

The complaint

Mrs B's complaint is about Santander Consumer (UK) Plc's response to dealing with problems she's had with a car it supplied to her under a conditional sale agreement.

What happened

Mrs B entered into a conditional sale agreement with Santander so she could get a car. The car was a little over six years old at the time, with a cash price of £6,081. Mrs B paid a deposit of £2,000 with Santander providing the balance, to be repaid over three years.

Shortly after taking delivery of the car, Mrs B started to experience problems with it. She says the car went into 'limp mode', and while she took it to the dealer for repair, within a few days the problem returned. Several problems were identified and work carried out on the vehicle. Mrs B describes that the car was with the garage for around four months. During that time she was provided with a number of courtesy cars.

But after Mrs B picked up the car the limp mode problem arose again, this time while driving on the motorway with her children. After having the car towed home, Mrs B raised her concerns with Santander.

Santander obtained a report from A, an independent engineer. A said the car had an excessive oil level, concluding that this could not have been the position at the point of supply. On this basis, Santander said it wasn't liable to Mrs B. Mrs B was unhappy with this and Santander told her she could refer her complaint to us.

Our investigator felt the complaint should be upheld in Mrs B's favour. She noted the obligations implied into the contract by the Consumer Rights Act 2015 ("CRA"); particularly that there was a duty to ensure the car was of satisfactory quality. Even taking into account the age and price of the car, the investigator considered the problems Mrs B had described with the car from an early stage were indicative that it was not of satisfactory quality. The investigator didn't think A's report dealt with those problems. Because of this, she didn't think it reasonable for Santander to rely on the report to defend the claim.

The investigator proposed that Santander end the agreement and collect the car, with no further cost to Mrs B. She also suggested that Santander refund – with interest – Mrs B's deposit and reimburse a proportion of the money she'd paid under the agreement to reflect the impaired use of the car. And she recommended that it pay Mrs B £200 compensation in recognition of her distress and inconvenience.

Mrs B said she would accept this outcome. But Santander didn't agree with the investigator's findings. It said the problems could be due to wear and tear, given the age of the vehicle. It again referenced the conclusions of A's report. And it said the current problem could be down to the excessive oil contaminating the car's throttle, rather than inherent at the point of supply. Santander has also forwarded a copy of a letter it received from the car dealer's legal representative, stating confidence the car was in satisfactory condition when supplied.

The matter has now been passed to me for review.

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.

On reviewing this complaint, I share the investigator's concerns over whether it was right for Santander to rely so heavily on A's report. A's report was based on the condition of the car at the time it was carried out. It noted that there was an excessive oil level and suggested this as the cause of the faults reported on the car's management system. The report concluded that this could not have been the case when the car was supplied.

But there is a clear record of Mrs B having reported the limp mode issue on several occasions very soon after she got the car. So if the fault A identified wasn't present at the point of supply, it seems logical to conclude that something else must have been causing the problems she experienced. Regrettably, the report didn't include any further efforts to establish whether there were any other underlying problems, or the root cause of why the car was losing power months earlier, which was the nature of Mrs B's claim.

Given Mrs B's evidence about the problems she experienced with the car and her comments about it being with the garage for several months, there was a clear line of enquiry that should have prompted further investigation. I don't consider Santander to have acted reasonably in accepting A's report as evidence that the car was of satisfactory quality when supplied. It makes no supported commentary about the condition at point of supply, possibly because once the current problem was identified, no further investigation took place. As such, I can't accept the report as persuasive evidence that Santander has done enough to demonstrate it met the CRA requirements when supplying the car.

The fact that Mrs B first experienced the problems with the car within a very short amount of time indicates to me that they were likely to have been present when the car was supplied. Her first contact with the garage about the limp mode problem was within a couple of weeks of that point. It happened again around a fortnight later. And the car was then with the garage for some months. Mrs B says she was told it might need a new engine. I'd expect all of this to suggest to Santander that a car that displayed this sort of repeat problem and potentially required such extensive work couldn't really be said to have been of satisfactory quality, even taking into account its age and mileage.

After carefully considering the circumstances, I'm not satisfied that the car supplied to Mrs B was of satisfactory quality, as required under the CRA. I don't consider the dealer's legal representative's letter gives me any reason to reach a different conclusion. It simply states the dealer's position without providing any useful information about the car's condition at point of supply.

Mrs B has been caused frustration and inconvenience in her dealings with Santander, and it would undoubtedly have been a frightening experience for her and her family for the car to break down on the motorway. She's had to pay out substantial amounts towards a car of which she's had significantly impaired use and was entitled to reject. She should be compensated for these things, and she should certainly not have to pay anything further towards the agreement, which should be terminated.

I appreciate some of the impaired use was addressed by the provision of courtesy cars. So looking at matters as a whole, I think it's reasonable Santander should be entitled to retain some of the payments received under the conditional sale agreement. But it's only fair that the majority of this is returned to Mrs B, along with her deposit.

Putting things right

To address matters Santander should, within 28 days of receiving Mrs B's acceptance of this decision, take the following steps:

1. collect the car from Mrs B at no additional cost to her
2. cancel Mrs B's conditional sale agreement effective 1 June 2022 (which is the point by which I consider Santander ought to have dealt appropriately with the claim), with no further payments due from her after this date. Santander should ensure this is reflected in the information it has recorded on Mrs B's credit file
3. return any payments Mrs B has made under the credit agreement since 1 June 2022
4. pay Mrs B £2,000, representing the deposit she paid for the car
5. pay Mrs B £500 by way of a reduction to the monthly payments due under the agreement between July 2021 and May 2022 to reflect her impaired use of the car
6. pay Mrs B interest on the sum of any money due under 3. to 5. at 8% simple annually, calculated from 1 June 2022 until the date it pays this settlement. If Santander deducts tax from this interest, it should provide Mrs B with an appropriate tax deduction certificate should she request one
7. pay Mrs B £200 in recognition of the distress and inconvenience she's been caused by the way it handled matters.

My final decision

My final decision is that I uphold this complaint and direct Santander Consumer (UK) Plc to take the steps I've set out in 1 to 7 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 24 February 2023.

Niall Taylor
Ombudsman