

## The complaint

Mrs R complains that the decision of Santander Consumer (UK) Plc (“Santander”) to default and terminate her conditional sale agreement was unfair.

## What happened

I issued a provisional decision on this complaint in May 2024. In that decision I explained why I thought the complaint should be upheld and what Santander needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*In August 2022, Mrs R was supplied with a used car through a conditional sale agreement with Santander. The agreement was over 49 months, with monthly repayments of £829.61 and an optional final purchase payment of £53,946.31. At the time it was sold, the car was just over four years old.*

*In August 2023 Mrs R’s car was stopped by the Police whilst being driven by a family member. The driver did not hold any insurance to drive the car so it was seized by the Police. Before Mrs R was able to collect the car the following day, Santander arranged for it to be taken by its agents for safe keeping. It later told Mrs R that it had concluded she had breached the terms and conditions of her agreement so it would be defaulting and terminating the loan and repossessing the car.*

*Mrs R complained to Santander about its decision. She said that the car had been taken without her consent, and provided a Police report of the theft. But Santander said that it wasn’t persuaded by Mrs R’s account of what had happened, and the initial report made by her husband was that she believed the driver of the car held valid insurance. So it refused to alter its termination of the agreement. Unhappy with that response Mrs R brought her complaint to us.*

*Mrs R’s complaint arises from the termination of a conditional sale agreement. Entering into consumer credit contracts such as this is a regulated activity, so I’m satisfied I can consider Mrs R’s complaint about Santander.*

*Santander has decided to default and terminate Mrs R’s agreement. It says it has done so based on the provisions contained in sections 4.4 and 4.5 of the agreement. Those say;*

- 4.4 You will not use or let anyone use the goods illegally. You will not let anyone obtain any rights (including liens) over the goods or let anyone take or threaten to take them to pay any debt that you owe. You will keep the goods in your possession and under your control and will not sell, transfer, mortgage, tend or give the goods to anyone.*
- 4.5 You will not allow the goods to be seized or removed by the police under a statutory power, this will be treated as a breach of the agreement, in the*

*event that the goods are seized or removed we may take the goods into safe custody.*

*Santander has said that its understanding, from Mrs R's initial report, was that she had allowed the car to be driven by an uninsured driver (although it accepts Mrs R might have thought the driver had insurance). So it says she has allowed someone to use the car illegally and so it has grounds to terminate the agreement.*

*Mrs R says that she was unaware the car was being taken by the uninsured driver. She says that the driver was a relative and friend, but when the car was taken she was asleep. She says that the first time she became aware the car had been taken, and seized by the Police, was when her husband told her what had happened the following morning.*

*So I think what I need to reasonably decide here, and that will lead to a decision on whether Santander has acted reasonably in terminating the agreement, is whether Mrs R has allowed someone to use her car illegally.*

*I have listened carefully to the three calls that Mrs R had with Santander later on the day that the car was seized. Although I am only summarising here what I consider to be the pertinent points of those calls, I want to confirm that I have listened to them in their entirety so I can understand the context of what was said.*

*On the first call Mrs R wanted to understand why her car had been collected from the compound by Santander's agents. But during that call one of her children became distressed so she asked Santander to continue the conversation with her husband (who I will call Mr R). I don't know whether Mrs R remained in the same room, and so was able to hear and influence what Mr R told Santander. Mrs R says that she did not have any further part in that conversation.*

*Mr R explained that the car had been driven by his brother and a friend. He said that he understood that the driver held comprehensive insurance that allowed him to drive the car. He also said that Mrs R was unaware that the driver didn't hold valid insurance.*

*I think my interpretation of what should have reasonably been concluded from that call differs from Santander. I accept that, at that stage, Mr and Mrs R made no allegation that the car had been taken without Mrs R's consent. But I don't think the opposite is true either. There was nothing on that call that would lead me to conclude Mrs R was aware that the car had been taken that night. Mr R simply saying that Mrs R was unaware that the driver didn't hold valid insurance doesn't lead me to a conclusion that Mrs R made active enquiries to determine that the driver did hold valid insurance*

*Santander then sent Mrs R an email explaining that it would be terminating her agreement. She called the firm to seek further information about that decision. Mrs R spoke with the same agent that had taken her initial report. I think it is fair to say that the call did not proceed well.*

*The agent was adamant that her earlier submission, that the car had been taken by someone Mrs R believed to be insured, was a fair reflection of the initial conversation. The agent refused to allow Mrs R to provide further information about the matter, implying that the information she was now giving was untrue. The agent from Santander terminated the call.*

*Mrs R called back and spoke to another member of staff. That call allowed Mrs R to provide further information about what had happened. She explained she was asleep in bed when the car had been taken so there was no way she could have provided her consent. The agent suggested that meant the car had been stolen. Although that definition surprised Mrs R she agreed that was effectively what had happened. And, following the advice from the agent, she agreed to request a report from the Police to show the crime had been logged.*

*I can see that the Police force sent two emails to Santander. The first, from a Police Sergeant confirmed that the car had been reported as stolen. And a second email also confirmed the crime number and that it related to the theft of a motor vehicle. But Santander's notes show that it decided to not return the car to Mrs R since it had only been reported stolen after the seizure had taken place, and it had found the information Mrs R had provided to be contradictory.*

*I have no way of knowing whether Mrs R was aware that her car was being taken for a drive that night. It does seem that Mr R was aware, and that potentially he provided the keys to the driver. But it is Mrs R that is the sole named individual on the conditional sale agreement. So where the terms of that agreement refer to "you", I think that can only reasonably mean Mrs R, rather than her husband.*

