

The complaint

Mrs M complains that a car she paid for using a fixed sum loan agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance, ("Santander") wasn't of satisfactory quality. She also complains that the car was misrepresented to her.

Mrs M is represented in her complaint. However, for the sake of simplicity in this decision I have referred to all of the submissions from Mrs M's representative as being made by Mrs M.

What happened

In September 2019 Mrs M entered into a fixed sum loan agreement for a used car. The car was six years old and had travelled approximately 38,000 miles at the time. Mrs M said the dealer, D, said it would service and repair the car and provide the service history book. She said she was induced into buying the car on the basis the car had been prepared as agreed.

Following collection of the vehicle on 2 September Mrs M became concerned. She said:

- A warning light became illuminated during the drive home. Mrs M said this was evidence of a fault but that D falsely declared it had forgotten to reset the warning light. Mrs M said this could only be done after a fault had been rectified. She said D was aware there was an underlying fault with the car, and if she'd been made aware of this, she wouldn't have gone ahead with the purchase.
- The car accumulated an oily brown sludge in the coolant reservoir which Santander and D ignored. Mrs M said she had to pay a third party to investigate this.
- D had told her the service history book was with the car but it was blank. She said she was told it was kept electronically.
- D failed to notify her there was no spare key. She became aware of this at collection.
- D failed to notify her there was a MOT advisory that the rear tyres were perishing and cracking. She said she was later advised by the tyre manufacturer that they needed to be replaced but she said D refused to do this.

Mrs M said she contacted D about the faults on 3 September 2019. She said no attempt was made to arrange to repair the car. On 16 September Mrs M arranged a diagnostic inspection by a third party garage, G, which noted a number of faults.

Following the inspection Mrs M took the car to D on the same day along with a letter which explained she was handing back the car and no longer wanted it. She told Santander she was withdrawing from the agreement on this date also. Santander didn't action this withdrawal and continued to chase Mrs M for payments. Mrs M complained to Santander.

In its final response Santander said there was a common sensor fault which had been repaired by D. It also said the repair took place at the same time as the car's spare key was coded on 16 September. It said it had not been provided with evidence to show there was an issue with oil leaking into the coolant expansion tank.

In May 2020 D refunded the deposit and cost of the diagnostic check.

Mrs M did not agree with Santander's findings and brought her complaint to this service. She said continued demand for payments was affecting her emotional wellbeing.

Our investigator was persuaded by G's report confirming residue around the coolant expansion tank. She said Santander should have accepted rejection of the car after it received a copy of the diagnostic report on 14 October 2019. She also recommended Santander pay Mrs M £200 as compensation for the trouble and upset this situation caused.

Mrs M agreed with this conclusion. Santander did not. Both parties provided additional comments which, where necessary, I have responded to below.

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've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the correct outcome.

Santander is jointly and severally liable for any breach of contract or misrepresentation made by the dealer. In deciding what's a fair way to resolve Mrs M's complaint, I must take account of relevant law. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs M pursued a claim in court, which is something she has discussed with her legal representation. Our service is an informal alternative to the courts. My role here is to decide Mrs M's complaint fairly and reasonably.

Mrs M believes that her claim falls under both a breach of contract and misrepresentation. It is possible for there to be both in a successful claim in respect to different aspects of the goods supplied. But with respect to Mrs M's car I believe this claim falls only under one.

Was there a misrepresentation?

Mrs M believes this to be a claim of misrepresentation, in that the goods weren't as described i.e. meaning a false statement of fact that induced the consumer to enter into the contract. She said D wilfully misrepresented that the car came with a service history book in the glove compartment, but in reality, it only had a blank duplicate service history book. She said she originally viewed the car on 27 August and D had agreed to service and repair the car prior to collection on 2 September, as well as provide the service history book. She said she was induced into signing the agreement on the premise that D had adequately prepared the car as agreed prior to collection.

I'm not disputing Mrs M's version of events and it may well be that D said the service book was included and agreed to service and repair the car. But it is not enough that D said this. For there to be a misrepresentation I must be satisfied that the statement is false *and* it induced Mrs M to buy the car. Again I'm not disputing Mrs M but it's possible there were other features of this particular car which were equally or more persuasive. I'm not aware of how the car was marketed or what features of a car were important to Mrs M prior to and at the time of making her decision. Under these circumstances it wouldn't be fair for me to conclude the car had been misrepresented.

