

The complaint

Miss J complains that Santander UK Plc (“Santander”) were unreasonable not to take her chargeback claim to arbitration.

What happened

I issued a provisional decision on this complaint in September 2024, an extract from that provisional decision is set out below.

Miss J bought a used car on 2 October 2023 from a merchant I will call “M”. She paid for it with a debit card provided by Santander.

Within a few days she identified problems with the car. Those faults were corroborated by a main dealership who confirmed that there was a problem with the driver’s side lower arm bush that was weeping; there was water in the boot near the electrics and mould had formed; and the thermostat and water pump needed replacing.

Miss J asked to reject the car as she said that was her short term right under the Consumer Credit Act (1974). M wouldn’t accept rejection as they said the faults were minor and must be balanced against the age and mileage of the car. They offered to repair the car and noted that the water pump and thermostat didn’t need to be replaced as the fault was a cracked expansion bottle, and that while they agreed that one lower arm bush needed replacing, they didn’t think the other one did. They said they had resolved issues with the boot leaking.

As Miss J was unable to resolve matters with M, she raised a chargeback claim with Santander. The claim was considered in late January 2024, but B rejected it as M defended it, offering to repair the car and they noted Miss J hadn’t returned the car to them.

Miss J didn’t think Santander had been reasonable. She referred her complaint to this Service, but our investigator didn’t think there was reason to uphold it.

Miss J was unhappy with the investigator’s opinion and she, therefore, asked for a decision by an ombudsman.

What I’ve provisionally 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’m expecting to uphold this complaint. I’ll explain why.

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.

When something goes wrong and the payment was made with a debit card, as is the case here, it might be possible for the business to raise a chargeback claim.

The chargeback scheme isn't administered by Santander, it's administered by Mastercard and they set the rules. Santander didn't have to submit a chargeback claim but I'd think it good practice for them to do so where the right exists and there is a prospect of success.

I'm considering whether Santander were reasonable not to take Miss J's chargeback claim any further by asking Mastercard to arbitrate it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied and that 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.

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 Miss J. The car here was about seven years old and had already completed about 68,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation gives consumers a short term right to reject the goods within 30 days if they are of unsatisfactory quality when supplied. The clock stops running while any repairs are being completed. Considering the information on file I think Miss J asked to invoke her short term right to reject the goods within the 30-day period.

Miss J obtained a report from an approved main dealership within that 30-day window and M considered that report. They agreed that there was a weeping lower bent arm suspension bush and they said they'd replace it, they tried to repair the boot leak by replacing seals and they replaced the expansion bottle but found no evidence that the water pump or thermostat needed replacing.

On that basis I don't think M were unreasonable to assert that the issues present weren't significant enough to warrant rejection of the car. They were, on their analysis, relatively trivial issues that I think a reasonable person would expect on a car of this age and mileage.

But, thereafter, I can see that Miss J has provided evidence that to my mind suggests the car wasn't of satisfactory quality. The car broke down in December 2023, the engine overheated and a third-party garage noted that the water pump needed to be changed. I think it is more likely than not that that failure was related to the issue the main dealership had identified shortly after Miss J had taken receipt of the car. I'm not persuaded that is a minor issue as to drive with that fault would be likely to cause further damage to the engine. The relevant legislation allows the business one opportunity to fix faults in those circumstances, but I think M had already had the chance to fix the fault with the water pump. In those circumstances the relevant legislation would then allow Miss J to reject the car.

But, as I've explained, I'm only considering here whether, with the information available to it at the time, Santander's decision not to progress the chargeback claim was a reasonable one. I've, therefore, thought about what information Santander had available to them when they considered the chargeback claim.

Miss J has provided evidence of the information she sent to Santander to consider. That included a report from a third-party garage that explained (in December 2023) the thermostat and water pump needed replacing and that the car was overheating. That was corroborated by a report from the main dealership that was completed in late January 2024 and that Miss J says she also provided to Santander.

I think Santander, therefore, had sufficient evidence when the chargeback claim was raised, to suggest a chargeback was likely to be successful. While M may have agreed to repair the car, it was Miss J's right to reject it as a repair had failed, or to receive a price reduction. M hadn't offered that, and I think that would have suggested a chargeback would have had a good chance of succeeding if taken to arbitration.

Santander are out of time to now pursue a chargeback for Miss J, so I've thought about what a fair resolution for her would be.

