

The complaint

Mrs M is unhappy with the quality of a car supplied under a conditional sale agreement taken with Santander Consumer (UK) Plc trading as Santander Consumer Finance.

What happened

In August 2021 Mrs M acquired a used car funded in part with a conditional sale agreement provided by Santander.

The car cost £63,419 and Mrs M paid a total deposit of £17,040. The car supplied was around three years old and had covered around 51,634 miles.

Mrs M says when she got the car she noticed issues with it. These included a rip in a seat, paint peeling and she said the car was juddering, jumping and losing power.

Mrs M explained the supplying dealer, who I'll refer to as 'D', was around a five and a half hour round trip away. So, as she had a manufacturer's warranty, she took the car to a local main dealer, who I'll refer to as 'Y', to look into the issues with the car juddering and losing power.

Mrs M explained Y first saw the car around two months after she acquired it, but it couldn't find a fault as the issue was intermittent.

The car was seen by Y again in November 2021. Y explained it had investigated juddering and jumping but all was okay.

Mrs M said the car broke down in January 2022 and was seen by Y. It appears a part was ordered at this point but was on backorder. The car was returned to Mrs M and it again broke down in April 2022 and was recovered to Y. Y carried out repairs to a heater.

The car was taken back to Y in May 2022 due to juddering and power loss. Y replaced an 'MAS air flow and fuel pressure sensor'.

Later in May 2022 the car was returned to Y again as Mrs M said the issue persisted. Mrs M at this point complained to D and Santander and said she wanted to reject the car.

While Y had the car, around this time it contacted the manufacturer's technical assistance team for further advice on repairing the car. Shortly after, the car was recovered from Y to D.

At the end of June 2022, Santander issued its final response to the complaint. It said, in summary, that as Y had attempted to repair the car and the issues weren't reported to D, Santander couldn't determine liability due to unauthorised repairs. Santander didn't uphold the complaint.

Mrs M remained unhappy and brought the complaint to our service. She said, in summary, that it wasn't reasonable to return the car to D to investigate due to the distance, and said

she had taken the car to Y in good faith as it was a main dealer. She said the car had issues since she got it and was unhappy being offered a courtesy car of far less value than hers.

Shortly after the complaint was referred to us, D bought the car back from Mrs M and settled the finance agreement. Mrs M took another car under a separate agreement with D. This car was then shortly returned to D as Mrs M wasn't happy with it and the new finance agreement cancelled.

Our investigator issued an opinion and said the complaint should be upheld. He said, in summary, that he thought the car supplied to Mrs M had an ongoing fault with it and so wasn't of satisfactory quality when it was supplied. He said this situation had caused Mrs M distress and inconvenience and thought Santander should pay her £200 to reflect this. But, he said as the car had been taken to Y, not D, any remaining issues weren't the responsibility of Santander.

Santander disagreed. It said, in summary, that any distress and inconvenience had been caused by Y, not it, and so it shouldn't have to pay anything to Mrs M.

Our investigator then reconsidered the complaint and issued a second view. He explained, in summary, having thought about things again that he believed Mrs M had acted reasonably when she took the car to Y rather than D, given the distances involved. He said, given Y had attempted to repair the car several times before Mrs M asked to reject it, she should've been allowed to do so.

Our investigator explained that, when the dealer bought the car from Mrs M and settled the finance, an advance payment of £7,428.43 was taken forward onto the new agreement. But, he said had Mrs M been allowed to reject the car, she would've received her total deposit back, which was £17,040. He said Santander should make up the difference between these amounts, this being £9,611.57.

Our investigator also said that the car wasn't performing as it should when Mrs M had it, so he thought Santander should reimburse her 10% of the repayments she made. He said it appeared Mrs M hadn't driven the car since 18 May 2022 so all repayments should be reimbursed since this time. And he still said Santander should pay her £200 to reflect what happened.

Santander didn't respond to the second opinion. So, the case has 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.

Having done so, I think this complaint should be upheld. I'll explain why.

Mrs M complains about the quality of a car supplied under a conditional sale agreement. Entering into regulated consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Mrs M's complaint against Santander.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Santander here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description.

So, I'll consider that the car Mrs M acquired was over three years old and had covered over 50,000 miles. I think a reasonable person would not expect it to be in the same condition as a newer car with less miles. That being said, I also need to consider that the car Mrs M acquired was from what many consider to be a premium brand, and cost over £63,000. So, I think a reasonable person would still have high standards for the quality of the car, would've expected it to have been free from anything other than very minor issues and would expect to have trouble free motoring for some time.

The first thing to consider here is whether the car had a fault with it. Having reviewed the evidence, I'm satisfied that it did. I say this as Mrs M has been consistent with her testimony here. Y attempted several repairs to the car, due to issues with power and it breaking down.

