

The complaint

Mr D complains about the quality of a car he acquired under a Conditional Sale Agreement with Santander Consumer (UK) Plc (Santander).

When I refer to what Mr D has said and what Santander have said, it should also be taken to include things said on their behalf.

What happened

In March 2023, Mr D entered into a Conditional Sale Agreement with Santander to acquire a used car. The car was first registered/manufactured in December 2013. At the time of acquisition the car had travelled approximately 104,000 miles. The cash price of the car was approximately £23,189 when Mr D acquired it. The total amount payable under the finance agreement was approximately £31,069. Mr D made an advance payment of £2,500. The agreement consisted of 58 consecutive monthly payments each of around £492.58 starting one month after the date of the agreement.

Mr D said that before he was even able to pick up the car there were issues with it; the dealership called him and said there is a slight clonk at the rear differential, but that this was nothing major as all that was needed was to replace the mounting bracket. But it was not until 2 April 2023 that Mr D was told he could come and collect the car. When he did, the first thing he noticed, was that an airbag warning light was on. But, he said, he was assured that this was only due to the car being valeted, and that it would go off on the drive home. Mr D said he also noticed that the lower tailgate did not open properly which was due to a strut being disconnected and that the light tint needed to be redone as it was peeling. Mr D said that during the drive back home he also noticed that there was a clonking noise in the gearbox or the differential, and a warning light came on the dashboard.

A couple of days later Mr D said that he also noticed a burning smell. A few days after picking up the car, he also noticed that the parking aid was unavailable, and warning lights came on showing that there was a Suspension Fault. Mr D said that about a week after picking up the car, a further fault started to appear showing that the Exhaust Filter was nearly full. The supplying dealership told Mr D to take it to a local garage to get some of these faults repaired. So, on 20 April 2023 the car was booked in for diagnostics and a Diesel Particulate Filter (DPF) regeneration. At the time, Mr D said that the car displayed a total of eight error codes. On 22 April 2023, Mr D said he had issues with the air suspension randomly going into extended mode when he would try to lower the car to normal ride height; The car would start to drop, and then inflate again putting the car back into extended mode.

On 15 May 2023 Mr D was given an estimate to get a lot of the faults repaired, but Mr D said he could not get a hold of the dealership, so he paid for the repairs himself and raised the issues with Santander. In July the dealership got in contact with Mr D, and told him that they would offer £300/£400 for the repairs and also asked him to take the car back to them for repairs as they could do it cheaper. Mr D said that this was not a fair option, so he asked Santander to help and told them that he will stop his monthly finance payments until a solution is found. Mr D said that he is now left with a car that has no MOT and one which needs more than £3,000 worth of repair work. He said that he already spent over £2,500 on

repairs. Mr D has also told Santander that he would like to return the car as it's not been fit for purpose.

In July 2023, Santander wrote to Mr D. In this correspondence they quoted parts of independent inspection report that they had commissioned in June 2023. Santander also said they presented these results back to the supplying dealership, by way of an intermediary, and requested the supplying dealership to honour their promise to reimburse Mr D for the costs of the repairs. Santander concluded by writing that they were waiting to hear back as to when the dealership would be repairing the outstanding issues with the car. And that they would be discussing and investigating how much Mr D should be compensated for distress and inconvenience, but that this would be tallied and totalled once the request to the dealership has been finalised.

Mr D was unhappy with this response as he did not receive the money for any of the above, so he referred his complaint to our service.

An investigator at this service issued an opinion on this complaint. The investigator was of the opinion that the car was not of satisfactory quality when supplied. The investigator thought the appropriate remedy would be for the repairs to be carried out to address the remaining inherently faulty components. He thought Santander should arrange and carry out the repairs to the towbar, tailgate, cruise control, and clunking noise in the gearbox at no cost to Mr D.

The investigator also was of the opinion that Santander should honour the previous arrangement and refund Mr D the cost of repairs incurred at the car's manufacturer's specialist garage on around 20 May 2023, plus refund Mr D the following:

- 20 April 2023 Diagnostic and DPF regeneration (upon Mr D providing an invoice to Santander)
- 20 May 2023 Diagnostic and DPF regeneration (£145)

This was because Mr D had identified these issues with the car at inception, so he thought that it was reasonable that Mr D had the diagnostics done at the time. He also considered that the DPF regeneration was done in very close proximity to the inception of the agreement. So, he thought a refund of these costs would be appropriate. But the investigator did not think that Santander was responsible for the below expenses incurred by Mr D:

- 17 July 2023: Diagnostic, brake disc and pad replacements - £890
- 22 August 2023: DPF and sensor replacement - £2,200
- 4 September 2023: Front lower ball joint arm replacement - £340
- 2 October 2023: Call out, diagnostic, battery replacement - £255
- 5 October 2023: Diagnostic and alternator replacement - £580

The investigator was of the opinion that the costs incurred by Mr D from 17 July 2023 onwards were Mr D's responsibility. The investigator said that these issues were addressed by local garages, but there was no further information about the nature of the faults or what would have been the most likely cause. So, he thought that given the age and miles covered by the car at inception, it is more likely than not that the repairs from 17 July 2023 onwards related to the components coming to the end of their in-service life, and seemed to be related to wear and tear, and not due to inherent faults. He also did not think that Santander was responsible for the costs associated with the air compressor rebuild kit, as there was no evidence or commentary around the fault being present and it did not represent an inherent quality issue.

