

The complaint

M complains that a car it was supplied with under a regulated consumer hire agreement by Santander Consumer (UK) Plc trading as MG Motor Financial Services (“Santander”), has defects which have not been successfully repaired.

M is a general partnership and is represented in the complaint by one of its partners, Mr S. When I refer to things said or done by Mr S then this should be taken to include things said or done by M (acting through Mr S) unless specified otherwise.

What happened

I issued a provisional decision on this complaint on 9 October 2024, in which I set out the background to, and my provisional findings on, M’s complaint. A copy of that provisional decision is appended to, and forms a part of, this final decision. Because of this, I don’t need to go into all the details again, but to summarise briefly:

- M signed a regulated consumer hire agreement with Santander in October 2022, for a new battery electric vehicle.
- The car broke down the day after it was delivered, on 2 November 2022. It was repaired by the local dealership, but it was said that the dealership struggled to identify a specific fault and had just replaced the 12V battery.
- The car was then fine until April 2023, when error messages began appearing occasionally relating to the high voltage battery, and the 12V battery was discharging. There were also problems getting the car to charge at public charging points.
- More worrying problems began to appear in November 2023, when the car shut down completely, causing braking and steering assistance to be lost. On one occasion, the car began rolling backwards down a hill when the high voltage battery shut off unexpectedly. The car also continued to have problems with public charging points.
- Mr S made various efforts to get someone at the dealership or the manufacturer, or Santander, to look into the problem. The car went back to the local dealership from February 2024 for a couple of months, but they couldn’t find a problem. It was then taken, on the manufacturer’s instructions, to a dealership in Swindon. “Phantom” error codes were found but the manufacturer thought the vehicle could be returned to the road if it passed a road test. It was not convinced there was a manufacturing fault.
- There was significant confusion between the Swindon dealership, the manufacturer, Santander and Mr S, as to what was meant to happen with the car next. The car has remained off the road since February 2024.

In my provisional decision, I first established that Financial Ombudsman Service had the necessary powers to look into a complaint about the quality of the car Santander had supplied to M under the regulated consumer hire agreement.

I then took the view that the complaint should be upheld, for the following reasons:

- The Supply of Goods and Services Act 1982 (“SGSA”) applied to the contract and implied a term that the car would be “satisfactory quality”. This term was a condition, meaning a breach of the term would generally entitle M to reject the car and terminate the hire agreement.
- The standard of quality to be expected of a brand new car would be high, and it would be expected to last a reasonably long time before experiencing faults.
- It was undisputed that the car had a fault the day after it was delivered and this had been repaired.
- It was disputed that the car had experienced faults since then, but I thought there was enough circumstantial evidence that the car had had an intermittent fault since April 2023 which was causing the problems Mr S had reported. This included:
 - A photo of an error message on the dashboard relating to the high voltage battery.
 - Mr S’s narrative account of events.
 - Comments from the operator of a public charging station.
 - Internal logs from the manufacturer, reporting the identification of “phantom” error codes when the car was inspected in Swindon.
- I didn’t think a reasonable person would consider the car to be satisfactory quality with this fault, taking into account the brand new nature of the car, and its age and mileage at the time the fault began manifesting.
- I thought M had been entitled to reject the car and terminate the hire agreement as a result of the above.

In terms of what should be done to put things right, I considered the hire agreement should be brought to an end with nothing further for M to pay and any negative credit file reporting removed. Santander would need to collect the vehicle at its own expense, and refund all rentals paid (including a pro-rata proportion of the advance rental) which covered the date 19 February 2024 onwards, as the car had been off the road since then. I thought compensatory interest should be paid on these refunds, back-dated to when M had originally made the payments they related to. Finally, I thought M should be paid £300 compensation to reflect the non-financial impact of the car not having been satisfactory quality, and the way Santander had handled its concerns.

I asked the parties to the complaint to respond to the provisional decision before 23 October 2024. Santander responded only to say that the decision had been sent to the incorrect email address.¹ Mr S responded on behalf of M to say that he agreed with the decision, but had a couple of points regarding the redress, which I had reduced from our investigator’s original recommendations.

¹ The provisional decision was sent to two different email addresses Santander has, at different times during this complaint, asked the Financial Ombudsman Service to use for correspondence, so I am satisfied Santander should be considered to have received the provisional decision.

