

The complaint

Mr W complains that a car he acquired financed through a conditional sale agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

What happened

In March 2022 Mr W acquired a used car from a dealership, D, financed through a conditional sale agreement with Santander. Mr W said four days after he acquired the vehicle the car started to show signs of a fault - when the car is in gear in a stationary position, with the handbrake applied, it's wanting to stall. He said as soon as he takes it out of gear the car runs normally. Mr W said the fault is intermittent in that it would happen one day or one journey, and not happen on the next. Mr W said he provided video evidence of the fault to D.

In April the fault was diagnosed to be the clutch master cylinder. D told Mr W it had ordered parts for the repair. Mr W said this repair fixed the problem for a few weeks. But the fault returned and in May the car went back to the workshop. The dealership couldn't replicate the fault. Mr W said at this point he lost confidence in D.

In October Mr W said the same intermittent fault returned and the car was booked into the workshop again. This time the garage was able to replicate the fault. Mr W said the car was in the workshop between 2 and 22 November. He was told the car needed a new power control module (PCM). On 22 November Mr W said he was told the dealership couldn't resolve the problem and an appointment would be made with the specialist from the manufacturer. He said he was told that the car was fit to drive but Mr W didn't feel safe driving the car and refused to collect it. Mr W brought a complaint to Santander.

Santander commissioned an independent inspection and the report concluded that the engineer was unable to replicate any of the reported issues at the time of the inspection. It considered the vehicle to be in good condition and fit for purpose. So Santander did not uphold Mr W's complaint. Mr W brought his complaint to this service.

Our investigator concluded that Santander had acted fairly and reasonably by arranging an independent inspection of the vehicle and that as no fault was found following a full inspection he wouldn't be asking Santander to do anything. Mr W wasn't satisfied so he asked for a decision from an ombudsman.

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.

Mr W has expressed some concern about the impartiality of our decision-making process. So I would first like to reassure him that my role is to be impartial, to look at the individual circumstances of his complaint and to decide based on what I believe is fair and reasonable.

I realise this will come as a disappointment to Mr W but having done so I won't be asking

Santander to do anything further. I've explained why below.

Santander, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr W – whether it was of satisfactory quality at that time will depend on several factors, which would include the age and mileage of the car and the price that was paid for it.

The car that was supplied to Mr W was approximately four years old, had been driven 32,271 miles and had a price of £15,808. So I would expect some wear and tear to be present.

Following the investigator's view Mr W has said the fault with the car is no longer intermittent and is present on almost every journey. He said the D's engineer had informed him there was a specific fault with the car that they couldn't resolve. He said he was told to keep his foot away from the accelerator when stationary. He said when he tried this at home it immediately began to sound like the car wanted to cut out.

Mr W said the inspection of his car hadn't been carried out sufficiently. He said the car needs to be stationary and a few steps need to be carried out with the clutch and the gear stick while stationary to find the problem which he said he'd stated multiple times yet felt he had not been listened to. He said this wasn't considered during independent inspection. Mr W said he had explained this numerous times to Santander. Mr W went on to say that when the time comes to move the car on he will no longer be able to sell it because the fault can't be fixed. Or if he is able to sell it would be heavily reduced in price. Mr W said both the Santander and D weren't taking the problem seriously enough.

In response to our investigator's view Mr W provided a video of the fault with the car which I viewed. The engine was on and the car was stationary and I can hear at times the engine appears to stutter or rev up.

Mr W has asked for a second inspection outside his house so he could show the engineer. I asked Mr W if he would be able to commission his own independent inspection of the vehicle. After doing some research Mr W said he was unable to afford the prices quoted for an independent inspection. I asked Santander if it would be prepared to arrange a second independent inspection of the car and to cover the cost. It agreed to do this. But Mr W declined as he was concerned the inspection would be carried out by the same company that did the original report. I do appreciate that Mr W has concerns about the original inspection but as we are an impartial service we wouldn't be able to comment on whichever company Santander would use. That would be up to Santander to decide. And I've no reason to dispute the validity of the original report. Mr W asked me to proceed without this second inspection.

In the absence of a second inspection and as Mr W had told this service that D had seen the vehicle a few times I asked Santander for its opinion on what the problem with the vehicle was. Santander said that D replaced the PCM and throttle housing under warranty on 20 December 2022. It said the vehicle was then serviced in February 2023 and D performed a health check which did not highlight any issues with the vehicle. Santander said "all green" was D's assessment.

I also asked Santander to review the video that Mr W provided. In its response it said:

"From what I can see the revs go up slightly when he puts it in gear. I'm assuming he has the clutch depressed. I do not know the specifics of this model but there is every possibility that this is an anti-stall safety feature and if so it is a characteristic of the vehicle."

It appears from Mr W's testimony and video provided that there is an issue which causes the car to either stutter or for the revs to go up. And it's possible this may be a fault, or it could be a characteristic of the car. But for me to be persuaded that the car wasn't of satisfactory quality at the point of sale it's not enough just to say there is a fault. It must have been present or developing at the time and it must also not be as a result of general wear and tear.

The original inspection report concluded that no defects were found with the vehicle and that the inspector was unable to replicate any of the reported issues. Mr W wasn't happy with the way the inspection was carried out but I have no reason to dispute the independence of the technical evidence provided. D has since carried out repairs to the vehicle, serviced and has given it a health check. While I understand Mr W is concerned the issue continues without further evidence I am unable to conclude the car was not of satisfactory quality at the point of sale.

Mr W has said that in November 2022 he was told by the manufacturers engineer that the issue with the car could not be fixed. He said he was told it was a characteristic of the engine in that car for that year. He said the engineer had tested another car with the same engine which produce the same results. He said after reviewing his notes of recorded conversations and considering this information he believes D mis-sold him the car. He said this issue was not mentioned before signing the contract with Santander and there was no mention of this characteristic in any other notes on the contract.

If Mr W believes that he has been mis-sold the car this would be a separate complaint point. In that case he would need to bring a new complaint to Santander so that it can investigate first.

Mr W has also said that the issue with the car has caused him a great deal of stress and anxiety. He has also mentioned concern about his financial situation and whether he can afford payments. I am very sorry to hear this. If Mr W is having difficulty making his payments he should contact Santander to discuss a way forward. I would expect in that circumstance Santander to treat Mr W positively and sympathetically.

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 W to accept or reject my decision before 28 July 2023.

Maxine Sutton
Ombudsman