The investigator also thought that it is fair that Mr D receives a refund of monthly payments for the period from 7 March 2023 to 1 April 2023 while the car was being repaired as, most likely, Mr D was not kept mobile during this period. Plus, monthly payments for the repairs carried out on 20 April 2023 and 20 May 2023, equating to around one to two days per visit (Mr D to confirm with Santander, so that any refund due can be calculated correctly). The investigator also thought that Santander should refund monthly payments for the repairs carried out by the car's manufacturer's specialist around 20 May 2023. Again, he said, that Mr D should confirm to Santander the dates the car went in and the date it was subsequently returned to him. Finally, overall, having considered the impact of this situation on Mr D, he thought it would be fair for Santander to pay £400 compensation to Mr D, to reflect this.

Santander replied to the investigator's view and said they accepted this outcome.

Mr D disagreed with the investigator.

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 to have been good industry practice at the relevant time. Mr D 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 the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr D 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 D's case the car was used, with a cash price of around £23,189. It had covered around 104,000 miles and was more than nine years old when he acquired it. So, the car had travelled a reasonable distance and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to 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. And with second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. So, Santander would not be responsible for anything that was due to normal wear and tear whilst in Mr D's possession.

I agree with our investigator who said that the car was not of satisfactory quality when supplied. I think each issue in isolation probably would not make the car of not satisfactory

quality, but the sheer number of issues does. And I agree that the appropriate remedy would be for the repairs to be carried out to address the remaining inherently faulty components which have not yet been repaired. I also agree that it would not be fair or reasonable for Mr D to be able to reject the car at this stage, as some of the repairs have been done by him already, and the independent report confirmed there was no evidence of failed repairs to inherently faulty components. And I think the fair and reasonable remedy, which is in line with the CRA, would be for Santander to arrange and carry out the repairs to the towbar, tailgate, cruise control, and to remedy the clunking noise in the gearbox at no cost to Mr D. And I also think that Santander should honour the previously agreed arrangement, and refund Mr D the cost of repairs incurred at the car's manufacturer's specialist garage on around 20 May 2023. Plus, I think Santander should refund Mr D the following:

- 20 April 2023: Diagnostic and DPF regeneration (upon Mr D providing an invoice to Santander);
- 20 May 2023: Diagnostic and DPF regeneration (£145).

Like the investigator has explained, some of the above issues have been identified by Mr D at the start, so most likely they were present at the point of supply, while others have been identified in June 2023 by the independent inspection, which indicated that they were developing at the time of purchase. And like I said before, I think each issue in isolation probably would not make the car of not satisfactory quality based on the mileage, age and price paid, but the sheer number of issues does. But I do not think I need to go into the details as Santander agreed to the outcome proposed by our investigator on 5 January 2024. So instead, I will focus on the remaining costs and issues that Mr D strongly believes should also be covered by Santander.

Before I look at those additional costs and issues, I too agree with the investigator that it is fair that Mr D receives a refund of monthly payments for the period from 7 March 2023 to 1 April 2023 while the car was being repaired, and a refund of monthly payments for the repairs carried out on 20 April 2023 and 20 May 2023 (equating to around one to two days per visit - Mr D should confirm with Santander so that any refund due can be calculated correctly). And Santander should refund monthly payments for the repairs carried out by the car's manufacturer's specialist around 20 May 2023. Again, Mr D should confirm to Santander the dates the car went in and the date it was subsequently returned to him. But, once again I do not think I need to go into the details, as Santander already agreed to this outcome. So, I will now focus on the remaining costs and issues.

Mr D believes that Santander should also refund him the below incurred expenses:

- a) 17 July 2023: Diagnostics, brake disc, and pad replacements (£890);
- b) 22 August 2023: DPF and sensor replacement (£2,200);
- c) 4 September 2023: Front lower ball joint arm replacement (£340);
- d) 2 October 2023: Call out, diagnostics, battery replacement (£380);
- e) 5 October 2023: Diagnostics and alternator replacement (£580).

Mr D provided invoices for all the above, but these are not reports which would stipulate to the nature of the fault, what has caused them, or when they may have started to occur. The invoices do not state a lot of detail at all. They do not even show the car's travelled mileage at the time of each of those repairs. Mr D said that when he picked up the car it had covered 104,074 miles, which was over 750 miles more than it was advertised with. He said the dealership explained that they had the car for a while, so it was used at that time, which Mr D said he was ok with as he said this was understandable, but he feels that he has not done a lot of miles in the car. So, he feels that the above repairs should be covered by the supplying dealership. I've considered that, but by 17 July 2023 the car had travelled more than 3,000 miles since the date of supply because in June 2023, when the independent

inspection was completed, the car had already travelled almost 107,000 miles. And when Mr D had the brake disc and pads replaced, he said this was at about 108,000 miles. So I've considered the age and mileage of the car when the above issues were noted and fixed, alongside the fact that all of the above ('a' to 'e' inclusive) are things that are subject to wear and tear. And as such, I think it is most likely that all of those needed to be fixed because of normal wear and tear and parts coming to the end of their life cycle.

