

## **The complaint**

Mr P complains that the car he acquired financed through a Conditional Sale Agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

## **What happened**

Mr P acquired a new car financed through a Conditional Sale Agreement he signed in September 2023. Shortly after he received the car he experienced a problem – the Eco Stop/Start wasn't functioning. Mr P said he liaised with the dealership, D, to repair the car and it was booked in for 18 October. Mr P said he received the car back on the same day, but the problem wasn't fixed.

Mr P said he contacted the manufacturer who he said told him the fault was 'not a common' fault and it suggested the battery was low in power. D subsequently agreed to change the battery and the car was taken in for repair on 1 November but the Eco Stop/Start was still not functioning. D took the car back in for repair on 15 November for three days.

Mr P said he had raised a complaint with Santander on 9 October. In its final response dated 14 November Santander said it had been in contact with the dealer and it was attempting a repair. It offered £200 for the distress and inconvenience which Mr P didn't accept. Mr P said Santander, through D, had had an opportunity to repair the car and he now wanted to reject it. Mr P said he was told by D the issue with the Eco Stop/Start appeared to relate to the car's airbag warning system and that it's a software problem within the car. D said it was waiting for guidance from the manufacturer as to how to proceed but the car was safe to drive. Mr P brought his complaint to this service.

Our investigator concluded the car wasn't of satisfactory quality when it was supplied to Mr P and recommended Mr P be able to reject the car. Santander did not agree and asked for a decision from an ombudsman. It made some additional comments to which I have responded below where appropriate. Mr P asked for the car to be replaced rather than just returned.

## **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 agree with the conclusions reached by the investigator for the reasons I've outlined below.

Mr P's agreement is a regulated consumer credit agreement, and our service can consider complaints against it.

Santander, as the supplier of the car was responsible for ensuring that it was of satisfactory quality at the time of sale – whether it was satisfactory quality will depend on several factors including age, mileage and the price that was paid for it. The car supplied to Mr P was new. As such I would expect it to be free from even minor defects.

I'm persuaded there is currently something wrong with the car. Besides Mr P's testimony that he's had issues with the Stop/Start and it hasn't worked since he got the car (up until today), which I find persuasive, he has provided evidence in the form of job sheets:

1. Dated 18 October 2023 – Investigate into Stop/Start – carried out battery test and came back as a good battery. Suspect the correct requirements are not being met for the Stop/Start to work. Carried out complimentary vehicle health check.
2. Dated 3 November 2023 – Investigated Stop/Start concern. Tested battery. Battery tested OK. Replaced F-O-C as a good will gesture.

In response to our investigator the dealership has said:

*"The Stop/Start system only operates when the battery state of charge is at a certain level. The vehicle's Stop/Start system & intelligent battery management system monitors the criteria before a Stop/Start event can take place. This must be met before Stop/Start is activated, for example ambient temperature needs to be above 4 degrees, high electrical accessory use & electrical load, (i.e. heated seats, Air-con, rear de-mist) can prevent the system from activating, the engine temperature is also fundamental to satisfactory operation. It is also worth noting that short, frequent journeys will not allow the Eco Start/Stop system to operate..."*

*"Upon inspection of Mr P's vehicle, no faults were found, Stop/Start operation lights were functioning as expected, again in -line with manufacturer specifications."*

Mr P has said the Stop/Start function has never worked. I note that the dealer said the Stop/Start operation lights were functioning but hasn't said that the Stop/Start function was working. The dealer went on to say:

*"As a good will gesture, and to give Mr P a degree of comfort the 12V battery was replaced, specifically, this was only done to reassure our customer given the situation and as a "belt & braces" measure noting there was no objective mechanical or electrical reason to do so.... At no time had/has the vehicle failed to start, neither had the vehicle displayed any warning lights, further, all inspections were carried out at a convenient time."*

While I appreciate that the vehicle didn't fail to start and didn't display warning lights the Stop/Start function wasn't working. Mr P took the car to the dealer twice to try to fix it and it wasn't fixed. The dealer said:

*"Whilst the vehicle may not stop the engine at every occasion the vehicle is stationary this in no way indicates a fault, on the contrary, the vehicle is performing as designed."*

I do understand this. But the vehicle Stop/Start hasn't appeared to function at all, and I think it reasonable that over the course of a few months the conditions would be met at some point for it to activate. As such I'm satisfied the vehicle is faulty. And as I'm persuaded the Stop/Start has never worked I'm satisfied the vehicle was faulty at the point of purchase. As this is a new car this fault wouldn't be the result of wear and tear. So I believe the vehicle wasn't of satisfactory quality.

In response to the investigator the dealer has said there is a software update available. It said this update would ensure the latest software is installed and re-confirm the vehicle is operating within the pre-determined manufacturer specifications. It said most electrical equipment will at some point require software updates, this is a completely normal routine maintenance operation. Again I do understand this.

Under the Consumer Rights Act 2015, Mr P is allowed to reject the car if the first repair is unsuccessful, and I'm satisfied it was. Mr P has acquired a brand-new car and it's reasonable to expect it would be free from any faults and wouldn't experience problems at such an early stage. So, I'm persuaded it would be fair for Mr P to reject the car.

Mr P has asked for the car to be replaced. He said he and his wife are not in good health and not in a position to look for a new car. I'm very sorry to hear this and I do understand why they would prefer a replacement rather than for the agreement to be ended. We are an informal service, and my role is to come to a decision that is fair and reasonable for both parties. Santander has disagreed with my conclusions so I think under the circumstances it would be fair to both parties to allow Mr P to reject the car and unwind the agreement. Mr P would still need to be involved in choosing the replacement and I think replacing the car to both parties' satisfaction would be logistically difficult.

### **Putting things right**

Mr P has been able to use the car, but it hasn't worked properly during this time. The investigator recommended Mr P should be refunded 10% of the payments made in October 2023, and a 20% refund for the month of November 2023. On 24 January 2023, Mr P provided us with an image of the current mileage, which was 1,190 miles. Because the mileage was low he recommended Mr P is refunded in full for his monthly rental amount for December 2023 and January 2024. I agree this is fair and reasonable. Mr P updated us with the current mileage which is 3,019. I can see that Mr P has been able to use the car so I think Santander doesn't need to refund any further for fair usage.

Mr P has told us how this situation has affected him and caused him stress. So I think it would be fair for Santander to pay him a total of £300 compensation to reflect this.

To put things right Santander Consumer (UK) Plc must:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr P;
- refund Mr P's deposit of £2,002.51;
- refund 10% of the monthly rental amount for the month of October 2023;
- refund 20% of the monthly rental amount for the month of November 2023;
- refund the monthly rental amounts in full for the months of December 2023 and January 2024;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay Mr P a further amount of £300 in compensation;
- remove any adverse information from Mr P's credit file in relation to the agreement.

### **My final decision**

My final decision is that I uphold this complaint and Santander Consumer (UK) Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 November 2024.

Maxine Sutton  
**Ombudsman**