Mr S explained that M had been left in limbo since February 2024, unable to use the car but also unable to obtain a replacement, and without any courtesy car supplied. He and the other partner in M had needed to use public transport and had limited business opportunities. He also said that Santander had destroyed a ten year relationship with his local car dealer (which sold cars of two marques), who had now told him that he was not welcome there. Being barred from using this dealer's services meant further travel and servicing costs would be incurred in future.

The case has now been returned to me to review once more.

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.

Neither party has responded to disagree with the main conclusions I drew in relation to the car in my provisional decision – that it wasn't satisfactory quality and M was entitled to reject it and terminate the hire agreement. Having reviewed the evidence again I see no reason to depart from those conclusions, and so they remain the same in this final decision.

The part of my provisional decision on which I've received comments is on the redress that should be due to M as a result of what's happened. I've read Mr S's submissions on this and considered them carefully, but I've ultimately come to largely the same conclusions regarding what would be fair and reasonable in the circumstances.

The return of rentals for the time the car has been off the road is intended to reflect the fact that other transport would have been needed during that time. There will always be a cost associated with getting from A to B, whether that's the rental of a car or a train or bus ticket.

That said, I note the car was alleged to have been off the road for more than just the period 19 February 2024 onwards, as a timeline supplied by Mr S suggests it was also off the road for over three weeks in November 2022 as a result of a 12V battery issue. Notes from the dealership suggest it was taken in on 8 November 2022 and collected by Mr S on 9 November 2022, which appears to contradict this. I prefer Mr S's evidence on this point, as he's been able to supply a breakdown report and emails showing the car was recovered to the dealership on 3 November 2022, as well as calendar entries showing a visit to the dealership on 22 November 2022, which is when he says he picked up the car.

In light of this I have made a small amendment to my directions to Santander that the refund of rentals (including a pro-rata refund of the advance rental) should include all times the car was off the road due to faults, including the period 3 November 2022 to 22 November 2022, so long as no courtesy car was provided.

Mr S has also referred to business opportunities being limited due to the lack of transport for M's partners. This would have need to have been evidenced and precisely quantified for me to be able to make any award in respect of this, and causation would have needed to have been established. I note in any event that the hire agreement contained clauses purporting to limit Santander's liability for business losses caused by the car not being satisfactory quality (clauses 11.3 to 11.3.2). Whether these clauses would have been *effective* is another matter², and not one I need to make findings on in the circumstances.

² The terms would need to pass the "reasonableness test" set out in the Unfair Contract Terms Act 1977. I note there are other terms within the hire agreement where Santander appears to disclaim any liability whatsoever for the quality of the vehicle. This term would be subject to the same test, but I've not found it necessary to undertake further analysis as Santander has not sought to rely on it.

Finally, Mr S has referred to the destruction of the relationship between himself/M and the local dealership, which he had built up over the years through the acquisition of other cars. Based on messages I've seen from the manager of the dealership, it does appear that the relationship has broken down and Mr S has been told his business is no longer welcome.

The dispute over the car involved multiple parties including the manufacturer, several dealerships, Mr S, and Santander. The manager of the local dealership seems to have been mainly upset by comments alleged to have been made by Mr S to the manufacturer, which had apparently caused the dealership some trouble. Even if Santander's involvement had contributed to the situation, I don't think the strength of the dealership's reaction was foreseeable in the circumstances. In light of this, I don't think this is something Santander can reasonably be held responsible for. Ultimately, I remain of the view that the compensation figure I arrived at in my provisional decision is reasonable based on all the evidence I've seen.

My final decision

For the reasons explained above and in my appended provisional decision, I uphold M's complaint and direct Santander Consumer (UK) Plc to take the following actions:

- End the hire agreement with nothing further for M to pay, and collect the vehicle from wherever it is currently located at its own expense (including paying any storage costs, if required).³ It may not pass on the cost of collecting the vehicle to M.
- Remove any adverse credit file reporting relating to the agreement, which should be recorded as settled in full.
- Refund all rentals to M covering periods of time the car was off the road due to faults and during which a courtesy car was not provided, specifically 19 February 2024 onwards, and 3 November 2022 to 22 November 2022. The refund can be reduced to take into account any period of time in which a courtesy car was supplied.

The refund must include the unused proportion of the advance payment/rental made at the beginning of the agreement. 8% simple interest per year* must be added to any refunds, calculated from the date the payments in question were originally made by M, to the date the refunds are paid.

- Pay M £300 compensation to reflect the non-financial impact of the car not being satisfactory quality, and the way it handled M's concerns.

*If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell M how much it's taken off. It should also give M a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

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

Will Culley
Ombudsman

³ Santander is of course free to discuss and negotiate any storage costs with the dealership which is currently storing the vehicle.

