

The complaint

Mr P has complained about the way Santander UK Plc dealt with a claim for money back in relation to a transaction he made using his credit card.

What happened

In February 2022 Mr P decided to pay a company I'll call "V" for an LPG conversion for his taxi. The taxi was a 2011 model that had covered around 220,000 miles. The conversion cost £13,800 and Mr P made three payments to V using his Santander credit card for the amount between February and March 2022 (£1,000, £5,000 and £7,800).

From what I've seen, in November 2022 Mr P contacted Santander to put in a claim under section 75 of the Consumer Credit Act 1974 because he was unhappy with the conversion. Santander's notes say that he started to experience issues in August 2022. The notes say in November 2022 Mr P told Santander he had issues braking and he took the car to one of V's approved garages and it replaced the braking servo, but this didn't resolve the issue with regards to a hard pedal. I understand the garage told Mr P to contact V.

I can see V wrote to Mr P in January 2023 and said it had been in contact with its technicians. It summarised the responses and comments in relation to the information Mr P gave it and said:

- Leak in engine shortly after conversion – it provided a free 2,000-mile service after the conversion to resolve any early issues. It said it wasn't uncommon as the new engine beds in.
- Wiring issue resulting in battery being replaced twice – it had no knowledge but would assume it to be the taxi's original wiring.
- Braking issue – its approved garage fitted the servo. The brake pedal on start would be hard while waiting for vacuum build up. No further support was required as not an engine fault.
- Steering – it observed some excessive wear with the power steering and crank pulley. If this was found it would upgrade the pulleys for Mr P.
- Loss of steering – it could only speculate the belt had been tightened too much, but this would need further investigation.

V said the taxi could be assessed/repaired at its workshop or at another approved garage, but it wouldn't be able to recover it.

Santander sent a response to the section 75 claim and said it couldn't conclude there'd been a breach of contract given how long Mr P had been driving the taxi since the conversion. It said the onus was on Mr P to show the fault was inherent at the time of supply. It said it would need some sort of report to diagnose the exact cause of the fault.

Mr P didn't agree and supplied a letter from the garage that serviced the taxi. This said the garage had serviced the taxi for 10 years and that Mr P had never had issues with the braking system.

Santander sent a final response letter for the complaint in May 2023 and reiterated it didn't think there was enough evidence to show there'd been a breach of contract.

Mr P obtained a report in June 2023 that said the braking efficiency was not up to standards. But Santander didn't think the evidence was sufficient. Mr P obtained further comments from the technician that said the braking system had been drastically reduced by the conversion and reiterated the taxi wasn't fit for purpose. Mr P decided to refer his complaint to the Financial Ombudsman. I understand he requested a full refund.

Our investigator ultimately didn't uphold the complaint. She noted in February 2022 the taxi had covered around 220,000 miles; by August 2022 it had covered around 230,000 miles, and by February 2023 it had covered around 236,000 miles. She said if the conversion had caused an issue with the hard brake pedal this would reasonably have been notable immediately, not after several months. She said there was no direct link between the two things. She said given the taxi passed its MOT in August 2022 and February 2023 this seemed to contradict Mr P's report. She thought the fault was more likely as a result of wear and tear. So she didn't make any recommendations.

Mr P didn't accept the assessment. He highlighted the lifespan of the taxi was between 300,000 – 500,000 miles, and that it was perfectly fine before the conversion. The independent technician reiterated the taxi wasn't fit for purpose.

As things weren't resolved, the complaint was passed to me to decide. I arranged for our investigator to contact Mr P to ask:

- If he had any job cards or contract detailing the work that was carried out by V. I wanted to see what sort of works were required to the braking system as part of the conversion as it seemed the main issue was with regards to the braking.
- If Mr P could supply evidence of any repairs/inspections between the conversion and when the issues started to be complained about towards the end of 2022. I said we couldn't see what happened between those first 6 – 10 months.

Mr P responded to say we had the service schedule and that within those 6 – 10 months the taxi wasn't functioning right. He said he'd provided an independent report, and that V didn't take into consideration the wear and tear and mileage of the taxi before it carried out the conversion. He said the conversion is what caused the brakes issue. He also provided a letter from March 2024 saying his taxi licence had been suspended for six weeks and that the taxi had an unapproved conversion.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr P and Santander that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear about the problems Mr P had with the taxi. I appreciate the conversion cost a significant sum.

What I first need to consider is whether Santander – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr P's request for getting money back. It's important to note Santander isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Santander can consider assessing a claim under section 75 or raising a chargeback.

I don't think there'd have been a reasonable prospect of success for a chargeback for services not being as described or being defective because it would have been raised out of time (within 120-calendar days from when the services ceased). So I've gone on to think about section 75.

Section 75 is a statutory protection that enables Mr P to make a like claim against Santander for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. And I think the necessary conditions between the parties exist as well.

I understand Mr P paid for the conversion for business purposes, but that Mr P is classified as an individual for the purposes of the Consumer Credit Act 1974. Relevant legislation says services need to be carried out with reasonable care and skill. Mr P paid V to carry out the conversion. So if it wasn't carried out with reasonable care and skill there could be grounds to say a breach of contract had occurred.

