

The complaint

Mrs W is unhappy with how Santander Consumer (UK) Plc trading as MG Motor Financial Services (Santander') dealt with her complaint about the quality of a car.

What happened

In November 2022 Mrs W entered into a fixed sum loan agreement with Santander in order to acquire a new car. The car cost £33,529. Mrs W made an advance payment of £4,500 and was due to make 48 payments of £468.53, followed by a final repayment of £13,230.

Within a few days of collecting the car, Mrs W reported to the dealer that the sat nav didn't work. She then said the radio stopped working, the media system terminated calls and that the 'car play' system didn't work. The dealer saw the car in November 2022 to try to rectify the issues, but Mrs W said within five minutes of getting the car back she noted the sat nav still didn't function.

Mrs W then says she explained to the dealer in December 2022 that the sat nav, car play and battery heating weren't working. She later noted the car had issues selecting gear. The car was returned again to the dealer in January 2023. Mrs W got the car back the next day.

In February 2023 Mrs W returned the car to the dealer and told it she wanted to reject it, as she said it still had various faults. She set these out in a letter to the dealer:

- *"car play - has never worked and is still not working*
- *Sat Nav - never worked from collection*
- *Radio / music stopped working. Silent driving experience*
- *Bluetooth synchronisation drops in and out frequently*
- *Battery Heating would not work from App*
- *Car would not turn off when parked and stationary*
- *eSOS warning light intermittently displays*
- *Main car screen freezes - inability to press any function button*
- *When powered off main screen stays on frozen on a blank screen*
- *ACC System unavailable error displays*
- *Car would not engage drive or reverse - would only sit in neutral*
- *Camera system freezes and glitches to a black and white rolling screen*
- *Telephone system will not terminate calls from multi function steering wheel*
- *Radio has to be turned on manually every time you enter the vehicle*
- *Emergency stop - car places itself into emergency stops with no reason or proximity to other vehicles"*

In March 2023 the dealer got in touch with Mrs W. It said, in summary, that the car's manufacturer said she didn't have the right to reject the car as it functioned in getting her to A to B and the issues Mrs W had were with 'convenience items'.

Mrs W complained to Santander and at the end of March 2023 it issued its final response. This said, in summary, that Mrs W didn't have a right to reject the car. It said the dealer had the right to repair it, and the issues were not "*proportionate for a rejection request*". It also said it could not "*enforce a rejection decision on the dealership*" as the manufacturer didn't think she had a right to reject it. Santander explained it had cancelled the independent inspection of the car as Mrs W was unhappy to wait for it. But it did offer £250 to apologise for delays.

Mrs W referred the complaint to our service. She reiterated her complaint points she'd raised to the dealer and Santander. She also said this situation had a significant impact on her, as she'd had to borrow cars from friends and relatives, and had at times been left without transport for her family.

An investigator issued an opinion and upheld the complaint. He said, in summary, that he thought the car had faults with it. He said as repairs had been attempted but seemed to have failed, Mrs W should have a right to reject the car. He said the agreement should be cancelled, the deposit and all repayments returned to her and an additional £100 compensation paid, bringing the total to £350.

Mrs W accepted the opinion.

Santander didn't accept the view. It forwarded on a response from the dealer. This explained, in summary, that the dealer had seen the car on more than one occasion and attempted to put 'issues' right but said these were not faults. It said issues could've been caused by third party devices. It said when the car was returned in February 2023 it was only able to replicate the SOS 'symptom'. The dealer said it had not attempted to repair the car.

Our investigator said this didn't change his opinion. He said, in summary, that the dealer had attempted to repair the car and this had failed. So he said Mrs W had the right to reject it.

Santander didn't respond and so the case was passed for an Ombudsman's decision.

Another investigator then reviewed the case and issued another view. This explained that due to the nature of the finance agreement, Santander should've considered this complaint as a claim under Section 75A of the Consumer Credit Act 1974 ('S75A'). They went on to say they thought the car was of unsatisfactory quality, for much the same reasons the previous investigator explained.

