

The complaint

Mr S complains that Santander Consumer (UK) Plc trading as Kia Financial Services supplied him with a car under a conditional sale agreement that wasn't of satisfactory quality.

What happened

In July 2023, Mr S acquired a brand new car using a conditional sale agreement from Santander. The cash price, including extras, was £52,012. Mr S paid a deposit of £13,050, which was made up of a part-exchange and cash. He also received a further £500 deposit contribution from Santander.

Mr S says that when he went to collect the car from the dealership it was the wrong colour. He says there were also some scratches on the bodywork and windscreen. Mr S says the dealership agreed to fix the scratches the following day and he drove away with the car. Mr S says there was an issue with the car alarm overnight and he reported this to the dealership. The car was returned to the dealership the next day for repairs. Two days later it was returned to Mr S. He says the alarm issue was fixed but the damage to the bodywork and windscreen had not been repaired.

Mr S complained to the dealership a few days later. He received a response explaining why the colour of the car was different (the colour Mr S ordered was no longer available) and agreed that the damage should not have been present on a brand new car. The dealership asked Mr S to bring the car in for the damage to be repaired.

Mr S then contacted Santander and asked to reject the car due to the damage. Santander responded to say that as Mr S was given the opportunity to inspect the car before collecting it, it didn't think it was responsible for putting things right.

Our investigator recommended the complaint be upheld. She said that Mr S had already allowed one attempt at a repair and the damage to the car had not been remedied so as he had now asked to reject the car, it was fair that he be allowed to do that.

Mr S accepted that outcome but Santander didn't. In summary, it said that the scratches were minor damage and it was disproportionate to allow Mr S to reject the car.

The complaint has been passed to me for a decision.

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.

Mr S acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mr S entered into and implies terms into the agreement that the goods that are supplied should be of satisfactory quality. Santander is the "trader" for the purposes of the CRA and is responsible for dealing with a

complaint about the quality of the car that was supplied.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply. It says the quality of goods includes their state and condition, fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

In this case, the car supplied was brand new and cost around £50,000. What would therefore be considered satisfactory would be significantly different to if the car had been used and at a lower cost.

There appears to be no dispute that the car's bodywork and windscreen has scratches and blemishes. As the car was brand new with a cash price of around £50,000, I don't think a reasonable person would expect that to be satisfactory. Not only was the car not free from minor defects, the damage would also have impacted the overall appearance and finish. From everything I've seen, I'm persuaded, on balance, that these issues were present on the car when it was supplied to Mr S and the car was therefore not of satisfactory quality when it was supplied.

I note Santander says that Mr S had the opportunity to inspect the car before taking possession of it and therefore it should not be liable for putting right any damage (because it says Mr S accepted the car in that condition). However, I don't agree this on its own would automatically absolve Santander of any liability to provide a remedy if the car was not of satisfactory quality. And in any event, I don't think it's a relevant consideration, as I'm satisfied that Mr S likely did notice the damage before taking possession of the car and did ask for this to be remedied.

I say this because I've seen emails from the dealership from a few days later which appear to support that the dealership accepted the damage was present prior to Mr S taking possession of the car. Further, Mr S has been consistent in what he says happened and that he noticed the scratches to the car's bodywork and windscreen when he went to collect it and that the dealership agreed to fix these the following day.

Mr S did return the car to the dealership the following day and it was kept there for two days in order to carry out some repairs. While I understand Mr S did also report a new issue having had the car overnight, the available evidence is persuasive and supports what Mr S has said. I've not been presented with anything which has caused me to question the legitimacy of when Mr S first reported the damage.

After having the car for two days, the dealership had remedied an issue with the car's alarm, but the scratches had not been repaired. Mr S then approached Santander to seek rejection of the car. Given that Mr S had accepted a repair, but that this had not been completed to a satisfactory standard, the CRA sets out that he had the right to reject the car.

I accept that Mr S did not originally approach Santander to seek a repair. However, I'm satisfied that this hasn't placed Santander at any material disadvantage. This is because I'm persuaded that had Mr S done this, Santander would most likely have always asked the dealership to attempt the repair on its behalf. I say this because throughout this complaint Santander has deferred all issues to do with repairs to the dealership. So, it seems likely it would have done exactly that had Mr S approached Santander first.

Santander says that to allow rejection of the car would be disproportionate given, what it says, is minor damage to the car. Even if I accept Santander's point in principle, the CRA

entitles Mr S to reject the car if the car is not of satisfactory quality. As I've set out already, I'm satisfied the car was not of satisfactory quality. It was not free from minor defects and its appearance and finish was compromised due to the damage. This was an expensive, brand new car, and I agree with Mr S that a reasonable person would not consider that satisfactory in those circumstances.

Not only was Mr S entitled to a short term right to reject within the first 30 days (which he attempted to exercise), but he had also given the dealership an opportunity to repair the car and the repair was not successful. Santander says that the dealership attempted to arrange a repair for Mr S and that he didn't to these further attempts. But from everything I've seen, the dealership's efforts to contact Mr S about a repair were several months after Mr S expressed his wish to reject the car, and crucially, after the dealership had already been given one opportunity to carry out the repairs. I don't think Mr S' reluctance to not agree to a further attempt at a repair when he'd already sought rejection of the car (and was entitled to rejection) should be held against him.

While it makes no material difference to the outcome I've reached here, as I consider Mr S is entitled to exercise his right to reject the car, I've noted that in addition the car Mr S was supplied with was forced to go in for an additional repair. This was because it was subject to a safety recall as certain components in the car were not of satisfactory quality. This further strengthens my view that rejection of the car is fair and reasonable here, but even without that, I'm satisfied Santander should take back the car as that is what Mr S is entitled to under the CRA.

I've seen that Mr S has covered over 10,000 miles in the car in the time he's had it in his possession, so I'm not persuaded there's been any meaningful impact on his ability to use the car despite it not being of satisfactory quality. I'm also mindful that Mr S paid a large deposit (which reduced the size of his monthly repayments) and the interest rate on the credit agreement was low. For these reasons I'm not proposing to refund any of the payments Mr S has made, except for the initial deposit. I consider the monthly repayments on their own to be sufficient to cover a deduction for Mr S' fair usage of the car.

Further, I consider he's been inconvenienced in having to take the car in for repairs on two occasions for differing issues which he wouldn't have needed to do had he been supplied with a car that was of satisfactory quality. I therefore consider that Santander should also pay a further £150 compensation for the distress and inconvenience Mr S has been caused.

My final decision

For the reasons given above, I uphold this complaint and direct Santander Consumer (UK) Plc trading as Kia Financial Services to:

- End the agreement with nothing further to pay.
- Take back the car at no cost to Mr S.
- Refund the deposit of £13,050, adding 8% simple interest per year from the date of payment to the date of settlement.
- Pay £150 compensation for the distress and inconvenience caused.

If Santander considers tax should be deducted from the interest element of my award it should provide Mr S with a certificate showing how much it has taken off so that he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2024.

Tero Hiltunen
Ombudsman