

The complaint

Mr A is unhappy that Santander Consumer (UK) plc trading as Santander Consumer Finance have reinstated a conditional sale agreement he had with them.

What happened

On 11 May 2021, Mr A was supplied with a used car through a conditional sale agreement with Santander. He part exchanged his existing car for £56,250 and paid an additional deposit of £4,750. The agreement was for £19,995 over 60 months; with monthly payments of £401.87. At the time of supply, the car was just over three years old, and had done 23,695 miles.

Mr A started to have problems with the car overheating from shortly after it was supplied to him. After having the car inspected by a local garage, on 24 May 2021 he complained to Santander. The car was inspected by an independent engineer on 4 June 2021, at which point Mr A had travelled 1,216 miles. The engineer concluded there were faults with the car which made it not of a satisfactory quality at the point of supply, but said that Mr A continuing to drive the car had caused additional damage that meant a new engine was required.

On 16 July 2021, while settling other agreements, the supplying dealership also settled Mr A's agreement with Santander. The dealership say this was done in error, and they advised Santander of this immediately, asking for them to reverse the transaction and refund the money they'd paid. They say they advised Mr A of this error, and, on 23 July 2021, he told them that he hadn't agreed to the agreement being settled.

A further inspection of the car took place on 10 August 2021. The engineer who conducted this inspection, and examined a stripped-down engine, said *"the vehicle has suffered from in wear deterioration and drive on damage, resulting in the vehicle's engine overheating ... although the head gasket [fault] would have been developing at hire, but [it] may not have been immediately evident the consequential damage, valve seat displacement, overheating damage to the bores and block distortion should have been avoidable. This damage we suspect will make the engine uneconomical to repair."*

The engineer concluded, *"the vehicle has suffered from drive on damage, resulting in the vehicle's engine overheating causing the above listed faults ... the damage above head gasket replacement would be [Mr A's] responsibility in their response to the head gasket defect and the consequential damage is considered from an engineering perspective drive inattention."*

Based on this report, Santander said Mr A would be able to reject the car, but he would need to pay them £8,000 to fix the drive on damage he'd caused by continuing to use the car when faults were evident. Mr A didn't accept this offer, and instead arranged for the car to be repaired. He's said he came to an agreement with the dealership where he would keep the car and repair the engine, and the dealership would clear the outstanding finance. I've noted this contradicts what the dealership have said.

The dealership has said that, while this matter was still ongoing, Mr A authorised the repair to the car by advising the garage who did the work that the cost would be covered by the dealership / Santander. However, no such agreement was made, and Mr A took possession of the repaired car without anyone paying the repair cost. As such, they reported this matter to the police.

In September 2022, Santander reversed the July 2021 settlement of the agreement, and put a new agreement in place with Mr A. Mr A raised a further complaint about this but Santander didn't uphold the complaint as the agreement had originally been settled in error, and Mr A was still in possession of the car. Mr A wasn't happy with this, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said we couldn't consider Mr A's initial complaint about the quality of the car as he never brought this matter to us to investigate. And, if he were to do so now, this matter would be out of time for us to consider. The investigator also said that we couldn't consider any agreement Mr A had made with the dealership in relation to the quality of the car.

The investigator said that, as she'd seen nothing to show why the agreement had been set up in September 2022, she was unable to say Santander set this up fairly. As such, she thought Santander should unwind this second agreement, and repay any payments Mr A had made towards it.

The dealership provided a response to this view and provided copies of emails and documents they say shows what happened. Santander also provided further information. However, the investigator said she hadn't seen anything to change her view.

I issued a provisional decision on 19 February 2024, where I explained my intention not to uphold the complaint. In that decision I said:

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 A was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Based on what I've seen, it's not disputed that the car wasn't of a satisfactory quality when it was supplied. Nor is it disputed that Mr A's continued use of the car, once the faults became evident, caused additional damage and the failure of the engine. While, as explained by the investigator, this isn't something we're looking at, I think it's important to set this out, as it's the basis for what happened afterwards.

What is in dispute is why the agreement was settled in July 2021, what Mr A knew of this, and what he understood to be happening. I've set out the view of both Mr A and the dealership in relation to this above, so I won't repeat those views here.

I've seen the correspondence between the dealership and Santander between July 2021 and September 2022 about the payment made in error, and the dealership's attempts to recover this. As part of this, there's an email from Santander to the dealership, dated 23 July 2021, which says Mr A said he'd come to an agreement with the dealership, but this agreement had fallen through, as he was being asked to contribute £12,000 to the repairs. The email also says the agreement has been settled by the dealer but Mr A "told me that he did not agree for this to happen and he was not even aware that [the dealership] had settled the agreement on his behalf."

In a further email dated 8 November 2021, Santander advised the dealership, in reference to a discussion with Mr A about contributing to the repairs, that Mr A hasn't responded "so we would not look to pursue rejection."

I've also seen that, on 22 March 2022, Mr A was interviewed by the police under caution about this matter. The police have provided a summary of this interview in which they say Mr A confirmed that the dealership "for an unknown reason have paid off the rest of the finance" and that Santander sent him an email dated 25 November 2021, stating they no longer have any interest in the vehicle. Mr A also provided the police with evidence that the final repair costs to the car were £2,340. The police said they were taking no further action as they considered the ownership of the car to be a civil matter.

