

The complaint

Miss M complains about the quality of a used car she acquired through a Conditional Sale Agreement with Santander Consumer (UK) Plc.

What happened

In mid May 2023 Miss M entered into a Conditional Sale Agreement with Santander and acquired a used car from a dealership for £18,899. She made an advance payment of £4,600, leaving £14,299 to pay over 60 months. The car was two years old and had covered approximately 38,573 miles when it was provided to Miss M.

Within a week of Miss M collecting the car a fault light appeared intermittently on the car's dashboard. She contacted the dealership who inspected the car in June 2023 but no fault was found. The fault light continued to reappear intermittently on the dashboard. The dealership and the manufacturing garage inspected the car several times but they didn't find a fault.

On 3 November 2023 Miss M complained to Santander as she believed the dealership hadn't taken responsibility for her car being faulty. Miss M told Santander there was a problem with the car's system control sensor light, the parking sensors didn't work, the emergency brakes didn't work and the windscreen wipers didn't work correctly.

Santander arranged for an independent inspection of the car which happened on 24 November 2023. Initially the independent engineer told Santander he hadn't found a fault with the car, apart from the windscreen wiper needing to be replaced. Miss M challenged the independent engineer's reported finding as he'd told her a fault had been found. On 14 December 2023 the independent engineer wrote to Santander clarifying that he'd told Miss M:

"a fault code for the parking sensors was stored and I suspect that it why the emergency braking was working intermittently and that would have led to the picture which they have of the fault on their dash".

Santander's final response letter of 8 January 2024 to Miss M said it upheld her complaint. Miss M had already told Santander she wanted to reject the car. But Santander said if she provided a quote from a garage of her choice for repair of the windscreen wipers and the fault relating to the stored code then the dealership would pay for the repairs. Santander also paid Miss M £50 compensation for her distress and inconvenience.

Miss M complained to us. She still wanted to reject the car. She didn't want to make more arrangements for the car to be repaired as the dealership and manufacturing garage had already had lots of opportunities to identify and repair the fault and failed to do so. She added that she'd been stressed and inconvenienced in having to arrange her work around getting her car to and from the garages for the attempts to repair the car and she had to pay taxi costs for those journeys.

Our Investigator said it was reasonable for Miss M to reject the car. She recommended that Santander: end the finance agreement; collect the car at no cost to Miss M; refund Miss M's deposit of £4,600 plus interest; refund five days of the finance arrangement payments Miss M had made to reflect the time she was without the car when it went back to the dealership and manufacturer's garage and she didn't receive a courtesy car; increase the compensation from £50 to £100 for Miss M's distress and inconvenience.

Miss M accepted the recommendation but said she also didn't want any adverse information on her credit file due to the finance agreement ending early.

Santander disagreed with our Investigator's recommendation and wanted an Ombudsman's decision. In summary it said:

- There was no evidence that the fault light was still an issue.
- A fault code could be generated on parking sensors due to dirt being on the sensor or the sensor being affected by water. It should be able to repair or replace the parking sensors to fix the issue. And it needed to establish that the fault with the parking sensor was causing the emergency brake fault light to illuminate. Until that had been established it wasn't 'proportionate' for Miss M to reject the car.
- The car was working in running order for its age and mileage.

Miss M sent us a photo showing the fault light was still on her dashboard. She also sent us photos from her local garage's 'health check' of the car which shows there's a fault on the driver's sensor assistance system.

Before I made my decision our Investigator clarified to Santander that as part of the redress she recommended Santander should also not add any adverse information to Miss M's credit file in relation to the finance agreement due to the agreement ending earlier than planned. We asked Santander if it had any comments on that additional redress but it hasn't responded by the response date.

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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Consumer Rights Act 2015 (CRA) is relevant 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". To be considered "satisfactory", the goods would need to 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. 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 car's history.

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.

