

## **The complaint**

Mr P has complained that he is unhappy with the quality of a car he acquired on 30 September 2022, using a conditional sale agreement with Santander Consumer (UK) Plc, trading as Volvo Car Financial Services ("Santander").

## **What happened**

Mr P acquired a new Volvo in September 2022, using a conditional sale agreement with Santander. The cost of the car was £34,787.07, of which Mr P borrowed £30,863.94 over a term of 49 months, with a monthly repayment of £ £404.60 (and a final payment of £17,879.25).

Mr P complained to Santander about the car on 21 October 2022 – so just three weeks after he acquired it - in relation to the following issues:

- Issues with the brakes. (Front and rear)
- Centre console cutting out.
- Issues with wing mirrors.
- Unknown creaking noise coming from the vehicle.
- Power steering fault.

Mr P said at this point that he wanted to reject the vehicle.

Santander commissioned an independent inspection of the vehicle, which took place on 13 January 2023. The inspector found that the faults were present at the point of supply and so the vehicle wasn't of satisfactory quality when supplied.

Santander issued its final response about the complaint in May 2023. It said it was upholding the complaint, but that the dealership had responded to the independent report to say that the reported issues with the vehicle were characteristics of it, rather than faults, and so it wouldn't be supporting rejection or repairs. Therefore, Santander proposed to arrange a second inspection to determine whether the issues were characteristics of the vehicle or faults. However, Mr P hadn't agreed to this. Santander further said that it would offer Mr P a payment of £250 in recognition of the delays, distress and inconvenience he'd experienced.

Mr P was unhappy with this, and brought his complaint to this service. Our investigator looked into it and thought it should be upheld. In response, Santander reiterated its earlier view that a second inspection should be arranged. Mr P also had some queries in relation to the compensation proposed by our investigator.

As Santander did not accept our investigator's view, the complaint has come to me for review.

## **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've decided to uphold Mr P's complaint. I'll explain why.

Because Santander supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was new, and I think any reasonable person would expect it to be free of any faults or defects.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I noted above that Mr P complained to Santander, saying he wanted to reject the car, three weeks after he acquired it – so within 30 days of taking delivery.

Mr P sent in details of the sequence of events, along with copies of Santander's final response and photographs or error messages from the console. Santander provided copies of the independent report, the credit agreement and its records of the complaint.

I've carefully considered all of the evidence sent in by both parties.

The independent report notes the reported faults as follows: *"Brakes making crunching sound. Front and rear pads were replaced already. Noise coming from wing mirrors when driven. Power steering issue. Centre console fault/cutting out."*

The report details the testing it carried out, and notes that the wing mirrors had by then been repaired, and goes on to say:

*"In our opinion based on the available evidence presented to ourselves at the time of inspection, we were able to identify faults with the vehicle, as when releasing the brake pedal slowly, there was a brake pad dry rubbing contact noise heard, which appears to be more than normal."*

*"During our road test, there were excessive creaking noises heard at low speeds when manoeuvring the steering wheel."*

*"We would consider, based on the available evidence presented to ourselves at the time of inspection, that the vehicle appears to be suffering from ongoing issues and we would consider the faults to be developing at purchase and are the selling agent's responsibility"*

On receipt of this, Santander took the matter up with the supplying dealership. However, the dealership said that in its opinion, the issues raised were characteristics of the vehicle rather than actual faults. As a result, it declined an offer to repair the vehicle and said that it wouldn't support a rejection request.

Following this, Santander suggested that the car should be taken to another manufacturer-authorised dealership for a second opinion diagnostic test to be carried out at its expense, to determine whether the issues were characteristics of the vehicle rather than faults. Mr P did not accept this, and Santander said in its final response that it would be closing the complaint, but would pay Mr P £250 in recognition of the distress and inconvenience caused.

I've thought about what the dealership said about the issues being characteristics of the vehicle rather than faults. But it has provided no evidence to demonstrate that these issues occur in every vehicle of this type, so I have no reason to think that that's right. And I don't think it would be fair to require a second inspection, as the car has already had an inspection by an engineer who is independent of all parties.

Therefore, based on the content of the independent inspection report, I'm satisfied that there are faults with the vehicle, and that these were present at the point of supply. And as this was a new vehicle, I don't think the reasonable person would expect such faults to be present. So I'm satisfied that the car wasn't of satisfactory quality at the point of supply. It follows that I'm satisfied that Mr P is entitled to exercise his right to reject the car, as he asserted within 30 days of taking delivery, and end the contract with nothing further to pay. Therefore I uphold this complaint.

In considering fair compensation, I have kept in mind that Mr P has been able to use the car, other than for a few days when testing or repairs were being done. So I don't consider I can fairly ask Santander to refund the monthly payments made under the agreement.

Mr P also referred to extra items taken with the car, such as a service plan. These did not form part of the finance agreement, so I cannot direct Santander to refund payments for these.

Finally, Mr P has mentioned further issues that have arisen with the car since the complaint was brought to this service. However, as I have upheld the complaint for the reasons stated above, I do not need to consider them in this decision.

### **Putting things right**

Santander should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr P;
- refund Mr P's deposit contribution of £3,923.13;
- pay 8% simple yearly interest\* on all refunded amounts from the date of payment until the date of settlement;
- pay the amount of £250 promised in recognition of the distress and inconvenience caused, if it has not already done so;
- remove any adverse information from Mr P's credit file in relation to the agreement (if there is any).

\*if Santander considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**My final decision**

For the reasons given above, I have decided to uphold Mr P's complaint. Santander Consumer (UK) Plc should compensate Mr P as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 February 2024.

Jan Ferrari  
**Ombudsman**