I can see repairs were attempted by Y to the car and multiple parts replaced.

Following the attempted repairs, in the communication with the manufacturer's technical assistance team, Y said:

"the engine is misfiring at idle"

"when engaging EV mode a severe lack of power is present"

So, considering this, I'm satisfied the car had a fault. And I'm satisfied a reasonable person would not expect this car to have the fault it did.

Mrs M explained the car had problems as soon as she got it. And on the first job sheet from Y that mentions the lack of power, the car had covered less than 4,000 miles since she acquired it.

Given this, I'm satisfied the fault was present when Mrs M got the car. And I'm satisfied the attempted repairs by Y weren't successful.

So, it follows all of this that I'm satisfied the car wasn't of satisfactory quality when it was supplied to Mrs M.

What I now need to consider is whether I agree with Santander's argument that, because the repairs were attempted by Y, it isn't responsible to put things right.

I've firstly thought about Santander's responsibilities under the CRA. It needed to ensure the car supplied to Mrs M was of satisfactory quality. It said in its final response that, because the car had been taken to Y, it was unable to determine its liability here. But, I disagree this was the case. Whether the car was taken to Y, or D, I think Santander should've known it had supplied a car to Mrs M that wasn't of satisfactory quality.

I say this as the information from Mrs M and Y makes it quite clear the car had a fault and that repair attempts hadn't resolved the issue. And, as above, I think it's quite clear this fault made the car of unsatisfactory quality considering the details of the car and how much it cost.

I've then considered here whether it was reasonable for Mrs M to take the car to Y rather than D. But, I think she acted in good faith here. I say this as Mrs M has explained D was a long distance and drive away. She's explained the car had a manufacturer's warranty on it, and Y could attempt repairs under this. I've also considered Y itself. Looking at its website, Y

explains it is a main retailer for the manufacturer of Mrs M's car and has been for over 30 years. It explains its service department is award winning and approved by the manufacturer. So, under the circumstances I'm satisfied Mrs M acted reasonably when she took the car to Y for a repair.

Thinking about Y's experience here, I also, on balance, haven't seen enough to persuade me anything different would've happened if the car was returned to D. I'm further persuaded of this given Y was in touch directly with the manufacturer about the issue and still couldn't put it right.

So, it follows all of this that I don't agree with Santander's response here. And I think it should've taken action to put things right at the time Mrs M complained to it.

I've considered Mrs M's rights under the CRA. I've seen evidence that she asked D and Santander to reject the car when she complained. I understand Santander's point that the 'trader' hadn't had a chance to repair as detailed in the CRA, but thinking about what's fair and reasonable, along with what I've said above about Y, I'm satisfied Santander should've allowed her to reject the car at this point.

So, I then need to consider what would now put Mrs M back closest to this position at this time. Had Santander allowed Mrs M to reject the car, it should've given her the deposit she paid back – which was £17,040.

The amount that Mrs M sold her car to D for and what happened when this second car was returned are in dispute. This is the subject of a separate complaint. But, the key thing, when considering this complaint, is that I'm satisfied when this finance agreement was settled Santander and D have treated the situation as though Mrs M 'carried over' £7,428.43 as a deposit for the new agreement.

So, this means when this car was returned, Mrs M effectively got back £7,428.43 whereas had Santander allowed her to reject it, as I think it should've, she would've received £17,040. I agree with our investigator that it would now be fair for Mrs M to receive the difference between these figures back, to put her in the position she should've been in. This means Santander should reimburse Mrs M £9,611.57.

I'm also satisfied, given what I've set out above, that the car wasn't performing as it should when Mrs M had it. So, while she has had use of the car, and this means Santander is entitled to retain an amount from the monthly payments for this, the usage of the car was impaired. Thinking about this, I agree with our investigator that it would be fair and reasonable for Santander to reimburse Mrs M 10% of the monthly repayments made to reflect this impaired usage.

Mrs M says she didn't drive the car since 18 May 2022. So, she should get back any repayments made to this agreement since this point.

I'm also satisfied Mrs M has suffered distress and inconvenience because of what's happened. She's been without the car while it was repaired, the car broke down on more than one occasion and she has had to spend time and effort attempting to fix the issues. So, I think Santander should pay her £200 to reflect this.

My final decision

My final decision is that I uphold this complaint. I instruct Santander Consumer (UK) Plc trading as Santander Consumer Finance to put things right by doing the following:

- Reimburse the 'remaining amount' of Mrs M's deposit of £9,611.57 from 16 August 2021*
- Reimburse 10% of all repayments made towards the agreement*
- Reimburse any repayments since 18 May 2022*
- Pay Mrs M £200 to reflect what happened
- Remove any adverse information from Mrs M's credit file in relation to this agreement

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Santander considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 17 July 2023.

John Bower
Ombudsman