Where a fault occurs in the first six months of a car being supplied there's a presumption that the fault was present at the point the car was acquired, unless can be shown otherwise. After further clarification was sought the independent engineer reported that he'd found a stored fault code for the parking sensors just outside the relevant six months. But I think that as Miss M reported the fault light to the dealership about a month after she collected the car it's probable the fault was present at the point Miss M acquired the car.

I need to consider whether the fault means the car wasn't of satisfactory quality, taking into account the factors I've detailed above. When Miss M acquired the car it was two years old and although it had above average mileage I think a reasonable person would have reasonable expectation that the car should be of a good quality and standard.

Santander considers that the car is working according to its age and mileage. The independent engineer also found that the car's windscreen wipers needed replacing and I accept that issue wouldn't mean the car wasn't of satisfactory quality taking the above factors into account. But Miss M told Santander that the emergency brakes didn't work. Although the dealership and manufacturer couldn't find the fault, the independent engineer's clarified evidence was that he considered it likely that the fault code for the parking sensors was why the emergency braking was working intermittently, which led to the fault symbol on the car's dashboard.

The car not having working emergency braking, even intermittently, is a serious safety issue meaning that I consider the car wasn't of satisfactory quality when it was acquired by Miss M.

I've considered what remedies there are in the CRA and what would be fair and reasonable in the particular circumstances of Miss M's complaint. Santander's view is that until it's been established that the fault with the parking sensor was causing the emergency brake light to illuminate it's not 'proportionate' for Miss M to be able to reject the car. I think the independent engineer's clarified opinion, referred to above, is sufficient evidence that the fault with the parking sensor is causing the fault symbol to illuminate. Miss M has provided evidence that the fault remains.

Anyway, I think it's reasonable for Miss M to use her final right to reject the car. Miss M has been trying to get the fault repaired since June 2023 and the dealership and manufacturing garage haven't been able to repair, or even find, the fault. I think Miss M has been significantly inconvenienced by the previous failed attempts to find and repair the fault. She's had to arrange her work around getting her car to and from the garage. She wasn't given a courtesy car for the five days the car was at the dealership or manufacturing garage. Santander's internal notes show Miss M told it that she'd been stressed as had no car and she was in a new job, which I think would have been particularly stressful. Miss M not being given a courtesy car also meant she had the cost for taxis when she dropped off and picked up the car.

In the particular circumstances of Miss M's complaint I think the fair and reasonable outcome is for Santander to do the following to put things right:

- Santander must end the finance agreement with nothing further for Miss M to pay.
- Collect the car at no cost to her.
- Refund to Miss M her deposit of £4,600, plus interest as detailed below.
- Refund to Miss M five days of the payments she made under the finance agreement to reflect the five days she was without the car when it went back to the dealership

and manufacturing garage and she didn't receive a courtesy car. I think it's fair for Santander to add interest as detailed below to this refund.

- Pay Miss M £50 compensation in addition to the £50 compensation it's already paid (so £100 in total) for her distress and inconvenience this situation has caused her.
- Confirm to Miss M that it won't add any adverse information to her credit file in relation to the finance agreement due to the finance agreement ending earlier than planned. I think it's unlikely Santander would have done so but Miss M is concerned about that matter so I think it's reasonable for Santander to give her that confirmation.

My final decision

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

- End the finance agreement with nothing further for Miss M to pay;
- Collect the car at no further cost to Miss M;
- Refund to Miss M her deposit of £4,600;
- Refund to Miss M five days of the payments she made under the finance agreement to reflect the five days she was without the car when it went back to the dealership and manufacturing garage and she didn't receive a courtesy car;
- Pay 8% simple yearly interest* on all refunded amounts from the date of Miss M's payments until the date of settlement;
- Pay Miss M £50 compensation in addition to the £50 compensation it's already paid (so £100 in total) for her distress and inconvenience this situation has caused her;
- Confirm to Miss M that it won't add any adverse information to her credit file in relation to the finance agreement due to the finance agreement ending earlier than planned.

*If Santander Consumer (UK) Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Miss M how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 September 2024.

Nicola Sisk

Ombudsman