

The complaint

Miss Z complains about the quality of a car she acquired through a conditional sale agreement financed by Santander Consumer (UK) Plc trading as Santander Consumer Finance (Santander).

What happened

In May 2021 Miss Z acquired a used car through a conditional sale agreement.

When she was driving back from collecting the car, Miss Z experienced a dashboard fault relating to the hill assist, she experienced a lack of power in the vehicle and the brake lights were constantly illuminated. The vehicle was returned to the dealership for repairs.

Miss Z contacted the dealership within days of the vehicle being returned to her to say the repairs had failed. She complained of a problem with the hill assist, the brake lights being on all the time and the vehicle hesitating under acceleration.

The vehicle was inspected by the manufacturer at the end of May 2021. They reported that more time was required to investigate the fault but said that the brake pedal wasn't pushing all the way back. They thought this could be causing problems with the cruise control and acceleration. They couldn't tell if the problem was the pedal pushing on the rod or the rod pushing on the pedal from the brake servo.

The manufacturer also commented on some other items, such as previous wiring repairs and a 'non-genuine' battery fitted to the vehicle.

The dealership arranged to replace the brake servo in June 2021 and paid for the diagnostic report.

Miss Z reported a gas smell from the vehicle shortly after it was returned to her. The vehicle was inspected in August 2021 by the manufacturer under their warranty process. They reported a number of leaks under the vehicle including a heavy oil leak and parts covered in soot and leaking emissions gas. They concluded this was a result of the brake servo being replaced without replacing the gaskets and seals, so this repair needed to be completed again but with the gaskets and seals included.

The engineer also noted front end accident damage to the vehicle, in the form of a 'non-genuine' windscreen, a bent bracing bar, damage to the new brake servo and damage to the bottom of the gearbox.

Miss Z complained to Santander about the quality of the vehicle in August 2021, and they arranged for an engineer to inspect the vehicle.

The engineer inspected the vehicle in October 2021. They said that the vehicle had accident damage repaired. They said this appeared to have been prior to it being supplied to Miss Z due to the aging of the damage. They declined to test drive the vehicle because of emissions

in the cab making it unsafe but concluded that the current faults relating to oil dampness and airflow weren't present or developing at the point of sale.

Santander sent Miss Z their final response to her complaint in November 2021. They said there was no evidence that the faults were present when the vehicle was supplied. They didn't uphold Miss Z's complaint.

Unhappy with this, Miss Z brought her complaint to us for investigation. She said she's had issues with the car from the beginning, it's been repaired several times, and she was unaware of the emissions leak which has made her ill.

Our investigator gave her view that the car wasn't of satisfactory quality at the time it was supplied to Miss Z. She thought that Miss Z was entitled to her final right to reject the vehicle, have her deposit refunded, and her monthly payments from November 2021 as she'd been unable to use the vehicle. She also recommended that Santander pay Miss Z £150 compensation for the distress and inconvenience.

Santander didn't agree. They said the vehicle had been driven a high number of miles whilst in Miss Z's possession, suggesting that there was no durability issue. They believe Miss Z has had an accident in the vehicle due to the damage to the new brake servo, and they don't believe there is any strong evidence to counteract the report's findings that the faults weren't present at the point of sale.

Our investigator gave their view that the vehicle wasn't reasonably durable. She said it appeared the brake servo had failed, and the engineer didn't comment on the durability of the parts.

Santander asked if they could complete another inspection of the vehicle. Our investigator didn't think this was reasonable, as they'd had chance to inspect the vehicle previously, and Miss Z didn't agree to let this go ahead.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it. Santander as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £16,000. It was around five years old and had travelled approximately 24,000 miles at the time of supply. With this in mind, although there is an element of wear associated with the age of a vehicle, I think it's fair to say that a reasonable person would expect the level of quality to be higher than an older, higher mileage, vehicle.