But, they did say Santander should do something slightly different to put things right. They said Mrs W should be allowed to reject the car and that Santander should refund the deposit, reimburse 10% of repayments made to 6 February 2023 and refund all repayments made from 6 February 2023.

Santander responded and explained it still thought the complaint should not be upheld. Mrs W got in touch and said she wasn't happy with the compensation changing. So, the complaint 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.

I should firstly point out that I may not comment on every individual piece of evidence nor every point raised. I want to reassure Mrs W and Santander that this doesn't mean I haven't fully considered everything. While I've reviewed all of the information on the case, I'll focus on what I think are the key facts and the crux of Mrs W's complaint. This reflects the informal nature of our service.

I think it's worth explaining the position with the legislation mentioned by our two investigators on this case, as there was some confusion here. When considering what's fair and reasonable, I take into account relevant law, guidance and regulations.

In this case, S75A and the Consumer Rights Act 2015 ('CRA') are relevant.

Having reviewed things, I'm satisfied Mrs W had a valid claim against Santander under S75A. I'll explain why. S75A says:

"If the debtor under a linked credit agreement has a claim against the supplier in respect of a breach of contract the debtor may pursue that claim against the creditor where any of the conditions in subsection (2) are met."

Subsection (2) goes on to explain that one of the conditions mentioned is:

"that the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim"

Here, I'm satisfied that for Mrs W this condition has been met. I say this as it was clear from texts and emails that Mrs W attempted to resolve this situation with the dealer, but couldn't.

S75A goes on to explain:

"In this section ""linked credit agreement"" means a regulated consumer credit agreement which serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service and where –"

"the specific goods or provision of a specific service are explicitly specified in the credit agreement"

Looking at the credit agreement, I'm satisfied this is regulated. And the specific details of the car Mrs W acquired are set out on the credit agreement.

S75A then goes on to explain it applies where the cash value of the goods is between £30,000.01 and £60,259.99. The cash price of the car Mrs W acquired was £33,529, so I'm satisfied it meets the financial limits set out.

It's important to note here that Mrs W didn't specifically set out she wanted to raise a claim under S75A. Nor did Santander respond directly to this. But, I am satisfied by raising the complaint she did, Santander should've considered this. I'm also satisfied it's clear from its correspondence that Santander effectively did decline Mrs W's claim under S75A. So, what I need to consider here is whether Santander was right to do so.

The CRA is also relevant to this complaint. This implied a term into the contract for the supply of the goods that they should be of 'satisfactory quality'. Satisfactory quality is what a

reasonable person would expect, taking into account any relevant factors. I would consider relevant factors here to be, amongst others, the car's age, price and mileage.

So, here, I need to consider that the car Mrs W got was brand new and cost over £33,000. I think a relevant person would expect it to be in mint condition, to be free of even minor faults and would expect trouble free motoring for a long time.

If the car supplied was not of satisfactory quality, I would consider this to be a breach of contract, and so as above, something Mrs W would have the right to pursue Santander for under S75A.

Was there a fault with the car?

I'm not going to list everything here, but Mrs W has provided quite a lot of evidence to back up what she told the dealer, Santander and our service about the faults with the car. This included photos and videos. These have shown:

Various warning lights on the dash, the car appearing to not respond to the stop/start button, the gear selector appearing to not work, channels apparently missing from the radio, the infotainment not connecting to a phone and the infotainment being unresponsive to inputs.

I've also seen an email from the dealer where they explain:

"since then have been responding to their questions which have revolved around the items we have been able to confirm the fault on.

Currently, we have been asked to update various control units, of which we are having trouble with the configuration on one" (emphasis added by myself).

Thinking about this, along with Mrs W's testimony and how consistent she was when complaining about the specific issues, I'm satisfied the car had various faults with the infotainment system. I'm satisfied it had intermittent faults where it wouldn't allow drive or reverse to be selected. And I'm satisfied it also had an intermittent fault with the SOS system.