Mr P says the conversion wasn't carried out with reasonable care and skill. Santander didn't think he'd shown sufficient evidence of that. It seems the main problem is with the braking issue. On the one hand, Mr P said his taxi was in perfect working order and well maintained prior to the conversion, and the independent technician said the braking system was reduced due to the conversion. But on the other hand, Mr P hasn't shown us what work was carried out as part of the conversion; V has said the braking system wasn't part of the conversion; the car was driven from 220,000 miles to 230,000 miles before issues with the braking were highlighted; and the independent technician said You mentioned to me whether I could confirm the fault on the vehicle was due to wear and tear. This surely cannot be the case as the fault to the vehicle was apparent some 6 months after the full fitting of the conversion was completed.

The evidence seems incomplete and slightly conflicting. This is why I arranged for our investigator to ask Mr P for further evidence. The problem I have is that I've not seen enough to determine the conversion would have involved doing something to the braking system that led to the more recent issues with the taxi. There's no contract setting out part of the braking system was repaired/replaced as part of the conversion. I'm conscious that Mr P was able to use the taxi for some time before the faults with the braking were highlighted. I'd like to have been more certain the problems with the braking system were caused as a result of the conversion. And I therefore don't find it was unreasonable for Santander to have wanted to see more evidence to determine there'd been a breach of contract. I think its answer to the claim was broadly fair based on what I've seen.

However, Mr P has recently provided us an email from a taxi licencing authority saying the type of conversion Mr P had carried out had not been tested or approved for installation in the area he is licensed in. So his licence was suspended for six weeks. I think Mr P is therefore saying V should not have carried out the conversion in the first place. But the complaint Mr P raised with Santander was in relation to a claim for problems off the back of the conversion, specifically with the braking system. Under the complaint I'm considering I need to focus on what happened up to when Santander sent Mr P its final response letter because that relates to the events Santander has had the chance to consider. While I appreciate it's frustrating, I think Santander will need the opportunity to deal with Mr P's claim the conversion was mis-sold before the Financial Ombudsman is able to deal with any subsequent complaint as a result of that. So either Mr P can contact Santander about the new issue himself, or he can ask our investigator to set things up for him.

Taking everything into account, I do sympathise with Mr P. I can see he's having issues with the taxi, and with being able to safely use it. But I'm not persuaded he's done enough to show, for the complaint I'm looking at, that the problems with the brakes were as a result of the conversion that was carried out. I've issued a provisional decision, so if there's any further evidence or arguments that Mr P wants to raise, I'm happy to consider them before deciding whether to issue a final decision.

Santander hasn't added anything new for me to consider. Mr P responded to highlight the letter he received about the conversion being unapproved. The letter sets out the type of conversion on Mr P's taxi had not been tested or approved for the area Mr P's taxi was licenced for. Mr P said professional and expert opinion said the conversion impacted the braking system due to an engine vacuum malfunction. He said the conversion should never have been installed into his fully functional approved vehicle. He highlighted again that between August 2011 and February 2022 the taxi carried out its duty without issue. He asked if Santander could obtain further information from V. He also supplied another letter from the licencing authority which indicated it had received a report which identified an issue with the braking system which might be linked to the conversion.

Our investigator asked if Santander would contact V to request further information, but it declined because it said it was for Mr P to provide supporting evidence and documentation.

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'd like to thank the parties for their responses. It's a shame neither party has been able to supply further information about what exactly was carried out by V. I think this may have been helpful.

I've thought about Mr P's point that the conversion involved removing the diesel engine and replacing it with a petrol engine that was modified to run on LPG. He said a gas fuel tank was fitted along with a small petrol tank so the taxi could run on bi-fuel. Having looked into this further, I understand that the vacuum for braking works different on a diesel car compared to a petrol car. So on reflection, I can now understand the conversion in theory may have impacted the braking. But as far as I know, had the conversion impacted the braking, this ought to have become apparent straight away. If not when the taxi was collected (if it had been running for a short while previously), then by the next time it was used from cold. I've still not been able to establish why there's no record of the brakes being complained about shortly after the conversion. The evidence indicated Mr P used the taxi for around six months and covered around 10,000 miles before the brakes were complained about.

I understand the braking issue was noticeable. And certainly, for a professional like Mr P, I think it would have been noticeable straight away after the conversion – if that was the cause of the issue. I think this, more than anything, puts too much doubt in my mind that the conversion was the direct cause of a braking issue. I'm mindful the taxi was over 10 years old and had covered over 200,000 miles by this point. And while I take the point, its life expectancy was longer than this, and that Mr P had been looking after it, it's not inconceivable that there could be another issue with the taxi down to usual wear and tear that led to the braking issue. I'm conscious it also subsequently passed an MOT.

Moreover, while I appreciate there have been some issues with the licencing of the taxi due to the conversion, this doesn't prove the conversion negatively impacted the brakes on Mr P's taxi. It shows that the type of conversion is not yet approved.

It's not straight-forward. But I do need to point out, I'm not looking at a complaint against V. I'm looking at a complaint against Santander – a financial service provider. I have to consider how it handled the claim, based on the evidence that was submitted. And for the reasons given above, I've not seen enough to say its answer to the claim was unfair.

However, for the avoidance of doubt, to reiterate, I've not made any conclusions on Mr P's argument that V should not have carried out the conversion in the first place because it wasn't authorised for the area Mr P worked. This is a new complaint. As I said before, I need to consider primarily what happened up to the point Santander issued its final response letter back in 2023. The issues with the licencing authority happened more recently. So, while I appreciate it's inconvenient, Mr P will need to decide if he wishes to take it up with Santander in the first instance. If he's unhappy with its response, it may be something our service is able to consider.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 May 2024.

Simon Wingfield
Ombudsman