Miss J always wanted to assert her right to reject the car so I think Santander should now allow her to do that and collect the car at no cost to her.

They will need to refund the money Miss J paid for the car (£12,700 plus £2,000 deposit) but it's only fair that Miss J pays for any use she has had from the vehicle. Miss J has explained that she hasn't been able to use the vehicle since December 2023 and that the vehicle has now been SORN off the road. The main dealership diagnostic report of 30 January 2024 notes the mileage as 68,476. The mileage was about 68,000 miles when Miss J took receipt of the car, so she had very little use of it, and that use was impaired by the problems she had with the vehicle. In the circumstances, I think that it would be fair for Santander to refund all the money Miss J paid for the car as I think use has been negligible. They'll need to add interest to that refund from the date they rejected the chargeback complaint to the date of settlement as Miss J has been deprived of the money.

Miss J may have incurred some costs as a consequence of the car being of unsatisfactory quality. They may be costs she can recover directly from the supplying dealership, or through the courts. But I'm not persuaded they would ever have been considered in a claim to charge back the transaction fee for the car, so I am not asking Santander to refund them.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell Santander UK Plc to collect the car at no cost to Miss J and refund the money Miss J paid for the car (£12,700 plus £2,000 deposit) adding 8% simple interest per year to the refund from the date they rejected the chargeback claim to the date of settlement.

The parties' responses to my provisional decision

Ms J accepted my provisional decision. She explained that she'd felt immense frustration and disappointment throughout and that wasn't helped by the fact that she suffers from some health conditions that she says Santander were aware of. She provided further personal information in relation to those health concerns, and other matters she was having to navigate while also dealing with Santander.

Santander also responded to my provisional decision. They said:

"[...] the claim was reviewed under the chargeback scheme. Therefore, the only transaction that could be considered is the £12,700.00, even had the chargeback been successful only the £12,700.00 would be reimbursed. The £2,000.00 was paid via cash, there is no

reimbursement scheme in place to cover cash payments, therefore I do not agree that the £2,000.00 payment should be considered in any settlement for this claim. Miss J would need to attempt to recoup the cash payment of £2,000.00 using another avenue, the chargeback wouldn't be viable.

Moreover, we know the merchant's position on the Miss J's comments was that a refund wasn't due- therefore its plausible to anticipate that the chargeback would have been defended by the merchant all the way to Arbitration- at Arbitration stage MasterCard would have then had the final say on the claim. However, as Miss J is still in possession of the car I do not think this claim would be won at Arbitration stage. As under the scheme rules, it wouldn't be viable for the entire claim amount to be reimbursed when the customer still has the vehicle."

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.

Santander are right to explain that chargeback would only cover a refund of the money Miss J paid using her debit card. The chargeback may also be inhibited if the goods haven't been returned.

I've thought about how that could fairly apply to Miss J's claim.

The goods haven't been returned but Miss J has been trying to do so for some time and I don't think it would be fair to deny the progression of any claim on that basis.

The car's current value is a product of the payment made by debit card and the deposit Miss J contributed. It wouldn't be fair to ask Santander to refund the amount paid on the debit card if Miss J was allowed to keep the car in which that amount was invested. It seems to me that if the £12,700 that was outlaid is to be refunded, the car would need to be returned so that Santander could, perhaps with the co-operation of the merchant, sell it and recoup some of the outlay. As the amount realised for the car when sold would be a product of the debit card and the deposit investment it would seem sensible to suggest that the sale proceeds would restore to Santander a greater amount than what could reasonably be expected from their initial investment.

In those circumstances, while I accept that the chargeback claim could only consider the debit card outlay, I think the deposit should still be refunded by Santander as that, to me, is the only fair way to resolve this matter for Ms J, in the circumstances.

While I understand Miss J has had a difficult time here. I am not persuaded to order Santander to pay any compensation. Santander aren't responsible for the merchant's actions, only the decision to process the claim. I'm not persuaded that they've caused Miss J sufficient distress or inconvenience when handling her claim to warrant any compensation.

It is for those reasons that I've not been minded to change my provisional decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint and tell Santander UK Plc to collect the car at no cost to Miss J and refund the money Miss J paid for the car (£12,700 plus £2,000 deposit) adding 8% simple interest per year to the refund from the date they rejected the chargeback claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 30 October 2024.

Phillip McMahon
Ombudsman