

The complaint

Mr H complains that the car he acquired through a fixed sum loan agreement from Santander Consumer (UK) Plc trading as Santander Consumer Finance (“Santander”) is of unsatisfactory quality.

What happened

Mr H acquired a car in April 2022 from Santander. The car was approximately nine years old and had travelled around 29,000 miles when it was supplied.

Mr H had problems with the gearbox shortly after it was supplied, in July 2022. The invoice from the supplying dealership shows the gearbox was replaced due to “poor shift change” in July 2022, and the work was undertaken under warranty. The mileage was noted as 31,923 miles.

There is some dispute as to further problems and when they were raised, but it’s clear in July 2023 Mr H is suffering further problems with the gearbox and has raised a complaint with Santander. They instructed an independent engineer to produce a report, and so the car was inspected on 9 August 2023. The mileage at this point was 52,750, so the car had covered around 24,000 miles in the 15 months since supply, and a little over 20,000 miles since the gearbox had been replaced/repaired a year before.

The independent report confirmed there were problems with the gearbox. It said:

“...on selecting reverse or drive gears the engine nearly stalls, the engine rpm is very low. The engine rpm does recover in approximately 2 seconds. Once drive gear is selected there is a delay on pressing the accelerator before the gearbox takes up drive, there was also a harshness when gear changes are made, both going up through the gears and dropping down gears from the gearbox.”

However, the report went on to say that despite the engineer being shown evidence that the gearbox was replaced a year before (they had been shown the invoice), the engineer didn’t feel the fault was present or developing at point of sale and said there was no evidence of any unsuccessful repairs.

Santander issued their final response letter at this point and did not uphold the complaint, relying on the independent engineer’s comments that they didn’t feel the fault was present or developing at point of sale.

Unhappy with this, Mr H brought his complaint to our service. An investigator here investigated the complaint and upheld it. They said that as repairs had been attempted twelve months before and the gearbox now appeared to have failed again, they didn’t feel that the gearbox had been durable and had failed prematurely. They said Mr H was entitled to now reject the car.

Santander asked for an extension of a week to consider this view in November 2023, but ultimately did not come back with any new evidence, or to confirm that they accepted or

rejected the view, so the case has been 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 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 H was supplied with a car under a fixed sum loan agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of the goods, Santander are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The issue in question here is whether repairs to the gearbox carried out in July 2022 amount to the same problems complained about a year later in July 2023. And if they do, having covered around 20,000 miles since the repairs, does that mean the repairs have failed or weren't durable.

Mr H says that he's had the same issues all along. The invoice for the work the supplying dealership had carried out under warranty in 2022 describe this as "replace gearbox due to poor shift change". The invoice lists the price as £4,676.58.

I think it's fair to say that this is significant work, and also the wording says "replace", and not "repair". I'm satisfied that the gearbox was replaced in July 2022, as the invoice provided matches up with Mr H's description of what happened.

I'm satisfied, based on the evidence and testimony provided, that this issue in 2022, within three months of Mr H acquiring the car, made the car of unsatisfactory quality at this point. But as per the CRA, Santander are allowed one opportunity to repair the car, so when this gearbox was replaced in 2022, that was a fair outcome at the time.

Mr H has said that the problem didn't really go away, and he had complained several times to the supplying dealership in the twelve months following their initial repair. This culminated in this complaint being raised, and in Santander arranging the independent inspection.

I place considerable weight on the contents of the independent inspection report. But that doesn't mean that its conclusions should be accepted word for word, because the person carrying out the inspection doesn't necessarily have the same knowledge of the issues which have occurred previously with the vehicle.

The report details the problems with the car, which revolve around the automatic gearbox. It talks about problems shifting up and down through the gears and recommends further investigative work as this is faulty and not working properly. This ties in with the testimony provided to us by Mr H.

This description of the issues is also broadly the same as that given when the gearbox was replaced in 2022. So, I'm satisfied that the problems identified in 2023 in the independent

report, are the same as those which were meant to be fixed when the gearbox was replaced a year prior in 2022.

This is the part which the independent engineer seems to have overlooked. In concluding that the problems were not present or developing at the time the car was acquired, he's perhaps not been fully aware of the full replacement gearbox which took place twelve months prior to his inspection, shortly after the car was supplied.

I am satisfied that these problems were present or developing when the car was supplied, as evidenced by the car needing extensive repairs/replacement of the gearbox in July 2022, only three months after the car was supplied.

This leaves two possibilities. Potentially, replacing the gearbox in 2022 hasn't resolved the problems the car was having. If this was the case, then the repairs attempted by Santander's broker were unsuccessful in fixing the problem, and under the CRA, Mr H would have the right to reject the car now if he wished.

The second possibility is that the gearbox replacement resolved the issues in 2022, but this repair has now failed a year later, and the same issues have re-occurred. If this was the case, for repairs of this significance, I would be concerned that the repairs have failed after around twelve months and approximately 20,000 miles travelled.

I've thought about that, and I don't think that this signifies these repairs would have proved durable, as they have failed prematurely. Under the CRA, Mr H would be entitled to reject the car at this point after failed repairs.

So, this means that whichever outcome has occurred, Mr H is entitled to now reject the car.

There was also an issue raised originally about the car being advertised as having Bluetooth, but this function not being present. I am aware that the supplying dealership provided a Bluetooth kit to add this functionality to the car, and am satisfied that this resolved that issue, so haven't considered it further, as Mr H accepted this resolution.

I've considered how Santander should put things right now and agree that Mr H should be able to reject the car. Whilst this gearbox issue impacts how the car drives, I've also noted that Mr H has driven the car for a considerable number of miles. It was noted that the mileage was 52,750 miles when the engineers report was carried out in August 2023, and the MOT done recently in March 2024 shows the mileage has moved on to over 66,000 at that point.

This means that in approximately two years since the car was supplied to him, Mr H has covered around 37,000 miles. As such, I am satisfied that it is fair for Santander to keep all the monthly payments made on the agreement by Mr H, to recognise "fair usage" as described in the CRA; that is the fact that he has had full of the vehicle over this time.

Having clarified this, I am not persuaded to change any of the redress recommended by the investigator when they gave their opinion, as I haven't seen any evidence or testimony that persuades me anything different needs to be done here.

Putting things right

To put things right, Santander should carry out the following:

- Collect the car from Mr H at no cost to him.

- End the agreement with nothing further to pay.
- Refund Mr H's deposit of £4,000.
- Pay 8% simple annual interest on the above refund from the date of payment until the date of settlement.
- Remove any adverse information from Mr H's credit file in relation to this agreement.

My final decision

I am upholding this complaint and instruct Santander Consumer (UK) Plc trading as Santander Consumer Finance to carry out the above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 June 2024.

Paul Cronin
Ombudsman