Mr D has said he knows that brakes are wear and tear items, but he said they are still a major safety point on any car so he feels that, had the wear sensors been fitted correctly or replaced as part of the usual maintenance, the car would have had brake warning light on the dashboard when he was collecting it, or it would have appeared within the first two thousand miles along with some of the other faults. But I've not seen enough evidence to be able to say that, on balance, there was a fault present or developing at the point of supply with the brake's wear sensors or that the car was unsafe. And Mr D travelled between 3,000 to 4,000 miles before the brakes were replaced, so I think most likely these needed changing due to normal wear and tear process.

Mr D said that as he collected the car with around 104,000 miles and the exhaust was full within 2,000 miles, he believes that any reputable garage would or should have replaced the DPF before supply. But a typical lifespan of a DPF is about 100,000 miles, and, in this instance, it fully failed 3,000 to 4,000 miles after the point of supply. And taking into consideration that the car's age, mileage, and price paid, I think it is reasonable to expect there to be some wear to it as a result of this use. So, 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. And with second-hand cars – especially with a car of high age and mileage – it is more likely that parts will need to be replaced sooner or be worn faster than with a brand-new car. So, Santander is not responsible for anything that was due to normal wear and tear. And I think it is fair and reasonable to say that, considering the circumstances of this complaint, the battery, the alternator, the brakes, and the DPF all fall within this category.

Mr D also said that on 22 April 2023 he had issues with the air suspension, as it would go into extended mode at random intervals. Mr D said that after some research he ordered a compressor rebuild kit and with it he rebuilt the air compressor and cleaned out the filters. He said that this solution worked for a couple days, but then the same issue came back. But I've not seen enough evidence to be able to say that, on balance, there was an inherent fault present or developing at the point of supply with the air suspension, or even that this fault still exists. So, based on the evidence available I cannot say this is something that Santander is responsible for.

I also do not think it would be fair and reasonable for Mr D to receive a refund of monthly payments for the periods when he did not have access to the car while he was experiencing issues with the air suspension and the issues mentioned above ('a' to 'e' inclusive). This is because, as I mentioned, Santander is not liable for those faults.

Mr D has also told us how all this has had an impact on his loss of earnings and his family life, so I would like to express my considerable sympathy for the position Mr D is in. I know this has been a very difficult time for him. And I've considered this, but overall, I've not seen enough evidence for me to conclude that all the car faults that Santander is responsible for were most likely the reason for Mr D directly incurring a financial loss. But I have considered that this matter has caused Mr D distress and inconvenience while he was trying to resolve it. Mr D had to get the car repaired, make time for the inspection that was carried out on the car, plus to deal with the correspondence issues he had with the supplying dealership. He has also told us that paying for all of the diagnostics and repairs has put him in a position of financial difficulties. Not all the repairs are the liability of Santander, as per my reasoning

above, but I think paying for some of the repairs that relate to the inherent quality issues has contributed to Mr D's current circumstances. Which, I think, would not have happened had Santander supplied him with a car that was of a satisfactory quality. So, I think Santander should pay Mr D £400 in compensation to reflect this.

I understand that Mr D still has arrears on his account with Santander. So, I remind Santander of their obligation to treat Mr D fairly and with forbearance when deciding how to pay the suggested redress.

Mr D has also said that Santander has not treated him fairly and did not provide support to him when they were dealing with the arrears on his finance agreement. But in this decision, I'm only looking at the events that have been raised and investigated by Santander.

My final decision

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

1. Arrange and carry out the repairs to the towbar, tailgate, cruise control and the clunking noise in the gearbox at no cost to Mr D;
2. Refund Mr D the costs of repairs incurred at the car's manufacturer's specialist garage on around 20 May 2023;
3. Refund Mr D for the Diagnostic and DPF regeneration on 20 April 2023 (upon Mr D providing an invoice to Santander);
4. Refund £145 to Mr D for the Diagnostics and DPF regeneration on 20 May 2023;
5. Refund of monthly payments to Mr D for the period from 7 March 2023 to 1 April 2023 while the car was being repaired;
6. Refund of monthly payments to Mr D for the repairs carried out on 20 April 2023 and 20 May 2023 (equating to around one to two days per visit) - Mr D should confirm with Santander so that any refund due can be calculated correctly;
7. Refund monthly payments to Mr D for the repairs carried out by the car's manufacturer's specialist around 20 May 2023 - Mr D should confirm to Santander the dates the car went in and the date it was subsequently returned to him;
8. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
9. Pay Mr D £400 compensation;
10. Remove any adverse information recorded on Mr D's credit file in relation to this credit agreement up to date of settlement.

If Santander Consumer (UK) Plc considers that tax should be deducted from the interest element of my award, they should provide Mr D 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 D to accept or reject my decision before 4 April 2024.

Mike Kozbial
Ombudsman