Was there a breach of contract?

A breach of contract would include that the car wasn't of satisfactory quality when it was supplied to Mrs M. Whether or not it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it. The car was six years old and had travelled approximately 38,000 miles at the time.

Mrs M became aware very quickly that there may be a fault with the car. On the drive home a warning light came on and she later noticed a brown sludge in the coolant reservoir. She also said there was an advisory on the MOT of cracked tyres. Mrs M said she notified the dealer, but no attempt was made to offer to repair the car. She had the car inspected on 16 September. I've seen a copy of this report. The inspection appears to have been carried out by an independent third party. The report included the following notes:

- Fault code PO599L engine coolant thermostat heater control circuit high voltage
- Coolant fan constantly on
- Residue around coolant expansion tank
- Further investigation needed
- Slight cracking around rear tyres

Mrs M decided to reject the car. Under the Consumer Rights Act 2015 Mrs M has a short term right to reject within 30 days if the goods are of unsatisfactory quality.

Santander told us D received two versions of Mrs M's letter rejecting the vehicle, dated 14 September and 16 September. D said Mrs M did make it aware she wanted to reject the vehicle. It said she presented various issues that D could not diagnose or find. D said the fan sensor was changed without Mrs M's consent due to the fact the car was in its workshop having the spare key coded and it was a simple FOC (free of charge) fix. D said it was when the sales executive told Mrs M the vehicle was ready it received the second version of the rejection letter.

I'm persuaded by the technical evidence provided by G that the car had faults which were likely evident at the point of sale and that further investigation was required. I'm not disputing Mrs M sent two letters on different days. It does appear Mrs M may have initially decided to reject the car on 14 September before the inspection. But I'm satisfied she chose to reject the vehicle again on 16 September after the inspection and within the 30 days on the basis of faults identified independently and did not ask for the car to be repaired.

Santander said it hadn't seen any evidence there was a fault with the vehicle. It said it would look at any evidence if it was submitted. It said the temperature fault was repaired by D. Mrs M has provided evidence of postage of the independent garage report, which included the note that further investigation was required with respect to the coolant expansion tank, to Santander dated 14 October 2019. So, while I accept it's possible Santander did not receive this report I'm satisfied it was sent by Mrs M in good faith.

Santander went on to say Mrs M said she was withdrawing from the agreement. She said this was within the 14-day cooling off period. Santander said Mrs M did not exercise her short term right to reject, she wanted to withdraw. It explained that withdrawal is simply withdrawing from the finance itself not the vehicle. Therefore, it would have required Mrs M to settle her finance. Santander said Mrs M did not want to do this and has since not paid anything towards her finance agreement. But I'm persuaded Mrs M did provide the evidence of faults and exercised her right to reject the car within 30 days. So I'm satisfied she should be allowed to reject the car.

Legal fees

As I mentioned previously our service is an informal alternative to the courts. Mrs M has asked for a refund of her solicitor fees. She said she instructed a solicitor because of letters received from Santander demanding payment. While I understand why Mrs M instructed a solicitor and she of course was within her rights to do this, I'm not persuaded it was necessary. Under the terms and conditions of the loan Mrs M was required to make payments. I understand Mrs M wanted to reject the car and withdraw from the finance agreement, but it was up to Santander to agree that the payments could stop even under the circumstances where a consumer brings the complaint to our service and while it is being investigated. So I'm satisfied Santander was within its rights to pursue the payments and I won't be asking it to refund Mrs M's legal fees.

I can see this situation has been stressful and inconvenient for Mrs M and I consider £200 in compensation to be fair and reasonable.

Putting things right

In order to put things right Santander Consumer (UK) Plc, trading as Santander Consumer Finance, should

- Treat the car as being rejected;
- End the fixed sum loan agreement at no cost to Mrs M;
- Remove any information about the fixed sum loan agreement that it's recorded on Mrs M's credit file;
- Pay £200 compensation for the trouble and upset this has caused Mrs M;
- As Mrs M was deprived of the funds, apply 8% simple interest to the refund of the deposit and diagnostic check.

My final decision

My final decision is that I uphold this complaint and instruct Santander Consumer (UK) Plc, trading as Santander Consumer Finance, to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 September 2021.

Maxine Sutton
Ombudsman