

The complaint

Ms R is complaining that two cars financed through separate fixed sum loan agreements provided by Santander Consumer (UK) Plc were of unsatisfactory quality. She brings the claim under Section 75 of the Consumer Credit Act 1974 (S75).

What happened

In June 2020 Ms R bought a new car. She financed it through a fixed sum loan agreement she took out through Santander.

Around three weeks after buying the car, she contacted Santander to say her car had developed a fault with the engine. Santander referred the matter to the supplying dealership to review and it was agreed that Ms R would be given a like for like replacement. And in July 2020 Ms R received a replacement car. She also entered into a new finance agreement with Santander.

In August 2020 Ms R contacted Santander again to say the replacement car had developed the same fault and she asked to return the car. Santander spoke to Ms R a couple of weeks later and she said the fault had rectified itself. However, Ms R contacted Santander again shortly after to say there were issues with the hazard and traction lights. She explained the car was in the garage being inspected.

In October 2020 Ms R told Santander she'd sold the car. Santander referred the matter to the supplying dealership who said they'd done extensive road tests of the car and couldn't replicate the issue. And they said the issue Ms R was experiencing was a design feature of the model of car.

Our investigator partially upheld the complaint. She was satisfied there was a fault with the original car Ms R bought. However, she thought the supplying dealership had acted fairly in arranging to swap the car for a like-for-like replacement. But, she thought it should also pay £150 in compensation for the distress and inconvenience in initially supplying a car that wasn't of satisfactory quality. However, she didn't think there was enough to show there was a fault with the replacement car. So she didn't think Santander needed to do anything further to put this right.

Ms R didn't accept the investigator's opinion. She maintained there was a fault with the car. She said she also spoke with the new owner of the car who said the car had had issues with the engine cutting out. So she queried what more she needed to provide to show there were faults with the car.

As Ms R didn't agree with the investigator, the complaint's been passed to me to decide.

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 come to the same conclusion as the investigator for largely the same reasons. I'll now explain why.

Ms R paid for the car through a fixed sum loan agreement. S75 sets out that in certain circumstances, as the finance provider, Santander is jointly liable for any breach of contract or misrepresentation by the supplier. I'm satisfied those circumstances apply here.

Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the purchase agreement with the supplying dealership that the car must be of satisfactory quality. As the finance provider, under the principles of S75, Santander can be held jointly responsible for the quality of the car Ms R bought.

In deciding whether this car was of satisfactory quality, I take into account the relevant circumstances, such as the cash price, its mileage and age. In this case, Ms R paid around £24,000 for the car and the car was brand new.

It's accepted there was a fault with the first car Ms R bought – in particular with a crank shaft sensor – that rendered the car of satisfactory quality. However, the supplying dealership arranged to replace the car, which is in line with the remedies available to Ms R under the CRA. So I don't think Santander needed to do anything further.

I note Santander has since agreed to pay Ms R £150 for the distress and inconvenience Ms R says she suffered as a result of being supplied with a car that was of unsatisfactory quality at the start. However, I'm conscious Santander didn't supply the car to Ms R – that was the supplying dealership. So I think this offer is more than fair, as Santander didn't cause the distress and inconvenience.

However the fundamental issue in question is in respect to the replacement car Ms R was given. The supplying dealership doesn't believe there's a fault with the car and has said the issue Ms R has referred to is a design feature of the car. Ms R maintains there was a fault with the car and also has referred to comments she says the new owner has made about it.

I appreciate Ms R's strength of feeling in this matter. But I'm also conscious it's for her to demonstrate there was a fault with the car – i.e. it's not for the supplying dealership or Santander to demonstrate there isn't one. Ms R sold the car before it was inspected, so there isn't a report for me to consider that demonstrates there's something wrong with the car.

I have, however, taken Ms R's comments into account about the issues she's encountered with the car. But, I've also considered the supplying dealership's comments that the issues Ms R is complaining about are a design feature of the car. And it's explained that *"The hazards lights coming on was a feature on the [model of car] where if you hit a pot hole at a speed for example, something that made the car think there had been an impact, the car would put the hazard lights on temporarily to signal other drivers that there had been a potential impact."*

I'm satisfied that this demonstrates the issues Ms R has said she experienced with the hazard lights was *most* likely to be a design feature of the car rather than any inherent fault with the car.

Ms R has also said there was an issue with the engine cutting out. But, other than her testimony, she hasn't provided anything to support this. I also understand that the supplying dealership carried out a number of road tests to look to replicate the fault, but wasn't able to locate a fault. Santander has said – in response to the S75 claim – that there isn't anything to demonstrate there's a fault with the car. Taking everything into consideration, I don't think

I've seen enough to support the fact that there was a fault with the replacement car. So I don't think I can reasonably conclude that Ms R has demonstrated that there was a breach of contract that Santander needs to put things right.

My final decision

For the reasons I've set out above, it's my final decision that I think Santander Consumer (UK) Plc's offer to pay Ms R £150 in compensation is fair and reasonable in all the circumstances. I don't award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 14 July 2022.

Guy Mitchell

Ombudsman