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general conclusions as our investigator, but I am minded to make some changes to the redress for the complaint, so I need to give the parties to it an opportunity to comment before I make my decision final.

I'll look at any more comments and evidence that I get before 23 October 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

M complains that a car it was supplied with under a regulated consumer hire agreement by Santander Consumer (UK) Plc trading as MG Motor Financial Services ("Santander"), has defects which have not been successfully repaired.

M is a general partnership and is represented in the complaint by one of its partners, Mr S. When I refer to things said or done by Mr S then this should be taken to include things said or done by M (acting through Mr S) unless specified otherwise.

What happened

M signed a regulated consumer hire agreement with Santander in October 2022, for a 2022 model battery electric vehicle. The agreement was set to last for 36 months, and M was required to pay an advance payment of £1,812.46, followed by monthly rentals of £302.08.

Mr S explains the car was ordered originally in March 2022 but it took a long time to be available. He says he was advised in August 2022 that the car could not be delivered yet due to a problem with a computer chip. He says that the car was finally delivered from a dealership on the south coast of England to his local dealership, on 1 November 2022, about six hours later than expected. Mr S says the driver explained that he'd had problems getting the car to charge and that it was "shutting down".

The car then broke down almost immediately and was recovered to the local dealership on 2 November 2022. Mr S says the dealership had the car for several weeks and he collected it in late November 2022. He says the dealership advised him they'd replaced the 12V battery but had been unable to identify a specific fault.

By April 2023 Mr S says he was having a problem with the 12V battery discharging, and was advised it might be because he was doing too many short journeys. Mr S says that an error message occasionally appeared in the car which indicated the high voltage (HV) battery had been disconnected or shut off. To clear the error, turning the car off and on again usually worked, but Mr S says it was difficult to get the car to charge at public charging points, and that he thought the issue should be looked into. He asked his local dealership to do so when the car went in for its first service.

The car went in for its service in October 2023 but Mr S says no diagnostics were carried out, apparently due to the expense involved. The following month, Mr S says the car shut down completely, causing steering and braking assistance to be lost. He reported this to the dealership but says he was told that he needed to provide video evidence. A little later, in December 2023, Mr S says he discovered the car could roll back when the HV battery shut off, as it sometimes caused the parking brake to disengage.

In January 2024, Mr S says he needed to charge the car on a long journey but it was refusing to charge. He contacted the operator of the public chargers he'd tried to use, who sent him an error log which indicated the car had terminated the charging session multiple times. The operator explained that it was aware of similar issues with cars from the same manufacturer, and outlined a workaround which involved taking various steps such as locking the car and then unlocking it immediately before plugging in the charger.

Mr S became very concerned in February 2024 when he says the car rolled back on a hill when the HV battery shut off, and the footbrake was unable to stop the car immediately. It was at this point that he first complained to Santander on behalf of M, who acknowledged the complaint on 1 March 2024. Mr S also took the car back to the local dealership in mid-February 2024.

The picture after this point becomes quite confused as it appears multiple parties were aware of the concerns about the car but not who was doing what and when. Santander and Mr S's local dealership appear to have been involved initially. Mr S then contacted the manufacturer, who also got involved. At this point, the manager at the local dealership became upset as he felt Mr S had made unfair comments about the dealership to the manufacturer and that they were stuck in the middle of the situation. He sent some messages to Mr S conveying his irritation, and had the car delivered back to him on 15 April 2024, having explained that the dealership "do not know 100% what we are looking at." Mr S tried to start the car and encountered an error message immediately which he was able to take a photograph of.

The following day, the manufacturer called Mr S to apologise for the poor service he'd received, and arranged for the car to be collected same day and taken to a different dealership. Over the next few days the manufacturer was liaising with another dealership, in Swindon, over diagnostic procedures. Two error codes were discovered and the manufacturer said it thought these were "phantom" codes. It directed that tests be run on the 12V battery and whether it was being charged properly by the HV battery. The car passed these tests and the manufacturer said it could be "returned to service" if it passed a road test. It's unknown if a road test was carried out.

While this was going on, Santander sent M a letter explaining that it hadn't been able to give a final response to the complaint yet, and that M now had the right to refer its complaint to the Financial Ombudsman Service. It said that it was waiting to hear back from the dealership in Swindon and hoped to have an update in a couple of weeks. Mr S had already contacted us by this point, and we subsequently began investigating his complaint.

