

The complaint

Mr B complains about how Santander UK Plc dealt with his claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to a defective car.

What happened

In November 2022 Mr B bought a used car, and he paid a £950 deposit using his Santander credit card. That deposit included a £200 delivery fee. The car's cash price was £10,750; he paid the £10,000 with money he had borrowed from a third party.

It is no longer in dispute that the car was defective when it was delivered. Mr B tried to reject it at the time, but instead the dealer insisted that it be allowed to try and repair it, and Mr B went along with that. Not only was this repair unsuccessful, but it actually turned out to leave the car in a worse condition than before. He tried to reject the car again, but the dealer stopped communicating with him. Mr B then asked Santander for a refund, but it declined. So he brought this complaint to our service.

Our investigator upheld this complaint. After reviewing all the evidence, he agreed that the car had not been of satisfactory quality at the point of sale, and that the repair attempt had been unsuccessful (and had even introduced new problems). He thought that Mr B was entitled to reject the vehicle and be refunded. He recommended that Santander arrange to collect the car at no cost to Mr B, and refund the entire purchase price and the delivery fee, with interest on the refunds. He said that Santander should also refund some costs which Mr B had incurred for the car being recovered at the roadside and for having the faults diagnosed by another garage, again with interest. And he also recommended that Santander pay Mr B £200 for his inconvenience.

Santander accepted that opinion and agreed to all of the investigator's recommendations, with the proviso that interest on the refunded credit card payment should begin to run from the date that Mr B had repaid that amount, rather than the date of the purchase. Mr B does not agree with that.

Mr B also accepted the investigator's opinion, at first. But he later changed his mind and asked for more compensation. He also said that as he has lost confidence in Santander and in the dealer, he should be paid his refunds first, before the car is collected. That is a sticking point for Santander, as it insists that the car should be collected first, before any refund is paid. As the parties have reached an impasse on this issue, the investigator referred this case for an ombudsman's 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.

As I've said, both sides accept the investigator's findings that the car was not of satisfactory quality at the point of sale, that Santander is liable for that, and that Mr B was entitled to reject the car. So there is no reason for me to depart from those findings, and I gratefully

adopt them here.

I therefore uphold this complaint. It only remains for me to decide what the remedy should be.

Putting things right

It is not in dispute that the cost of the car, and the related costs of £1,076.16, should be refunded, with interest, and that the car should be collected at no cost to Mr B. The main issue between the parties is in what order those things should take place. Also, Mr B has asked for more compensation.

I will deal with the latter point first. I think that full refunds, with simple interest at eight percent a year, plus another £200 for inconvenience, is probably about what I myself would have awarded if our investigator had not upheld this complaint. So that is what I shall do.

I will follow the investigator's method of dealing with the £950 credit card payment separately to the balance. In connection with that, the reason for awarding interest on refunds is to reimburse Mr B for being without the relevant funds for the period between spending them and getting them back; the credit card payment, being a debt, did not deprive him of funds until he paid it off, so I think it is fair that interest runs from the date he did that, which is 11 December 2022.

Turning to whether the refunds should be paid before or after the car is collected, the usual practice is for the car to be collected first, and then for the refunds to be paid afterwards without delay. So I have thought about whether there is a good reason to proceed differently in this case.

I understand why Mr B has lost confidence in Santander and in the garage, and I appreciate his strength of feeling in this matter. However, as far as I'm aware Santander has never failed to comply with an ombudsman's decision, and so I do not believe that it would be unsafe to assume that it will comply with this one. Furthermore, Santander has indicated that if the garage is reticent about paying the balance of the cost of the car, then Santander will assume responsibility for this and recover the money itself, rather than making it Mr B's problem. So I'm satisfied that Santander is dealing with this complaint in good faith, and accordingly I will say that the refunds and compensation are contingent on the car being collected first.

Mr B has, understandably, expressed concern about the fact that the repair attempt left the car in an even worse condition than when he first received it. He is also worried about what will happen if the car is damaged in transit back to the garage. However, neither of these things should be his problem. Santander is aware of the outcome of the repair attempt, which the investigator described in detail in his decision; and since the dealer caused the new problems, the dealer is no doubt aware of them and Mr B is of course not liable for them. And once the vehicle has been removed from Mr B's property, any accidents which occur while it is being transported will be nothing to do with him. Neither of these issues will affect his compensation. So I'm satisfied that he will not be disadvantaged by the remedy I have set out below.

My final decision

My decision is that I uphold this complaint. I order Santander UK Plc to:

- Collect the car from Mr B at no cost to him, promptly and at a mutually convenient time; and then:

- Refund the £950 deposit, with simple interest on that refund at the rate of 8% a year, calculated from 11 December 2022 to the date of settlement;
- Pay Mr B the balance of the purchase price of the car (£10,000), together with interest on that sum at 8% a year from the date of purchase to the date of settlement;
- Rework Mr B's credit card as if he hadn't used it to pay £950 of the purchase price, refunding any credit balances that may result plus simple interest on any such credit balances at 8% a year from the date the balances result to the date of settlement;
- Refund £1,076.16 (being the total of Mr B's sundry costs in connection with recovering and diagnosing the vehicle), with simple interest at 8% a year from the various dates of payment to the date of settlement;¹ and
- Pay Mr B £200 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 November 2023.

Richard Wood
Ombudsman

¹ I believe that Santander already has the relevant invoices that make up this sum, but if I am mistaken then these will be supplied on request.