

The complaint

Miss L complains that a car she bought under a conditional sale agreement from Santander Consumer (UK) Plc was not of satisfactory quality. She wants to reject it.

What happened

In November 2021 Miss L entered into a conditional sale agreement with Santander for a used car. The car was around three years old and cost just under £15,000. It had an odometer reading of around 63,000 miles.

Within a couple of weeks, Miss L says that she noticed noises from the car's engine and exhaust. She contacted Santander to say that she wanted to reject the car. The dealership which had supplied the car said that a third party garage had checked the car and said there was some movement in the exhaust flap, but that could be attributed to wear and tear.

Santander arranged for an independent inspection of the car. That inspection reported oil leakage in the engine bay and around the turbocharger and a rattle from the flexible joint on the exhaust system. The flexible joint needed replacing and the turbocharger would require further investigation. The report concluded however that, due to the use of the car since delivery – it had covered just over 1,900 miles – the faults would not have been present at the time of delivery. Relying to a large extent on that report, Santander said that it was not liable to Miss L and declined her request to reject the car.

Miss L did not accept Santander's conclusion and referred the matter to this service. Our investigator thought however that the car had not been of satisfactory quality and that Miss L could properly reject it. Santander did not agree and asked that an ombudsman review the case.

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.

The conditional sale agreement was to be read as including a term that the car would be of satisfactory quality. That means the quality a reasonable person would expect in the circumstances – including, for example, the car's age, price and mileage. Santander acknowledges that the car had faults but says that they did not mean that the car was not of satisfactory quality – they could be put down to wear and tear.

Miss L bought a used car with a relatively high mileage for its age. Its price was significantly lower than it would have been if the car had been bought new. It was therefore reasonable to expect that faults might develop and that some might be significant and expensive to rectify.

Generally, in court proceedings, it is for the person who makes an allegation to prove it. In this case, it is Miss L who says that the car was not of satisfactory quality. However, the effect of the Consumer Rights Act 2015 is that, where a fault comes to light within six months, it is for the supplier to show that it was not present at delivery. Santander says that it has done that, because the inspection report concluded that the faults identified were not

present or developing at the point of sale. The report referred in particular to the use Miss L had had of the car in the few weeks between delivery and inspection.

I am not bound by the same rules of evidence as a court would be, but I must take relevant legislation, including the Consumer Rights Act, into account. I do not believe in this case that Santander has shown the faults with the car were not present or developing at delivery. The statement in the inspection report does not, in my view, show that; it simply refers to the mileage from delivery. Whilst it is well above average for the time concerned, I think Miss L was entitled to expect the car to cover rather more than 2,000 miles before it needed significant repairs.

Miss L also said very quickly after delivery that she wanted to reject the car. Santander accepts that she would be entitled to that remedy if the car was not of satisfactory quality. As I have explained, however, I believe the car was not satisfactory; it follows that Miss L was within her rights to reject it at the point she told Santander she wanted to do so.

Putting things right

The investigator noted that Miss L had been able to use the car, so I do not believe that it would be appropriate to refund any monthly payments that she has made. As far as possible, however, my award seeks to put her broadly in the position in which she would have been if she had not entered into the finance agreement with Santander.

My final decision

For these reasons, my final decision is that, to resolve Miss L's complaint in full, Santander Consumer (UK) Plc should within 28 days of Miss L's acceptance of this decision:

- end the conditional sale agreement so that Miss L has nothing further to pay;
- if necessary, collect the car at no cost to Miss L;
- refund Miss L's deposit of £400, together with interest at 8% simple from the date of payment until the date of the refund;
- pay Miss L £100 in recognition of the distress Miss L has suffered and any inconvenience to which she has been put; and
- remove any reference to the agreement from Miss L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 10 May 2022.

Mike Ingram

Ombudsman