Miss Z experienced faults with the vehicle on the day it was acquired. The brake lights were constantly illuminated, and the later inspection of the vehicle in May 2021 determined that the braking problem likely caused the power and acceleration issues that Miss Z experienced as well. I don't think a reasonable person would expect such a serious issue to occur so soon after acquiring a vehicle of this age and mileage, so I'm satisfied that this fault made the car of unsatisfactory quality at the time it was supplied.

The dealership had two opportunities to repair the vehicle: when it was returned shortly after Miss Z acquired it, and when it was taken back for the brake servo replacement in June 2021.

The report from August 2021 concludes that the brake servo replacement wasn't completed correctly. It says the repair was done without new seals and gaskets, which caused a number of leaks in the vehicle and was the cause of the emissions smell that Miss Z experienced.

The report from October 2021 concludes that the leaks and emissions faults weren't present or developing at the point of sale and relied on the age and mileage of the vehicle to reach this conclusion.

The engineer that inspected Miss Z's vehicle in August 2021 had first-hand experience of the repairs that were authorised and completed by the dealership, so I'm persuaded by their findings over those of the engineer that inspected the vehicle some two months later without this knowledge of the repairs.

I don't think a reasonable person would expect a replacement part to fail this soon after being fitted. All things considered, I'm satisfied that the faults complained of by Miss Z in August 2021 were as a result of either failed repairs to the brake servo, or the replacement servo not being reasonably durable.

There has been accident damage reported to the vehicle, but it's not clear when this occurred. The report commissioned by Santander in October 2021 concluded that this damage was old, and likely to have occurred prior to the supply of the vehicle due to its obvious aging. The report completed in August 2021 noted damage to the new brake servo, suggesting that it had occurred after this repair took place.

Miss Z has said that she hasn't had an accident in the vehicle and didn't know about the damage until it was highlighted in the August 2021 inspection. She said the inspection done in May 2021 was limited, the engineer was instructed only to look at the fault and that's why the accident damage wasn't noted until the more detailed inspection in August 2021.

I'm persuaded by the Santander report, and Miss Z's testimony, that it was more likely than not that the accident damage occurred before the vehicle was supplied.

Having said that, regardless of when the accident damage occurred, I'm satisfied that the initial faults with the brake servo made the vehicle of unsatisfactory quality for the reasons outlined above. And, based on the engineer's findings from the August 2021 inspection, that the repair has failed, outside of any damage that might have been caused by an accident, either due to poor repairs, or as a result of a durability issue.

Putting things right

As the vehicle has not been returned to a satisfactory condition after an attempted repair, Miss Z should be allowed her final right to reject the car. This means that the car is collected from Miss Z, the finance agreement is brought to an end, and Miss Z has her £1,864.16 deposit refunded (plus interest). The agreement and any adverse information should be removed from Miss Z's credit file.

Miss Z has been unable to use the vehicle since November 2021. The engineer that inspected the vehicle concluded that it wasn't safe to drive as a result of the emissions leak. So, Santander should refund 100% of Miss Z's monthly payments from November 2021, plus interest.

Our investigator recommended that Santander pay Miss Z £150 compensation. Miss Z has been put to distress and inconvenience in taking the vehicle for multiple repairs and has had to use a vehicle which is not performing as expected whilst it has been in her possession. All things considered, I think £150 fairly reflects the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint, and Santander Consumer (UK) Plc trading as Santander Consumer Finance must:

- End the finance agreement and collect the car at no further cost to Miss Z.
- Refund Miss Z's deposit of £1,864.16 plus 8% simple yearly interest calculated from the date of payment to the date of settlement.
- Refund 100% of Miss Z's monthly rental payments from November 2021, plus 8% simple yearly interest calculated from the date of payment to the date of settlement.
- Pay Miss Z £150 compensation to reflect the distress and inconvenience caused
- Remove the agreement and any adverse information from Miss Z's credit file.

If Santander considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss Z how much it's taken off. It should also give Miss Z a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 24 June 2022.

Zoe Merriman
Ombudsman