

The complaint

Miss S complains that Santander Consumer (UK) Plc refused to let her reject a faulty car.

What happened

In September 2019 Miss S acquired a three-year-old car funded by a deposit of £500 and the balance with a Conditional Sale Agreement for £14,133.00.

Miss S has explained that she encountered a number of other faults, both electrical and mechanical which she S had to deal with. The first of these arose in December 2019 and continued through to July 2021. In July 2020 a fault came to light and Miss S was advised she needed to replace the head gasket. The dealer claimed this was due to work being carried out by another garage. She believed the supplier had not been helpful and had sought to mislead her.

She contacted Santander which identified a discrepancy with the mileage at point of sale. However, it said further evidence as needed to demonstrate that there was a fault with the car at point of sale.

Miss S brought the complaint to this service where it was considered by one of our investigators who recommended it be upheld. She said that after having covered some 46,000 miles in five or so years the head gasket failed. Normally one would expect it to last for around 100,000 miles and in the absence of any other explanation it seemed the most likely explanation was that the car had an inherent fault.

She noted Miss S had asked for an independent inspection, but this had not been carried out. She concluded that the car should be rejected and Miss S's deposit returned along with a number of costs and compensation. Santander didn't agree and said that the car should be repaired. The matter was referred to me and it then transpired that Miss S had sold the car. She had received £11,234 and had to pay an additional £142 to clear the finance agreement.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

I issued a provisional decision as follows:

I said the finance agreement in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Santander is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality. The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

I explained that the relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in

a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

The car was acquired in September 2019 and in July 2020 after Miss S had covered some 20,000 miles it needed a new head gasket. The car was some three years old when it was purchased and had covered some 26,000 miles. I thought it surprising that a head gasket would fail at this stage in the life of a car. That gave me cause to believe that it wasn't sufficiently durable as required by the legislation. I added that I had seen nothing to suggest that Miss S could be held responsible for the car's failure either in the way it was driven or maintained.

Ideally there would have been an independent inspection, but despite this being requested by Miss S one wasn't undertaken. This means both the investigator and I had to reach a conclusion based on the balance of probabilities.

I noted Miss S had also encountered a number of other issues which had caused the car to be at the garage for a considerable time. Santander has referred to the continuous faults in 2021 with issues with radio, juddering, smoke coming out of vents. Santander didn't uphold her claim but offered £200 compensation for distress and inconvenience. I didn't consider that was sufficient.

I wasn't convinced the car was of satisfactory quality at the point of sale and I didn't believe it satisfied the requirement to be durable. If Miss S hadn't sold the car I would have confirmed our investigator's recommendations. However, as it has been sold I believed the redress needed to be amended. I saw from the car's MOT history that Miss S was able to make some use of it in the latter months. In December 2021 it had covered 46,408 miles meaning she had covered some 4,000 miles in the previous six months. So I did not consider that any of her monthly payments need be refunded. However, I considered that her loss of £142 should be refunded along with her deposit of £500 and £200 compensation for the trouble and upset she suffered. I did not believe any further costs need be met.

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.

Miss S agreed with my provisional decision and Santander said that it didn't think that it should refund Miss S' deposit as it was not receiving any asset back.

The role of this service is to put consumers back in the position they would have been had the error(s) not occurred. That means that the aim of my decision is to ensure Miss S is not disadvantaged by the settlement. If she had not sold the car she would have been able to return it and to receive her deposit back and I do not see that the fact the car has been sold should deny her a similar level of recompense. She has paid for the use of the car with her monthly payments and I do not believe she should pay more by having to surrender her small deposit.

As such I consider my provisional decision should stand.

Putting things right

Santander should compensate Miss S as set out below.

My final decision

My final decision is that I uphold this complaint and I direct Santander Consumer (UK) Plc to pay Miss S £142 to cover her loss, £500 for her deposit and £200 compensation if that has not already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 17 May 2022.

Ivor Graham
Ombudsman