On 23 May 2024, the manufacturer wrote to Mr S to say that it didn't think the car had a manufacturing issue, and it suspected the 12V battery had a low charge. It said this was associated with low mileage or short journey use, but accepted Mr S didn't fall into this category of user as he had covered a significant mileage. Mr S says that he was advised (verbally) that a senior technician was needed to track down any potential fault, but there were very few of them in the country that could work on these vehicles, and there was a long backlog of cars waiting to be seen.

Our investigator, who had been looking into the complaint, considered an independent inspection of the vehicle would be a sensible next step. There was then an extended period of confusion as to the car's whereabouts. Santander wanted the car to be delivered back to Mr S so it could be inspected. Mr S said he didn't know where the car was now. There appeared to be some possibility that it was in Bournemouth, or Gloucestershire, or perhaps still in Swindon. Eventually, it came to light in August 2024 that the car was in Swindon.

Our investigator issued an assessment at around this time, upholding the complaint. He

noted that there appeared to be an intermittent fault that the manufacturer didn't have the resources to look into. He didn't consider that this sort of fault was reasonable on a brand new car, and that the car should have remained fault free for longer than it had. Given the car had not been repaired in a reasonable time, he considered M ought to be able to reject it.

Santander appeared confused by our investigator's assessment. It said it had been told the car was safe to drive and ready for Mr S to collect. It said it would try to get hold of the job sheets which showed the work carried out on the car. In the meantime, it came to light that the car had been left on a public road in Swindon without appropriate insurance. When the Swindon dealership was challenged about this, they said neither the manufacturer nor Santander had collected it despite promises, so they'd moved it off their forecourt (it has subsequently been returned to the forecourt).

When our investigator advised Santander of this, it said it had never had any contact with the Swindon dealership, it didn't accept the car was faulty, it hadn't made the arrangements for the car to be taken to Swindon, and it would not be paying any of the storage costs the dealer was now proposing to charge. Our investigator highlighted previous communications with Santander which had explained they were waiting to hear back from the Swindon dealership, which he felt undermined Santander's claim that it had never had any contact with the dealership.

On 27 September 2024 Santander told our investigator that it didn't have any copies of the job sheets and wouldn't be getting any. As no agreement could be reached, the case has now been passed to me to decide.

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.

Because Santander supplied the car which is the subject of this complaint to M under a consumer hire agreement regulated by the Consumer Credit Act 1974, I am able to consider a complaint about the quality of the car. Sometimes such agreements are exempt from regulation when they are entered into for business purposes which, on the face of it, this agreement was (given M is a business). However, I'm satisfied that this agreement is not exempt.

Because M is a business, the Consumer Rights Act 2015 does not apply to the hire agreement, but the Supply of Goods and Services Act 1982 ("SGSA") does apply, which makes it an implied term of such contracts, that any goods supplied under it will be "satisfactory quality". The SGSA goes on to say that "satisfactory quality" means *"the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the consideration for the [hire] and all the other relevant circumstances."*

The SGSA says this term is what's known as a condition (as opposed to a warranty), which practically-speaking means that if the term is breached, the person to whom the goods are hired is entitled to reject them and terminate the agreement.

The key question to determine in this case then, is whether the car was satisfactory quality. Before considering what, if any, problems the car has, I think it would be useful to outline what standard of quality would be considered satisfactory in this particular set of circumstances.

The car in this case was supplied to M brand new, with only delivery mileage. The standard

of quality that a person would reasonably expect of brand new goods is generally going to be higher than the standard to be expected of older or well-worn goods. Brand new goods would also generally be expected to last longer without developing faults, and the manufacturer's warranty can sometimes be a good indication of the absolute minimum amount of time that a particular item should remain fault free, as it presumably reflects the level of confidence the manufacturer has in the durability of its product.⁴ I've borne all this in mind when thinking about M's case.

The main point of contention in this complaint appears to have been around whether there is in fact currently a fault with the car or not.

It doesn't appear to be disputed that the car had a problem the day after it was delivered, and that the 12V battery was replaced at that time, resolving this early issue. However, despite several complaints from Mr S, it also doesn't appear that any dealership has been able to identify a specific fault since then, and an independent inspection hasn't taken place. I'm not convinced that a general independent inspection would be helpful in this case, as the reported fault seems to be intermittent and something manufacturer specific which may need extended testing and particular equipment from the manufacturer to diagnose.

