

The complaint

Mr P complains that a car supplied to him under a condition sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance was of an unsatisfactory quality.

What happened

I issued a provisional decision setting out what I thought about Mr P's complaint. I've copied the relevant parts of that provisional decision below – and they form part of this final decision.

"In December 2023, Mr P was supplied with a used car through a conditional sale agreement with Santander. He made an advance payment of £6,000 and the agreement was for £17,157 over 49 months; with one payment of £143.31 followed by 47 monthly payments of £143.11 and a final payment of £10,287.52. At the time of supply, the car was around four years old, and had covered 35,858 miles.

A few months after the car was supplied, Mr P started to notice that it was consuming an excessive amount of oil, and that oil stains had started to appear beneath the car. The car was returned to the dealership in May 2024, and the oil leak was repaired. Mr P said the oil leak returned soon after, and that he returned the car to the dealership for a repair two more times.

The dealership said it could no longer find any leaks or other problems with the car. An independent inspection was arranged to determine the source of the problem. The inspector found an excessive oil leak, which had splashed back to the brake fluid reservoir and onto the rear of the engine. They suspected this might have been caused by the crank seal. They said that given the length of time elapsed, the fault likely wasn't present at the point of supply – but believed it may have been caused by an unsuccessful repair.

Based on the findings of the report, Santander accepted that the fault was likely caused by failed repairs carried out by the dealership. It therefore agreed to allow Mr P to reject the car. It said it would collect the car and refund the deposit as well as all monthly instalments Mr P had made. It applied a charge for Mr P's use of the car at 45p per mile driven. It said Mr P had driven 6,574 miles – so deducted a total of £2,958.30 from the refund. It also offered Mr P £250 to recognise the distress and inconvenience caused.

Mr P didn't agree that Santander's offer was fair, and he referred his complaint to this service. He said 45p per mile was an excessive amount to be charged for use of a faulty car. He was also unhappy the dealership had incorrectly diagnosed the fault as an air conditioning issue – and said he'd have rejected the car sooner if aware that there was an oil leak. He also said some of the mileage was as a result of having to take the car to the garage and shouldn't be considered normal usage.

One of our Investigators considered the complaint and upheld it. They agreed Mr P should pay for his use of the car, but didn't think the charge Santander had applied was fair in the circumstances or that it had adequately explained what it was based on. Instead, they

recommended that Santander refund the deposit in full – with interest - and retain the monthly payments Mr P had made. They noted that Mr P's use of the car exceeded the contractual annual mileage under the agreement by 574 miles – and thought it would be fair to charge him for this use at the excess mileage rate under the agreement – 14.9p per mile. Based on this, they thought a fair charge for usage – including Mr P's monthly payments – was £1,373.52. They thought Santander's offer of £250 fairly reflected the distress and inconvenience caused to Mr P.

Santander didn't accept the Investigator's recommendations. In summary, it said the charge of 14.9p per mile was only applicable under the terms of the contract if the agreement was ended early – which wasn't what had happened here. It said it was entitled to deduct a usage fee to reflect the depreciation of the car – which, based on the make and model, was 45p per mile. It asked that the complaint be referred to an Ombudsman for a final decision. So, it's been passed to me to decide.

What I've provisionally 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.

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my decision on the balance of probabilities – what I think is more likely than not to have happened given the available evidence and wider circumstances.

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 P was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means I can consider a complaint about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr P 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.

So, if I thought the car was faulty when Mr P took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Santander to put this right.

In this case, Santander has accepted that the car was subject to a poor repair by the dealership which has rendered the car of unsatisfactory quality – and the agreement has already been unwound. So, I don't think I need to comment on this further. My decision instead will focus on what should be done to put things right for Mr P.

Putting things right

Santander agreed that Mr P could reject the car, and the agreement was unwound in October 2024. When doing this, it applied a fair usage charge of £2,958.30 – calculated at 45p per mile, which it says is the industry standard based on the make and model of the car.

This exceeded the total payments Mr P had made under the agreement by around £1,670.

