

The complaint

Mrs F complains about the quality of a car she has been financing through an agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance, who I'll call Santander.

What happened

I issued my provisional decision on this complaint in August of this year. An extract from that provisional decision is set out below.

Mrs F acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Santander, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mrs F. The car here was brand-new so I don't think a reasonable person would expect it to have any faults.

Mrs F complained soon after she took receipt of the car, that the key fob wouldn't unlock it. An independent inspection was completed in October 2022 and the inspector clarified there was a fault that was likely to have been present when the car was supplied and was therefore the supplier's responsibility to rectify.

The relevant legislation gives the business one chance to repair faults that are present when goods are supplied, but a further inspection has explained that repairs have failed, and faults persist. In those circumstances the relevant legislation says Mrs F should be allowed to reject the car and end the finance agreement.

Santander say that action is disproportionate, but I don't agree. This was a new car and I think Mrs F could have expected it to have been fault free for some time. I can imagine it must have been frustrating not to have been able to gain access without using the blade, and I also understand from the inspector's reports that the alarm would sound when the car was accessed in that manner. I don't think that was a trivial issue and I don't therefore think rejection is disproportionate.

Putting things right

Santander should collect the car at no cost to Mrs F and they should end the finance agreement.

They'll need to refund any deposit Mrs F has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Mrs F has been inconvenienced by these issues. She's had to take the car back to the dealership on several occasions and has had to arrange to be present at the independent inspections. She's also had to escalate her complaint to this service when I think it could have been resolved earlier. Since our investigator issued her view in March 2023 there have been some further delays waiting for Santander to organise a further independent inspection, although these were limited. On balance, I think Santander should pay Mrs F £400 to compensate her for the distress and inconvenience she's experienced.

This was a new car and I think the issues Mrs F has experienced with it will have impacted on her enjoyment of the car. To compensate Mrs F for that Santander should refund 5% of the monthly instalments Mrs F has paid to her agreement, but it's fair for them to retain the rest of the payments as Mrs F has had use of the car.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Santander Consumer (UK) Plc to:

- Allow Mrs F to reject the car and end the finance agreement.*
- Collect the car at no cost to Mrs F.*
- Refund any deposit or part exchange contribution that may have been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- Refund 5% of all finance payments that have been made in respect of loss of enjoyment and impaired use. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- Pay Mrs F £400 to compensate her for the distress and inconvenience she's experienced;*
- Remove any adverse reports they may have made to Mrs F's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and/or evidence

Mrs F didn't think my provisional decision was fair. She explained that a deposit wasn't paid for the car, and she did not think surrendering the car was a satisfactory outcome, given her daughter would be further inconvenienced by being without a car, and would have to sort a further finance agreement when she is currently a student midwife and has not got the time or the means to do so. She didn't think the amount of compensation was sufficient to address the distress and inconvenience caused either. She suggested that she should keep the car, fix it at her own cost, and be provided with £2,000 in full and final settlement.

Santander said the dealership would replace the key fob and they'd be happy to pay the compensation I set out in my provisional decision. They said if the repair didn't work they would support Mrs F in rejecting the car.

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.

I've already explained that the relevant legislation expects a business to attempt to repair goods in these circumstances, but if the repair fails, as has been the case here, the consumer should be allowed to reject the car. I'm not persuaded that the distress and inconvenience experienced here requires a higher award than I set out in my provisional decision. It seems there has been no problem driving the car, and Mrs F has been able to access it albeit, at times, only by using the key blade.

I understand Mrs F's daughter has been using the vehicle. but it's Mrs F who has been financing it and she is Santander's customer. It wouldn't, therefore, be fair for me to take into account the problems Mrs F's daughter, a third party, may have in securing finance.

As Santander are still prepared to repair the fault it may be that Mrs F prefers that option. But I've not been persuaded to increase the compensation I suggested in my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Santander Consumer (UK) Plc to:

- Allow Mrs F to reject the car and end the finance agreement.
- Collect the car at no cost to Mrs F.
- Refund 5% of all finance payments that have been made in respect of loss of enjoyment and impaired use. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Mrs F £400 to compensate her for the distress and inconvenience she's experienced;
- Remove any adverse reports they may have made to Mrs F's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 18 October 2023.

Phillip McMahon
Ombudsman