Given how quickly these faults appeared after Mrs W got the car, I'm satisfied they were present or developing at the point of supply.

I realise this doesn't address all of the faults Mrs W raised with the car. There's something of a lack of evidence with these points. But, I don't need to make any findings on these other areas. That's because whatever I decided here wouldn't change the outcome I reached on the complaint, nor what I think would be reasonable to put things right.

Did these faults mean the car wasn't of satisfactory quality?

Firstly, it's important to be clear that I disagree, in the strongest terms, with the argument put forward by the manufacturer that because the car was drivable this meant it was of satisfactory quality. And it was very disappointing to see Santander being led by this. The CRA specifically states "*freedom from minor defects*" should be considered as part of satisfactory quality in appropriate cases. And I would very much consider this to be reasonable when thinking about a brand new car.

I should also say that I don't think the faults Mrs W had would be considered as 'minor' either way.

Considering everything here, I think it's clear a reasonable person would not consider the car to have been of satisfactory quality. It follows that as above, this means there was a breach of contract and so Santander need to remedy this under S75A.

Putting things right

Mrs W said she wanted to reject the car. Santander and the dealer explained that they believed Mrs W didn't have this right.

The CRA explains Mrs W would have the final right to reject the car if it was of unsatisfactory quality and:

"after one repair or one replacement, the goods do not conform to the contract"

The dealer confirmed they saw the car in November 2022. It said *"we confirmed the issues (not vehicle faults) and carried out a 1st process step of 12v battery disconnection and reset of system to then retest"*

It then confirmed again it saw the car in January 2023, where it was in touch with the manufacturer's technical department and were waiting a response. It then said it did *"all the updates available"*.

I'm satisfied both of these instances were clearly attempts at repairs. And I think it's most likely the issues were not put right. It follows I do not accept Santander's argument that any further repairs by the dealer should now be seen as the first attempt under the CRA.

So, this means I'm satisfied Mrs W had the final right to reject the car under the CRA when she asked to. Given it was then left at the dealer, it's fair and reasonable that she still has this right.

I've also considered the use of the car Mrs W had. Between acquiring it and when she left it at the dealer, Mrs W did use the car.

But, I'm satisfied due to the faults she had with it that it wasn't performing as it should. This means the use of the car was impaired. I do think Mrs W should pay for the use of the car she had, but I don't think Santander should retain the full repayments for this period. I agree with our investigator that Mrs W should be reimbursed 10% of the monthly repayments from the time she got the car until the time it was left at the dealer.

Mrs W didn't have use of the car from 6 February 2023. So all repayments from this point should be reimbursed.

I'd like to briefly add a note here about distress and inconvenience. Our first investigator recommended Mrs W be paid compensation for this. And our second investigator didn't. I understand Mrs W was unhappy with this.

I think it's quite clear this situation has caused Mrs W significant distress. And I was sorry to read about the impact this has had on her and her family. But, I'm specifically considering Santander's responsibilities under S75A here.

I can only make an award for distress and inconvenience caused by what I think Santander did wrong. Here, I don't think it reached the right outcome on Mrs W's claim. But, I'm satisfied the distress and inconvenience was caused by Mrs W being supplied with a car that had faults with it – not by how Santander handled her claim under S75A. So, Santander don't need to pay Mrs W anything additional for the distress caused.

My final decision

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

- End the agreement with nothing further to pay
- Collect the car at no cost to Mrs W
- Reimburse Mrs W's deposit of £4,500*
- Reimburse 10% of all repayments made to the agreement until 6 February 2023*
- Reimburse all repayments made to the agreement from 6 February 2023*
- Remove any adverse information about this agreement from Mrs W's credit file

* 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 W how much it's taken off. It should also give Mrs W 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 W to accept or reject my decision before 20 December 2023.

John Bower
Ombudsman