality when supplied. So, I have considered if the car was of unsatisfactory quality when it was supplied to Mr C.

First, I thought about the tyres. The puncture in one of the tyres could have happened at any point in time. However, I think, had the puncture been there when Mr C collected the car, most likely, the tyre sensors would have flagged this. Overall, I do not have enough evidence to be able to say that, most likely, the puncture happened before Mr C took possession of the car.

Regarding the second tyre, the supplying dealership said that the car passed its MOT shortly before supply, and that the pre-delivery inspection did not list the tyre as an issue. On the other hand, Mr C said that he raised issues with one of the tyres before he took supply of the car, but nothing was done. He also provided an invoice for when the tyre was replaced. From this invoice I can see that the tyre, even though it had 2mm thread which is above the legal limit, had its condition stated as perished and it was recommended for replacement. I have also seen a video that shows the state of that tyre which also verifies that invoice. So, taking everything into consideration, including how soon Mr C raised these issues, I think on balance, the tyre was unsafe at the time of supply. As such, I think it is fair and reasonable that Santander should refund Mr C the £236.95 he paid for the replacement of that tyre.

When deciding if the car in question was of unsatisfactory quality, I have considered all the faults mentioned in both inspections which took place in November 2024. And when looking at the independent inspection commissioned by Santander dated 8 November 2024, when the car had travelled about 3,700 miles since supply, I can see it concluded that the issues were present or developing at the point of acquisition and therefore were the selling agent's responsibility. Also, I tend to agree that, most likely, the car was of unsatisfactory quality when it was supplied to Mr C, even if we just consider the issues listed in the independent report.

I think it would be debatable whether some of the issues by themselves, such as the front and rear screens having elements of faults, would render the car of unsatisfactory quality. But I think that, most likely, the sheer number of issues noted in the independent report, do make the car of unsatisfactory quality. I do not think the price paid and the mileage travelled reflect the fact that so many issues needed addressing and/or required repairs done to them. Considering the mileage of the car when supplied combined with when the faults first became apparent I think, most likely, a reasonable person would not consider the car to be of satisfactory quality when supplied.

Since then, the supplying dealership has taken the car back for repairs. However, a copy of a video where the engineer sent by the supplying dealership is inspecting the car, after Mr C has reported further issues after driving the car, shows:

- Fault codes relating to the DPF;
- The air intake pipe previously repaired by the supplying dealership being broken again, so the car would require a new air intake shut off valve pipe & elbow.

As such, it seems that the initial repair done by the supplying dealership has now failed. I know that the supplying dealership has argued that this part was deliberately loosened, because it conveniently happened when Mr C was driving and recording plus that he was pumping the accelerator pedal. But from the video it seems the reason Mr C, most likely, started recording was because the car started to malfunction. I think the video most likely shows that he was not pumping the accelerator pedal. I have taken what they have said into consideration, but I have not seen enough evidence to say that, most likely, this issue was deliberately caused by Mr C.

I thought about if Mr C should be able to reject the car or should he only be able to exercise his right of repair. Considering the specific circumstances of this case, I do not think it would be fair and reasonable for Santander to have another attempt at a repair. I think now a more fair and reasonable solution would be for Mr C to be able to exercise his right of rejection under the CRA.

When coming to this conclusion, I have considered that the supplying dealership had seen the car previously and failed to repair it. I also reflected that a repair would cause further delays, costs, and inconvenience to Mr C. Under the CRA, Santander are responsible for carrying out the repairs within a reasonable time and without significant inconvenience to Mr C, which has not happened in this case. Considering the amount of time that has passed, I do not think that a repair would be a fair and reasonable solution. As such, I think Mr C should now be able to reject the car.

Santander should end the conditional sale agreement ensuring Mr C is not liable for payments since 23 January 2025 when he stopped using the car due to the issues with the air intake pipe. They should collect the car from wherever it is located without charging for its collection.

Mr C has been able to use the car and has been able to cover a reasonable number of miles in it, so I think it is fair he pays for this use. But there were many instances when he could not use the car as it was getting repaired or was broken down, including when he was on his holiday. In addition, some of the use has been impaired as certain aspects of the car were not working properly, for example the air conditioning. However, Santander has agreed to refund Mr C £2,005.02 for the time he had not used the car. This amount is just above the sum of three-monthly payments, and I think it fairly reflects the impaired use of the car. So, this amount should be refunded to Mr C, if it has not been done yet.

Santander should also refund the advance payment of £3,877 paid by Mr C. If any part of the advance payment is made up of funds paid through a dealer contribution, Santander is entitled to retain that proportion.

