

The complaint

Ms P complains about a faulty car she hired from Santander Consumer (UK) Plc (trading as Santander Consumer Contract Hire).

What happened

In December 2021 Ms P acquired a new car from Santander under a hire agreement for two years. She agreed to pay £7,300 right away (there is a dispute about the precise nature of this payment), followed by 23 monthly rental payments of £1,167.26 each.

In March 2022, when the mileage was 7,520 miles, a fault developed and Ms P took the car to be repaired. The dealer gave her a courtesy car, and £700 towards fuel costs. But the car was still being repaired three months later, in June, and so she complained to Santander about how long it was taking.

Santander did not uphold her complaint. It said the repairs had been completed, and as the dealer had given Ms P a courtesy car and money for fuel, that was enough. In July 2022, Ms P brought this complaint to our service. She wanted to reject the car. She added that the courtesy car had not been as good as the car it was standing in for.

In August 2022, the car was taken back to the dealership as the bodywork had been damaged during the original repair. In September of that year, more faults were discovered. Then in November 2022, Santander refunded one of the monthly rental payments as a gesture of good will, but it said it was not liable for any damage that had been caused by the retailer.

Meanwhile, one of our investigators looked into this case, and in January 2023 he decided that the car must have been defective at the point of supply, and that Santander was liable for that. He recommended that Ms P be allowed to reject the car, and that the hire agreement should be ended with no more to pay (and in particular, no excess mileage charges). He said any adverse information that had been recorded on Ms P's credit file should be removed, and the initial payment of £7,300 should be refunded in full, with interest on the refund at eight per cent a year. But taking into account the courtesy car, the £700 paid by the dealer, and the £1,167 gesture of good will, he did not think that there needed to be a refund of any rental payments Ms P had already made by way of compensation for her inconvenience.

Ms P accepted that opinion. Santander also accepted the investigator's opinion, except that it argued that the £7,300 initial payment should not be refunded in full, but only on a *pro rata* basis, to take into account the use Ms P had had of the car. The investigator agreed with that, and he modified his recommendation accordingly. He added that he had meant to say that in the first place.

Ms P did not accept that variation of the investigator's opinion. She said the £7,300 payment had been an advance payment of six months' rent, and so it should be refunded in full. She added that Santander had sent her an arrears notice for three monthly payments, which she

said was evidence of Santander acting in bad faith. She asked for a replacement car, in addition to everything the investigator had originally recommended.

The investigator said that any complaint about arrears should be dealt with as a new complaint, rather than as part of this one, because it was a new issue and Santander was entitled to eight weeks to investigate it. He did not change his mind about the compensation he had recommended, with the *pro rata* refund of the first payment. He referred this case for an ombudsman's 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.

It is not in dispute that the car was defective at the point of sale and that Santander is liable for that, and so it only remains for me to decide what the compensation should be. And I agree with the investigator's revised opinion.

The payment of £7,300 was not a deposit, but an advance rental payment; it is described as such in the hire agreement. This would normally be refunded on a *pro rata* basis, and so I think it would be fair to do that in this case. So I will require Santander to refund Ms P in proportion to the period of time following the return or collection of the car.

Ideally, the courtesy car should have been as good as the original car, but that is not a legal requirement or an industry standard or best practice. So in the absence of a clause stipulating that any courtesy car will be of the same standard as the car originally hired, I cannot uphold this complaint on that basis. However, I think that the two payments totalling £1,867 are more than I would have awarded Ms P if I had upheld her complaint about that issue. So, taking that money into account, I don't think any further award is due for the period for March 2022 to June 2022.

Because Ms P still had a car during the time the repairs were going on, I don't think it would be fair to require Santander to refund the rental payments she made during that period.

I am not going to investigate the arrears notice, as I agree that that should be the subject of a new complaint. As far as *this* complaint is concerned, Ms P remains liable for any arrears and late payment charges already incurred, but no further payments will be due from her in relation to the period after the date on which the car is returned or collected.

My final decision

My decision is that I order Santander Consumer (UK) Plc (trading as Santander Consumer Contract Hire) to:

- Refund to Ms P on a *pro rata* basis the £7,300 advance payment for spread rentals (so she isn't paying for any period she won't be hiring the car for),
- Pay simple interest on that refund at the rate of eight per cent a year from the date when the advance payment was paid to the date of settlement,
- End the hire agreement and accept Ms P's rejection of the car, with nothing further for her to pay from the date the car is collected (other than any late payment charges incurred before that date),
- Collect the car at no cost to Ms P, and
- Remove any adverse information about the hire agreement from Ms P's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or

reject my decision before 12 April 2023.

Richard Wood
Ombudsman