The CRA says a finance provider can make a deduction for fair use when a car is rejected. It doesn't set out a specific rate or method of calculation to be used. Our approach is to look at all of the circumstances to decide what's fair and reasonable. I note that the charge Santander has applied is more than three times higher than the amount it charges for excess mileage under the agreement – and I'd expect it to be able to explain how such a charge was calculated. There's no reference to the fair usage charge Santander has applied in the agreement itself – and Santander hasn't provided details to demonstrate why it believes the rate it's charged is fair or what it's based on. I don't think the charge applied by Santander is fair and reasonable in the circumstances of this complaint.

Mr P had the car for around ten months before it was rejected, and made nine monthly payments during that time, covering around 6,500 miles. This isn't significantly more than the average level of mileage I'd expect to see – especially considering that Mr P made multiple round trips to the dealership to have the oil leak investigated and repaired. This wouldn't have been necessary if there weren't problems with the car, or if the issue had been correctly diagnosed and repaired in the first instance. And, as Santander has highlighted, the provision to make an additional charge for excess mileage specifically applies when the car is returned at the end of the agreement – not when the agreement itself has been unwound.

As Mr P was able to use the car, I think it's fair that Santander retain the monthly payments he made under the agreement. But I don't think it should impose a higher charge than those payments in relation to his usage of the car.

I appreciate Mr P's concern that the dealership misdiagnosed the problem which delayed him rejecting the car. While that may be the case, I'm satisfied he was still able to use the car up until the point that it was rejected, and it's only fair that he pay for that use. But I've taken into account the fact that the dealership made multiple attempts to repair the issue and most likely misdiagnosed it.

I'm satisfied the problems Mr P experienced caused him some inconvenience. He had to make repeated trips to the dealership to have the oil leak investigated, and the car continually leaking oil would naturally have caused him some frustration and stress. Had the problem been correctly identified and repaired sooner, it's likely that Mr P would either have been able to reject the car at an earlier stage or that it would have been returned to a satisfactory quality. Santander has offered £250 to compensate Mr P for the distress and inconvenience caused. Taking all of the circumstances into account, I think this is fair."

Responses to my provisional decision

I invited both parties to respond with any further points or evidence they wanted me to consider before I issued my final decision on the complaint.

Santander responded to my provisional decision, and said it believes it's already paid everything I suggested – minus the additional interest. It said it already refunded the deposit in full as well as the monthly payments – and after deducting the mileage charge that resulted in a total net refund of £4,329.69.

Mr P responded to my provisional decision. He said he agreed with the majority of my reasoning, but wanted to make an additional point regarding the level of compensation. He explained that his home had a brand-new tarmac driveway which he'd laid at a cost of £12,000. He said the car continuously leaking oil caused permanent damage to the driveway in the form of multiple oil stains. He asked that any compensation award take the cost of repairing or cleaning the driveway into account. He provided a photo showing what appeared

to be an oil stain on the ground.

I wrote to both parties to clarify what I intended to say Santander should do to put things right. I agreed with Santander that any payment would need to take into account the amount it had already paid. I said the total amount refunded to Mr P should be the deposit value (£6,000) without a deduction for mileage – but shouldn't be any more than this, as I didn't think Santander needed to refund the monthly payments. As Santander had already paid Mr P £4,329.69 – which took into account the deposit, monthly payments and the mileage deduction – the fairest way to resolve things was to pay the difference between this amount and £6,000. This comes to an additional payment of £1,670.31 – bringing the total amount refunded to £6,000. I also explained that, while I've taken Mr P's further comments into account, I remained satisfied that compensation of £250 was a fair reflection of what's happened here.

Santander said it disagreed with my conclusions and suggested that my decision was based on a misinterpretation of the agreement terms. In summary, it said it was entitled to deduct a usage fee to reflect the car's depreciation while it had been with Mr P. It said it was unfair to expect the dealership to take back a car with an accrued mileage, as the resale value would be impacted. It said it assessed the mileage using the British Vehicle Retail and Leasing Association (BVRLA) guide, and that the mileage charge of 45p was based on the car's make and model. It also said the excess mileage fee in the agreement only applies where the car is returned at the end of the agreement or if it's terminated early – so isn't relevant here.