Mr C has told us that he had to acquire another car and he has asked for his insurance and road tax payments to be refunded to him. I think considering he was supplied with a car that was of unsatisfactory quality and had no use of the car since 23 January 2025, it is only fair and reasonable that, upon proof of payment, Santander refund him the pro-rated cost of his insurance and road tax expenses. I say this because he would not have incurred these costs, had Santander provided him with a car that was of satisfactory quality.

Santander should add interest to the refunded amounts from the date of each payment until the date of settlement. Interest should be calculated at 8% simple per year.

Any adverse information should be removed from Mr C's credit file and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as a voluntary termination.

Mr C paid £204 for his own diagnostic report which was completed on 14 November 2024. But I do not think it would be fair and reasonable to ask Santander to refund this expense to him. When coming to this conclusion I have considered that at the time Santander agreed to pay for the independent inspection they commissioned, and Mr C was aware that this was about to be carried out. Also, I have not seen enough to be able to say that, most likely, Santander agreed to refund him the cost of his own inspection in addition to the one they paid for.

Mr C also thinks that Santander should be responsible for the damage he sustained to his caravan as he believes that the towbar was installed incorrectly/too high. But I do not think I have seen enough to be able to say that, most likely, Santander should be responsible for that damage. When coming to this conclusion, I have considered several aspects. I have taken into consideration that the independent report commissioned by Santander concluded that the towbar can be adjusted with ease by removing the bolts and lowering the tow bar socket to its lowest setting. And from the picture I can see that there was more than one setting available, so I think most likely, it was more a matter of adjustment and not the fact that it was installed incorrectly. In addition, I have not seen evidence that Mr C asked the supplying dealership to install it at a specific height. I know Mr C said that he did not know what torque needed to be set on the adjustment, precluding him from carrying the adjustment himself. But I think if he thought the height was too high, he could have mitigated his losses by having it adjusted at most third-party car garages.

I know that Mr C has mentioned that this situation has also had impact on his family and that his business has been impacted too. But in this decision, I can only consider the impact this situation had on Mr C, so I cannot consider the impact this had on his family. And I've not been given enough evidence for me to conclude that Santander supplying him with a car that is not of satisfactory quality was most likely the reason for Mr C directly incurred a financial loss. But I have considered that this matter has caused him a lot of distress and inconvenience while trying to resolve it. Mr C had explained, in great detail, how this has impacted his life including his holiday when the car broke down. Also, he had to take the car for repairs and spend a significant amount of time trying to resolve this issue. I think Mr C would not have experienced all of this, had Santander supplied him with a car that was of a satisfactory quality. I think Santander should pay him £350 in compensation to reflect the impact this situation had on him.

Mr C has mentioned that after the dealership returned the car to him, they only compensated him £80 instead of about £90 for fuel that he said was used by them when conducting the repairs. But I have not seen enough evidence to be able to say that exactly £90 worth of fuel was in the car when it went in for repairs, especially as Mr C himself said that it was about a half a tank. A such, it would not be fair for me to ask Santander to refund him any money towards this.

Mr C has also mentioned other issues with the car, among them: some vibrations, non-factory black pack, door packets coming loose, condensation in the headlights, and he was unhappy about how the warranty was sold and explained to him. However, I do not think I need to specifically comment on these as I already agreed that he can reject the car and I believe the remedy I am proposing already fairly covers the impact the issues had on him.

My final decision

For the reasons given above, I uphold this complaint and direct Santander Consumer (UK) Plc trading as Santander Consumer Finance to:

1. End the conditional sale agreement ensuring Mr C is not liable for payments since 23 January 2025. Any overpayment should be refunded to him;
2. Collect the car from wherever it is located without charging for the collection;
3. Refund Mr C £2,005.02 for the time he had impaired use of the car, if this had not been done yet;
4. Refund Mr C the £236.95 he paid for the replacement of the tyre;
5. Refund the advance payment of £3,877 paid by Mr C. If any part of the advance payment is made up of funds paid through a dealer contribution, Santander is entitled to retain that proportion;
6. Refund Mr C the pro-rated cost of his insurance and road tax expenses he incurred from 23 January 2025 onwards (upon proof of payment);
7. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
8. Pay Mr C a total of £350 compensation;
9. Remove any adverse information recorded on Mr C's credit file in relation to this credit agreement. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If Santander Consumer (UK) Plc trading as Santander Consumer Finance considers that tax should be deducted from the interest element of my award, they should provide Mr C with a certificate showing how much they have taken off, so he can reclaim that amount if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 September 2025.

Mike Kozbial
Ombudsman