

The complaint

Mr H complains about the quality of a car supplied to him by Santander Consumer (UK) Plc trading as McLaren Financial Services ("Santander").

What happened

Mr H acquired a new car under a conditional sale agreement with Santander in July 2020. The car cost around £147,000. Under the agreement, Mr H made an advance payment of £20,000 and he was required to make 24 payments of £999, followed by a final payment of £114,648.33 if he wanted to keep the car.

In March 2021, Mr H contacted the supplying dealership, who I'll refer to as D, to let it know the car's radio and media unit wasn't working. D asked Mr H to send it photos so the part could be replaced. However, due to a global supply issue of the part, D couldn't carry out the repair. So Mr H complained to Santander in January 2022.

Santander issued its response to Mr H's complaint and told Mr H the part was on back order. It said given the issue had arisen more than six months after Mr H got the car, it was down to Mr H to show that the issues he'd experienced with the media system were present at the time the car was supplied to him. So it said Mr H would need to provide independent evidence to demonstrate this and it didn't uphold Mr H's complaint.

Unhappy with this, Mr H referred his complaint to this service. He said the car's media unit hadn't been working since March 2021. He said this had affected his enjoyment of the car significantly and so he wanted to return the car and get financial compensation from Santander.

Our investigator looked into the complaint and said she wouldn't reasonably expect the issue with the media system to occur within eight months of the car being supplied to Mr H. She said the dealer had confirmed the issue occurred due to a faulty part, which it wouldn't expect to fail given the car's age and mileage and so she said the part wasn't sufficiently durable.

She concluded that the car supplied to Mr H wasn't of satisfactory quality. She also acknowledged that the part had become available in April 2022 and said the dealer should arrange to repair the issue. She said Mr H should be refunded 20% of any rentals between March 2021 and April 2022 to cover his impaired use of the car, with applicable interest. She also told Santander to remove any adverse information from Mr H's credit file.

Mr H agreed with our investigator. But Santander disagreed. It said the recommendation to pay Mr H 20% of all his rentals between March 2021 and April 2022 was disproportionate, as he would still have been able to use some features of the car. It said instead it would offer Mr H £200 to recognise the distress and inconvenience caused. And it mentioned that Mr H had been offered free servicing by the manufacturer as a goodwill gesture and a free repair even though there was no evidence to suggest the fault with the car was present at the point it was supplied to Mr H. Mr H didn't accept this offer and neither did he accept the offer from the manufacturer.

As Santander remains unhappy, the complaint has been passed for an ombudsman's decision.

While awaiting a decision, Mr H confirmed the car was repaired in June 2022. Mr H said he had lost faith in the car, so he sold it and repaid the finance in July 2022.

The case has now 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

What I need to decide in this case is whether the car supplied to Mr H was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated conditional sale agreement. So our service is able to consider complaints relating to it. Santander is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality. Satisfactory quality is what a reasonable person would expect. So the car's condition at the point of supply, should meet the standard a reasonable person would consider satisfactory, given its age, mileage and price.

The car Mr H acquired was brand new and from a premium manufacturer. He was paying £999 a month for the car and the cash price of the car was around £147,000. Bearing this in mind, I don't think a reasonable person would expect the car to have any problems for a significant amount of time and I think they would have very high expectations for the quality of the car.

I'm satisfied the car had a fault with the radio from March 2022. I say this as D seems to accept this in an email chain, and a repair was later carried out.

I now need to consider whether this fault makes the car of unsatisfactory quality. One of the considerations of whether goods are of satisfactory quality is durability.

Having considered that the car was only around eight months old, it cost around £147,000 and it was from a premium brand, I don't think a reasonable person would expect a component within the car to become faulty after eight months.

In light of this, I'm satisfied that the car Mr H was supplied wasn't sufficiently durable. It follows that I don't think the car was of satisfactory quality when it was supplied to Mr H.

I've gone on to think about what Santander needs to do to put things right.

Santander say Mr H was able to use some of the features of the car such as the Bluetooth and a USB plugin. To understand the impact to Mr H, I asked him to explain which features he couldn't use. Mr H says he was unable to use the radio or DAB tuner. He says this was particularly important to him as he doesn't use a smart phone, so the Bluetooth or USB options were irrelevant to him.

I've thought about this carefully and whilst Mr H was still able to drive the car and make use of a number of its features, I don't think he was able to make use of a significant part of it by being unable to use the radio or DAB tuner. I'll explain why.

There doesn't seem to be a dispute that Mr H was able to make use of the Bluetooth or USB features. But, I'm persuaded by Mr H's testimony that these features were irrelevant to him given he doesn't use a smart phone. So I think being able to use the radio or DAB tuner was of significant importance to Mr H.

Having thought about the features Mr H intended to use, I'm satisfied he had impaired use of the car whilst these features weren't working. I think Mr H would have more likely than not intended to make use of the radio or DAB tuner each time he drove the car. And I think any reasonable person would consider being able to listen to music or the radio, as a function that could reasonably expected to be used each time a car is driven.

Mr H has said the repair was carried out in June 2022. But he hasn't disputed that D contacted him to let him know it could repair the issue in April 2022. So given the car could have been repaired in April 2022, I think any impaired usage should be considered up until this time.

Overall, having considered the amount Mr H was paying for the car each month and that the specific functions he intended to use weren't working for over a year, I think Santander should refund Mr H 20% of the rentals between March 2021 and April 2022. I think this is a fair and reasonable reflection of the impaired usage Mr H has suffered.

In her opinion, the investigator recommended that the car should be repaired. As this has been completed, and the car sold, Santander don't need to take any action on this point.

My final decision

My final decision is that I uphold Mr H's complaint. I instruct Santander Consumer (UK) Plc trading as McLaren Financial Services to do the following:

- Reimburse Mr H 20% of all repayments paid between March 2021 and April 2022; and
- Pay Mr H 8% simple interest on these amounts from the date of each payment until the date of settlement. *

*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 Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 November 2022.

Sonia Ahmed
Ombudsman