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.

I'd like to thank both parties for providing their additional comments in response to my provisional decision, which I've considered. Having done so, I've reached the same overall conclusions as outlined in my provisional decision, and for the same reasons.

I'll first address Santander's comments regarding the fair usage charge. The majority of Santander's comments are the same as those submitted before I reached my provisional decision – so I won't repeat my conclusions on those in detail.

I accept Santander's wider point that it's entitled to make a deduction for fair use. I also agree that the car's mileage was higher when Mr P returned it than when it was first supplied – which could affect the resale value of the car. As explained in my provisional decision, the CRA makes an allowance for a fair usage charge where a car is rejected. But I'm not persuaded Santander has demonstrated that a charge of 45p per mile is fair.

Santander has referred to the BVRLA guide. These guidelines reflect circumstances in which a lender can apply a charge when an agreement comes to an end – which includes excess mileage charges. It doesn't cover circumstances where a car has been rejected, nor does it suggest that lenders can apply a charge for the entire mileage covered by the customer. I explained in my provisional decision why I don't think it would be appropriate to apply the excess mileage charge – and I'm in agreement with Santander on this. Santander has suggested that my provisional decision is based on a misunderstanding of the agreement terms – but I can't see that it's highlighted any part of those terms that are inconsistent with my conclusions.

Santander says the charge of 45p per mile is based on the make and model of the car – but hasn't shown how that figure was reached or why a car of the make and model supplied to

Mr P reflects a value of 45p per mile. While HMRC gives guidance on mileage rates which references a figure of 45p, this is intended to cover the total cost of running a car for business use (including things such as maintenance, fuel and insurance) and I don't think it applies here. This charge is three times more than the excess mileage charge applicable under the agreement, and I see no basis for Mr P to pay more than he was required to pay each month under the terms of the agreement for his use of the car.

So, I remain of the opinion that Santander should refund Mr P's deposit in full without making a deduction for mileage – but can instead retain his monthly payments up to the point of rejection to reflect his use of the car. For the reasons I've explained, I think the fairest way to carry out the direction outlined in my provisional decision is to refund Mr P an additional £1,670.31. So, Santander should now pay Mr P that amount.

I've considered Mr P's comments regarding the level of compensation and his request to be compensated for the cost of cleaning or repairing his driveway. I note that Mr P's concern that his driveway had been damaged doesn't appear to have been raised with either Santander or this service previously. The car was rejected in October 2024 – nearly a year ago – and if Mr P was concerned that the car had damaged his home, I think it would have been reasonable for those concerns to be raised at the time. In any case, I've considered whether further compensation is appropriate for the damage Mr P describes.

Mr P has provided a photo showing oil stains on a driveway. I haven't seen direct evidence to demonstrate that the stains were caused by the car in question or linked to the fault Mr P reported. Nor have I seen any evidence of the costs Mr P says will be incurred because of this damage – such as the cost of cleaning or repairing the driveway. So, I can't fairly require Santander to pay those costs to Mr P.

Taking everything into account, I remain of the opinion that the compensation of £250 offered by Santander fairly reflects the impact to Mr P of what's happened here.

My final decision

My final decision is that I uphold Mr P's complaint. I require Santander Consumer (UK) Plc trading as Santander Consumer Finance to:

- Refund the deposit of £6,000 in full – less the net refund it already paid. This comes to an additional payment of £1,670.31.
- apply 8% simple interest per annum to the above, calculated from the date the payment was made by Mr P to the date of settlement[†];
- remove any adverse information recorded on Mr P'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; and
- if it hasn't already, pay Mr P an additional £250 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If Santander considers that tax should be deducted from the interest element of my award, it should provide Mr P with a certificate showing how much it has 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 P to accept or reject my decision before 14 October 2025.

Stephen Billings
Ombudsman