Based on what I've seen, I'm not satisfied with Mr A's explanation as to what happened. While he's said that he agreed with the dealership that they would repay his finance and he would pay at least £8,000 to repair the engine, this is not supported by the correspondence at the time. Not only did Mr A tell Santander on 23 July 2021 that he had no idea why the agreement was settled, he also confirmed this to the police when interviewed under caution.

What's more, I haven't seen any evidence of an agreement between Mr A and the dealership where the dealership agreed to repay the finance; and the dealership's almost immediate request for a refund from Santander, due to the agreement being settled in error, supports that no such agreement was in place.

When Mr A was initially supplied with the car, this was done with £19,995 finance through Santander. And, even if I'm wrong about an agreement with the dealership, I don't think it would be reasonable for Mr A to expect the dealership to clear this finance in return for Mr A paying the £2,340 repair costs he evidenced to the police, especially when two independent engineers confirmed that he was responsible for some of the damage to the car.

Given the above, I'm satisfied that the dealership repaid the agreement in error, something which had nothing to do with any agreement they had with Mr A. While it took Santander about a year to resolve this matter, I'm satisfied with the explanation they provided the dealership for the delays in an email dated 9 August 2022 – they weren't able to action the refund without due consideration and a proper investigation, and that they had been in contact with Mr A about this, and about re-proposing the agreement.

As such, it's my intention to say that Santander have acted reasonably by reinstating/re-proposing the agreement with Mr A, and by chasing him for payment. And I don't intend to ask them to do anything more.

Responses

Santander didn't respond to my provisional decision, but Mr A did. He provided extensive comments on the faults with the car, and he says he was advised to continue to drive the car. As such, he found it unacceptable that he was being asked to contribute towards the costs of an engine replacement. Which he says led to an "intense disagreement" about who should pay the repair costs.

Mr A said that "the finance was cleared unexpectedly by [the dealership], who then informed me of [their] actions ... this act was contradictory to our discussions and the ongoing dispute over the vehicle's condition and the responsibility for its repair."

Mr A also said that Santander setting up a new finance agreement in September 2022, was done without his authority and "raises serious concerns regarding the legality of Santander's actions and the manipulation of my personal and financial information. The establishment of

this new agreement amidst an ongoing dispute and without any form of consent or proper communication is both alarming and indicative of a severe lapse in ethical and legal standards.”

Finally, Mr A has said that the £2,340 repair costs he provided the police in March 2022 were only for the stripping and diagnosis of the engine, not for its complete repair. And he thinks my provisional decision didn't take into consideration the “*manipulative actions*” of the dealership, or the “*unauthorized actions*” taken by Santander.

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.

As Santander haven't said anything to the contrary, I'm taking their lack of comments to mean they don't object to my provisional decision.

While Mr A's comments on the faults with the car, and what he was told about this, have been noted; as explained in both my provisional decision and the investigator's opinion, this is not something we are considering as Mr A hasn't brought this matter to us for investigation (and is now out of time for doing so). As such, I will only be considering Mr A's comments on the repayment and reopening of his agreement, and Santander's actions relating to this. I'm also not considering the actions of the dealership and, as Mr A clearly remains concerned about these, he should raise these matters with the dealership direct.

I've noted Mr A's comments about the finance agreement being repaid by the dealership without his knowledge. This statement contradicts his original assertion that he'd agreed for the finance to be repaid in lieu of him funding the repair costs, and is now in line with what he told both Santander in July 2022, and the police in March 2022.

Based on this, I remain satisfied that the finance was repaid in error, and not as part of any agreement relating to repair costs. Given that this was repaid in error, and that Mr A was aware of this error from shortly after it happened, I think it's reasonable for him to expect for this error to be rectified i.e., the agreement to continue and for him to remain liable for the ongoing payments, despite the dispute over repair costs. I'm also satisfied that any reasonable person would also expect this to happen. What's more, given this was an error, I wouldn't expect Santander to either seek or require Mr A's authority to rectify the error and reinstate the agreement.

As I've explained in my provisional decision, Santander took around a year to reinstate the agreement. Had they reinstated the agreement from the date of the repayment in error, which they were entitled to do, then Mr A would've found himself in a position where he would've needed to immediately repay a year's worth of 'missed' payments. And to ask him to do this would be unfair, as although the repayment in error wasn't Santander's fault, the delay in resolving it was. So, restarting the agreement, which Santander did, was the fair and reasonable thing to do. And I remain satisfied they've not done anything wrong by taking this course of action.

Finally, while the breakdown of the repair costs is noted, as I explained in my provisional decision, I only considered this to be relevant in the context of a repair-repayment agreement between Mr A and the dealership. However, as Mr A's comments confirm that no such agreement was in place, these costs no longer have any relevance to my final decision.

For the reasons given, Mr A's comments don't change my view. As such, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

My final decision

For the reasons explained, I don't uphold Mr A's complaint about Santander Consumer (UK) plc trading as Santander Consumer Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 March 2024.

Andrew Burford
Ombudsman