

The complaint

Mr B complains about the quality of a car supplied by Santander Consumer (UK) Plc through a conditional sale agreement.

What happened

The parties are familiar with the background details of this complaint so I will only summarise them. It reflects my informal remit.

Mr B financed a new car with Santander in March 2023 but he says that problems started with it soon after supply. He says that the infotainment system has been the problem, with issues including lagging/crashing/glitching.

Mr B says that Santander has had several attempts to repair the car but it is still not working properly. He now wants to reject it.

Our investigator agreed that Mr B should be able to reject the car and receive back some money, including a portion of his payments to reflect impaired use, along with a payment for distress and inconvenience.

Santander does not agree with this so has asked for a final decision. In summary, it says:

- Mr B has had opportunities to have the car in for a further software update to fix the issue but has refused these.
- After an initial hardware replacement and software update everything was confirmed as ok and the issue with the system being '*laggy and glitching*' was never confirmed by the dealer – there is also a question over whether the issue is Mr B's USB leads and the dealer needs a chance to check this.
- At one stage Mr B took the car to be looked at an unfranchised dealer without the technical know-how about the car or requisite support from the manufacturer.
- The fault did not prevent Mr B using the car – so it should not be refunding payments.

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 have read and considered the evidence from both parties but I won't be commenting on it all – only the matters I think are key to resolving the complaint. This is not meant as a discourtesy but reflects my role resolving disputes informally.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it.

I note here that Santander has referred to the dealership as if it decides what happens in the resolution of this complaint. However, I remind Santander it is the supplier of the goods under this type of agreement, and responsible for a complaint about their quality. It follows that I have taken into account the comments of the dealership as if they were made on behalf of Santander in its role as the supplier.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

The Consumer Rights Act 2015 says the quality of goods are 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle’s history.

The Consumer Rights Act 2015 (‘CRA’ from now on) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

Santander supplied Mr B with a brand new car. So I think it’s fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

I am satisfied that there was a fault with the infotainment system on the car from an early stage. Mr B has not only supplied credible testimony on this point but I note that there are job sheets dated shortly after supply (April 2023) which:

- Show Mr B reported ‘continuous glitching, shutting down and disconnecting’ from the infotainment system; and
- diagnose an issue with the buttons lighting but the screen not being responsive (as a result a hardware module is replaced).

I think it goes without saying with a new car (costing almost £30,000) that has been used for a few weeks and only 1,713 miles on the clock that these problems are unacceptable. Specifically, a reasonable person would not expect the infotainment system to be demonstrating black screens and require a hardware replacement at this stage. And I don’t see persuasive evidence from the diagnosis and repair document or otherwise that this repair was due to Mr B’s particular use of the car. So I think at this stage the car was not of ‘satisfactory quality’ under the CRA.

Because the car was not of satisfactory quality Mr B was entitled to a repair or replacement under the CRA and I can see a repair was performed by the dealer. However, it is important to note here that the CRA only allows one attempt at fixing goods of unsatisfactory quality (not individual faults) before the consumer is entitled to other remedies – including rejection. I say this because the current point of contention appears to be that if there are further inherent issues with the infotainment system Santander has pointed to Mr B not taking up the opportunity to get further repairs to remedy this.

It follows, that if I am satisfied (after this initial repair) the car continued to suffer from further inherent faults, then it would likely be fair for Mr B to be able to reject it in accordance with his consumer rights as set out in the CRA.

I can see the following evidence that supports either an improper diagnosis and fix of the initial blank screen crash, or Mr B being unlucky enough to have other inherent issues linked to the infotainment system:

- The dealer's job sheet shows that in May 2023 Mr B reported that the infotainment was lagging and glitching. He says he tried various phones and cables but no luck.
- An independent inspection report carried out in June 2023 confirms issues with the infotainment system glitching and points to a USB port on the console being faulty. It is important to note here that despite Santander suggesting Mr B's cables/phone could be at fault the engineer here specifically points out that he tried his own phone and USB cable and had the same issue. The report concludes that the fault was inherent at the point of sale.

So I think there is persuasive evidence that post the initial repair the car was still of unsatisfactory quality and it is arguable that Mr B was able to reject it at this stage due to his rights under the CRA.

However, I note that the argument for rejection is even stronger here because it appears that Mr B allowed the dealer to have another attempt at repair which also failed. I note the following evidence supports this:

- A job sheet from the dealer shows Mr B took the car in with the infotainment issues previously identified and the dealer carried out a hard reset and completed all software updates – it also checked the USB but was not able to identify a problem.
- Mr B says he continued to have problems and went to a third party dealer to have the system checked. A report from this dealer says the system was found to be 'freezing and crashing making it unusable'. It said the matter requires extensive investigation to locate the cause. And while I note that Santander has pointed out that this garage is no longer a main dealer – their diagnosis is not inconsistent with all the reported issues to date which are backed up by Mr B's consistent testimony – the initial dealership inspection and the independent expert. So I consider this report to be credible in the circumstances.

So, on balance I think Santander had at least two chances to repair the car and has failed. But even if it had not had attempts to repair I also note that the software update that it says Mr B is now refusing (and purports to fix the issue) was not released until several months after Mr B took delivery of the car. And during which time Mr B has described significant inconvenience caused by the fault with the system. The CRA allows rejection in circumstances where repair is a *prima facie* a suitable remedy but said repair is not done in a reasonable time and without significant inconvenience to the customer.

All things considered, and with the CRA in mind I think it is fair now that Mr B is able to exercise his right to reject the car.

Santander's representations appear to infer our investigator has directed it to refund all Mr B's monthly payments. That is not the case – I can see Mr B has been using the car and it has been pointed out that he should fairly pay for this use. Looking at the mileage covered I agree and think it fair that Santander retains the majority of his monthly payments to date. However, Mr B should get some money back to reflect that the use of the car has been impaired by the issues with the infotainment system.

It is not a science working out what an impaired use refund looks like. But I note here that Mr B has described all the functions that have been impacted by the fault (including the

navigation). It also appears a lot of core functions are displayed by this system (as also reinforced by the report Mr B obtained) – so use of the car would be notably impaired by it not working correctly. And the problems started soon after supply and continue to date. Therefore, I think the investigator's recommendation of a refund of 20% of each monthly payment from inception to date of settlement is fair to reflect impaired use here.

It also appears that Mr B has been caused distress and inconvenience by the issue. He has described the worry in trusting that the system won't crash during journeys. Along with the inconvenience of the trips to the dealer for attempts at repair. So overall I think it also fair he gets £200 compensation for distress and inconvenience for Santander not resolving this issue sooner.

I think it fair Mr B is refunded his deposit here too – as it will allow him to then take out a similar agreement for a replacement car. From what I have seen to date I understand this is £5,500 and I note Santander has not disputed this is what Mr B contributed upfront.

Putting things right

For the reasons given here I uphold this complaint in accordance with the direction below.

My final decision

I uphold this complaint and direct Santander Consumer (UK) Plc to:

- end the agreement with nothing further to pay;
- collect the car (if this has not been done already) at no further cost to Mr B;
- refund Mr B's advance payment of £5,500;
- pay a 20% refund of each monthly payment for impaired use, of the car because of the inherent quality issues;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £200 for any distress or inconvenience that's been caused due to the faulty goods;
- remove any adverse information (if any) from Mr B's credit file in relation to the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 May 2024.

Mark Lancod
Ombudsman