

## The complaint

Mr C complains about the quality of a car he has been financing through an agreement with Santander Consumer (UK) Plc, who I'll call "Santander".

## What happened

I issued a provisional decision on this complaint last month. An extract from that provisional decision is set out below.

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I agree with our investigator's suggestion that Mr C should be allowed to reject the car he has been financing, but I don't think the investigator has considered the loss of use Mr C has had from the car, or the distress and inconvenience he's experienced. The redress I'm proposing is therefore different. I'll explain.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr C acquired his 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. And when we think about whether a car has been of satisfactory quality the relevant legislation says we should consider whether it has been durable.*

*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 Mr C. The car here was brand-new so I don't think a reasonable person would expect it to have any faults.*

*Mr C has experienced three issues with his new car within the first year of operation. Warning lights appeared in December 2022 that indicated there was a problem with the brakes; in January 2023 warning lights illuminated and suggested there was a gear selector fault; and more recently the front detection radar warranted attention.*

*I can understand Mr C's frustration as I don't think a reasonable person would expect to have had so many problems with a brand new car so soon after they'd taken receipt of it. I*

*can also understand he would be concerned that the dealership's attempts to fix what appears to be an intermittent electrical fault, have not been successful. While the dealership say the replacement of the front detection radar has now resolved the issues with the car, it is unclear how that repair could be said to have had an impact on the braking, or gear selection issues, reported earlier.*

*In the circumstances, I don't think this car has been durable and I think Santander should now allow Mr C to reject it.*

### **Putting things right**

*Santander should collect the car at no cost to Mr C and they should end the finance agreement.*

*They'll need to refund any deposit Mr C has paid and, as he's been deprived of that money, they will need to add interest to that refund.*

*When our investigator issued her view on this complaint Mr C had explained he didn't want his loss of use to be considered, and that he simply wanted to exit the agreement. But that was more than five months ago, and, in the meantime, Mr C does not appear to have had use of his car and has continued to pay for it. I think Santander should, therefore, refund any finance instalments Mr C has paid since he returned the courtesy car the dealership had provided. They'll need to add interest to that refund as Mr C has been deprived of that money.*

*Mr C has been inconvenienced by these issues. He's had to take the car back to the dealership on several occasions and he's had to escalate his complaint to this service when I think it could have been resolved earlier. He's also explained the impact this complaint has had on his mental health. In the circumstances, I think Santander should pay him £150 to compensate him for the distress and inconvenience he's experienced.*

*This was a new car and I think the issues Mr C has experienced with it will have impacted on his enjoyment of the car. To compensate Mr C for that Santander should refund 5% of the monthly instalments Mr C has paid to his agreement, but it's fair for them to retain the rest of the payments as Mr C has had reasonable use of the car. I note the mileage he had covered in the first year was broadly in line with his entitlement under his agreement of 10,000 per year.*

### **My provisional decision**

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

- *Allow Mr C to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr C.*
- *Refund any deposit that has been paid and add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Refund 5% of all finance instalments in respect of loss of enjoyment and add 8% simple interest\* per year from the date of payment to the date of settlement.*
- *Pay Mr C £150 to compensate him for the distress and inconvenience he's experienced.*
- *Refund any finance instalments paid since Mr C returned the courtesy car and until this complaint is settled. Add 8% simple interest\* per year from the date of payment to the date of settlement.*

- *Remove any adverse reports they may have made to Mr C'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**

Santander didn't provide any further information.

Mr C was happy with the decision. He explained that the car was still with the dealership and that he'd returned the courtesy car on 10 March 2023.

### **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 not been provided with any additional information that would lead me to change 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 Mr C to reject the car and end the finance agreement.
- Collect the car at no cost to Mr C.
- Refund any deposit that has been paid and add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund 5% of all finance instalments in respect of loss of enjoyment and add 8% simple interest\* per year from the date of payment to the date of settlement.
- Pay Mr C £150 to compensate him for the distress and inconvenience he's experienced.
- Refund any finance instalments paid since Mr C returned the courtesy car (10 March 2023) and until this complaint is settled. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr C'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 Mr C to accept or reject my decision before 27 December 2023.

Phillip McMahon  
**Ombudsman**