*As I am sure Mrs R is aware, making an incorrect report to the Police is a serious offence. And I note that Mrs R was employed at the time she purchased the car by a firm of solicitors. So I can only reasonably conclude that Mrs R thought carefully about making the report of theft, and that it is most likely to be a true reflection of what happened.*

*I don't think that Santander has reached a reasonable conclusion here. It has placed too great a weight on information provided by Mrs R's husband, at a time when he might have been keen to protect a relative and friend from further Police action. It has failed to consider what appears to me to be strong evidence of the car being taken without Mrs R's consent that was subsequently provided.*

*So I am currently satisfied that Mrs R didn't breach terms 4.4 and 4.5 of the conditional sale agreement. I am not persuaded that she allowed someone to use her car illegally. And when she retired for the night I think she was sufficiently satisfied that the car was in her possession and under her control. So I don't currently think it was reasonable for Santander to default the agreement and so it needs to put things right.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Santander has said that it has nothing further to add. Mrs R has said that she accepts my provisional decision. She has also provided me with some further information about additional costs she has incurred. Although I am only summarising here what Mrs R has said, I want to reassure her that I have read, and carefully considered, her entire responses.

Mrs R says that she has needed to pay additional costs for taxis and the like as a result of not having her car. But she says that she doesn't hold any evidence of those costs. She also says that Santander has added some adverse information to her credit file as a result of her cancelling her repayments after the car had been recovered and not returned to her.

Mrs R has also provided evidence of two car related invoices that she paid shortly before her car was seized. On 25 May 2023 Mrs R had the car serviced at a cost of £538.70. And on 26 July 2023 Mrs R arranged for the replacement of the tyres (at a cost of £1,440) and the

supply of four new alloy wheels (at a cost of £4,368). And she says that she needed to pay £80 to have her private registration removed from the car.

### **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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs R and by Santander. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that neither party has provided me with any new evidence I see no reason to alter the findings I reached in my provisional decision. But as I said above, Mrs R has provided me with some information about additional costs she has incurred. I invited Mrs R to provide that information in my provisional decision. And I said that in this final decision I would consider whether I should increase the compensation I am directing Santander to pay.

I have carefully considered the additional costs that Mrs R says she has needed to pay. It is likely that she will have been greatly inconvenienced by the loss of her car and needed to have paid for alternative transportation such as taxis. But I am mindful that apart from possibly one repayment that I am asking Santander to refund, Mrs R hasn't made any further payments on her car. So I am satisfied that it wouldn't be reasonable to ask Santander to pay those additional transport costs.

I also don't think that Santander should refund the costs that Mrs R paid to have the car serviced. Those costs were paid almost three months before the car was repossessed. Servicing the car was a requirement of Mrs R's agreement with Santander. So I think that was a cost that Mrs R was required to pay regardless of the actions Santander took later when it repossessed the car.

I haven't seen any information about why Mrs R chose to have the tyres replaced. But I am mindful that when Mrs R had the tyres replaced the car had travelled almost 29,000 miles. So it is entirely likely that the tyres had reached the end of their normal lifespan and needed replacement. So for similar reasons to those given above, I think this was a cost that Mrs R needed to pay regardless.

But at the same time Mrs R also purchased four new alloy wheels. I haven't seen anything to make me think the purchase of those wheels was needed as a result of say damage to the existing wheels. Instead I think Mrs R most likely purchased those wheels to enhance the appearance of her car. Those wheels were repossessed along with the car, so Mrs R has received no benefit from their purchase. I think that the cost of the wheels should be refunded by Santander. And I also think Santander should refund the £80 that Mrs R needed to pay to have her private registration number removed from the car.

## Putting things right

For the reasons set out above, and in my provisional decision, I direct that Santander should take the following steps to compensate Mrs R.

- Santander should refund any monies that Mrs R has paid to settle the finance agreement including any charges it has levied for that early settlement including, but not limited to, repossession fees, early settlement interest, administration charges etc.
- Mrs R made an advance payment on the agreement of £8,200. That sum should be refunded to her.
- Santander should refund the amount paid by Mrs R for the new wheels of £4,368 on 26 July 2023.
- Santander should refund any monthly repayments made by Mrs R after the car had been repossessed.
- Santander should add simple interest to the above refunds at a rate of 8% per annum from the date they were paid to the date of settlement. HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mrs R a certificate showing how much tax it's taken off if she asks for one.
- During the time Mrs R held the car I think she would have derived benefit from its use. I think that benefit is fairly represented by the monthly payments that she has made. So I think it fair that Santander retains those payments.
- Santander may deduct from any refund it pays to Mrs R any payment it made to the storage compound to which the Police recovered the car. From Santander's notes that charge appears to have been £192 for the release and potentially £26 for one day's storage.
- There is no doubt that this matter will have caused a great deal of distress and inconvenience to Mrs R, both in being deprived of her car, and in needing to source a replacement. I direct Santander to pay an additional sum of £500 to Mrs R for the inconvenience she has been caused.
- Santander should remove any adverse information such as late or missing payments, and including any notices of default, from Mrs R's credit file in relation to this agreement

## My final decision

My final decision is that I uphold Mrs R's complaint and direct Santander Consumer (UK) Plc to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 13 August 2024.

Paul Reilly  
**Ombudsman**