

The complaint

Mrs K complains that the car she acquired through a conditional sale agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

What happened

In June 2021, Mrs K acquired a new car through a conditional sale agreement with Santander. She noticed excessive movement when the windows were partially open and contacted the supplier about this. The supplier wasn't able to resolve the issue and Mrs K was told it was a characteristic of the car. Mrs K raised a complaint with Santander. An independent inspection took place which confirmed the issue, but the complaint wasn't upheld.

Santander says that Mrs K contacted it in March 2022 about the car windows rocking when open. It arranged an independent inspection which confirmed *'that with the nearside rear and nearside front windows in a part open position the glass had excessive lateral movement which would in our opinion be considered unacceptable'*. Santander contacted the supplier which said: *'All these are fixed items and cannot be adjusted (unlike some). They are replaced only. Although replacing the items would have the same result of the windows moving This is due to the size of the window and not uncommon for these to move when lowered due to no support at the top being there from the door.'* The supplier said that it had investigated the issue, but it couldn't be fixed. Santander didn't uphold the complaint saying the issue was a characteristic and not a fault. It noted that the supplier had offered to replace the vehicle as a gesture of goodwill, but Mrs K hadn't accepted this.

Our investigator upheld this complaint. He didn't think the car was of satisfactory quality at the point of supply. He noted the repair attempts and that the supplier had said there was no fix and said that a reasonable remedy now was for Mrs K to be able to reject the car. He noted that Mrs K had still had use of the car but that this was impaired by the issue with the windows. Because of this he thought it reasonable that Mrs K remained liable for the monthly repayments up to the point of settlement subject to a 5% reduction to reflect the issue with windows. He also thought she should be paid compensation of £250 for the distress and upset the issue had caused.

Mrs K didn't think our investigator's redress was sufficient. She said she had put over £1,000 of extras on the car which would be lost if the car was returned.

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.

Mrs K entered into a conditional sale agreement with Santander in June 2021 to acquire a new car. Under the regulations, specifically the Consumer Rights Act 2015, Santander can be held liable in certain circumstances if the car supplied wasn't of satisfactory quality. Satisfactory quality takes into account factors such as the age and mileage of the car. In this case as the car was supplied new, it is reasonable that Mrs K would expect it to be free from

faults, including minor defaults, for a reasonable period of time.

Mrs K identified an issue and contacted the supplier about this. The issue was investigated but she was told that there was nothing that could be done. It was suggested the issue was a characteristic of the car. While I note these comments, having considered Mrs K's testimony and the video provided I do not find that this issue is something that Mrs K should be expected to accept. She acquired new car and would expect it to be free from faults and while slight movement of the windows may have been acceptable in this case it appears the issue is much more prevalent. This is supported by the conclusions of the independent inspection which states that there was excessive lateral movement in the nearside rear and nearside front windows when part open and later noted this as being of an unacceptable level. It noted movement in the other windows but said this wasn't excessive. The report notes the issue would have been present from the point of supply and wasn't due to wear and tear.

Based on the evidence provided I do not find that the car was of satisfactory quality at the point of supply. Because of this I find that Santander is required to remedy the situation. In this case, Mrs K provided an opportunity for the issue to be repaired and the supplier has said that there isn't a fix. Therefore, I agree with our investigator that the reasonable remedy is for Mrs K to be allowed to reject the car. I note Mrs K's comments about having paid for extras on the car but as I do not find that repair is a reasonable remedy and Mrs K has explained the distress the issue has caused, I think rejecting the car is now the fairest resolution.

While I appreciate the issue has caused Mrs K distress, she has still had use of the car. Therefore, I find it reasonable that she remains liable for the repayments due to the date of settlement. However, I also appreciate the use may have been impaired due to the issue with the windows and so agree the repayments should be subject to a 5% reduction.

The issue, and the process of trying to resolve this, has caused Mrs K distress and inconvenience. Because of this I agree with our investigator that she should be paid £250 compensation.

Putting things right

As I do not find that the car was of satisfactory quality at the point of supply, I uphold this complaint.

Santander should:

- end the agreement with nothing further to pay;
- collect the car (if this has not been done already) at no further cost to Mrs K;
- refund the Mrs K's deposit/part exchange contribution of £4081;
- Mrs K remains liable for the repayments due to the point of settlement subject to a reduction of 5%, any additional amounts that have been paid should be refunded;
- pay 8% simple yearly interest on any refunded amounts from the date of payment until the date of settlement;
- pay compensation of £250 for the distress or inconvenience that's been caused;
- remove any adverse information that may have been recorded about this agreement from Mrs K's credit file.

*HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mrs K a certificate showing how much tax it's taken off if Mrs K asks for one.

My final decision

My final decision is that I uphold this complaint. Santander Consumer (UK) Plc should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 14 October 2022.

Jane Archer
Ombudsman