I've considered what evidence we *do* have that the car has been experiencing faults. I've seen the following:

- A photo of an error message on the car's dashboard relating to the HV battery.
- Mr S's account of his experiences with the car over an extended period of time.
- A log of messages between the Swindon dealership and the manufacturer, in which fault codes are reported as having been found (albeit not necessarily considered significant).
- Emails from a charging point operator indicating the car had terminated charging sessions unexpectedly, and that the operator was aware of this issue occurring with this model of car.

There is also an email from the manufacturer to Mr S in which the manufacturer suggests the problem is related to the 12V battery having a low state of charge, but that it's unlikely to be due to how Mr S uses the car.

Where the evidence in a case is unclear or contradictory, it's necessary for me to reach conclusions on the balance of probabilities. Based on the evidence I've seen in this case I think, very much on balance, the car has had an intermittent fault (or faults) of an unknown nature potentially as far back as April 2023. The fault has resulted in a variety of problems, ranging from the inconvenient (such as having to make multiple attempts to charge the car at public chargers) to the worrying (such as the car rolling backwards after the HV battery disconnects).

I don't think a reasonable person would consider this car to be satisfactory quality, taking into account the fact it was brand new as supplied, and was not very old or road-worn by the time the faults began to manifest.

Because this is a breach of a condition, M would be entitled to reject the vehicle and terminate the hire agreement, but I've thought about whether it would have been fair and reasonable in the circumstances for the car to be repaired instead. I don't think it would be – and that's because the car has been in various garages since February 2024 with no progress made towards either a diagnosis of the root cause of the fault, or repair. It seems

⁴ Though it should be pointed out that a manufacturer's warranty is separate to a person's right to be supplied with goods that are satisfactory quality.

more reasonable in the circumstances that the agreement is brought to an end and the vehicle returned.

Redress

Our investigator recommended that the car be returned to Santander and the agreement ended with nothing further for M to pay. He also recommended that the entire advance payment of £1,812.46 be refunded, along with all monthly rentals from 19 February 2024 onwards, and that Santander pay £500 compensation for the distress and inconvenience caused by the car not being satisfactory quality. He also recommended that any negative information recorded with the credit reference agencies relating to the agreement was removed.

I think our investigator's recommendations were mostly in the right place, however I don't think it would be fair for M to receive a full refund of the advance payment, and that is because the advance payment is not a deposit but a lump sum rental which is spread across the remainder of the agreement. It is "used up" as the agreement ages, so it would be fair for any refund to be on a pro-rata basis.

I also think £500 compensation is a little too high in the circumstances. Clearly there has been some inconvenience, frustration and annoyance to Mr S as a partner in M, as a result of the car not being satisfactory quality. I think, were it not for Santander's rather poor handling of M's concerns, I'd have considered about £200 to be a fair amount of compensation.

However, Santander's handling has been poor in places and has, in my view, contributed to things taking a long time to resolve and increased the inconvenience to Mr S. It really doesn't feel to me as though Santander grasped the nettle with M's complaint, and it failed to investigate things with the level of diligence that I would expect of a professional financial business. There have also been various delays in obtaining information from Santander during our investigation. Sometimes information has been promised then not provided (such as the job cards/sheets), and occasionally information has been contradictory or wrong.

But it's not the purpose of compensation to punish a business for its errors – it is intended to reflect the impact on the complainant of those errors. I think Mr S has been frustrated by Santander's poor complaint handling, but I don't think an additional £300 is warranted for this. I would set the *overall* level of compensation at £300.

My provisional decision

For the reasons explained above, I'm currently minded to uphold M's complaint and direct Santander Consumer (UK) Plc to take the following actions:

- End the hire agreement with nothing further for M to pay, and collect the vehicle from wherever it is currently located at its own expense (including paying any storage costs, if required).⁵ It may not pass on the cost of collecting the vehicle to M.
- Remove any adverse credit file reporting relating to the agreement, which should be recorded as settled in full.
- Refund all rentals to M covering 19 February 2024 onwards, including the unused proportion of the advance payment/rental made at the beginning of the agreement.

⁵ Santander is of course free to discuss and negotiate any storage costs with the dealership which is currently storing the vehicle.

8% simple interest per year* should be added to any refunds, calculated from the date the payments in question were originally made by M, to the date the refunds are paid.

- Pay M £300 compensation to reflect the non-financial impact of the car not being satisfactory quality, and the way it handled M's concerns.

*If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell M how much it's taken off. It should also give M a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

I now invite the parties to the complaint to let me have any further submissions they'd like me to consider. These must reach me **before** 23 October 2024. I will then review the case again.

Will Culley
Ombudsman