

The complaint

Ms H complains about the quality of a car she has been financing through an agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance (Santander).

What happened

I issued my provisional decision on this complaint last month. An extract from that provisional decision is set out below.

Ms H took receipt of a used car in April 2023. She financed the deal through a conditional sale agreement with Santander.

Ms H had problems with the car soon after. In June 2023 the dealership replaced the Variable Valve Timing (VVT) solenoid when Ms H complained of an unresponsive throttle. They also replaced the fuel tank sender when she complained about poor fuel efficiency. Ms H also complained of a fault with the boot hydraulics, a noise coming from the air conditioning and a badly worn tyre. Those issues weren't resolved by the dealership, but Ms H did subsequently pay to have the tyre replaced.

Ms H was disappointed to find the repairs had failed. She contacted Santander and they arranged for an independent inspection of the car. The inspector noted that there was a noise from the motor when the automatic boot was closing, and a noise from the air conditioning. The inspector took the car on a short test drive and wasn't able to replicate the throttle issues Ms H complained of. He explained that a 500-mile road test would be necessary to clarify if the fuel consumption concern Ms H had was valid. He wasn't persuaded that there was evidence the car was faulty when supplied or that it hadn't proven durable. He was subsequently advised that Ms H was also concerned about the screen occasionally blacking out and the phone not connecting properly. It was the inspector's opinion that if those faults were present, they would most likely have happened recently and that it would be unfair to hold Santander responsible.

Santander rejected Ms H's complaint and she referred it to this service. Our investigator thought there was evidence that the repairs hadn't been successful. He suggested that Santander should resolve matters for Ms H. But Santander were confused by the redress he had proposed and didn't, therefore, accept it. The complaint has, therefore, been referred to me, an ombudsman, for a decision.

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.

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.

Ms H acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Santander, who are also the supplier of the car, are responsible. The relevant law also says 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 Ms H. The car here was about four and a half years old and had already completed about 25,500 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 a business one opportunity to repair faults on a car supplied in an unsatisfactory condition. I think Santander had that opportunity when the dealership attended to the issues Ms H referred them to in June 2023.

The independent inspector noted that the boot was still making a noise from the motor when it was closing and that there was still an "abnormal" noise coming from the air conditioning unit. I don't think a reasonable person would expect to experience faults of that nature on a car of this limited age and limited mileage. While they didn't impact Ms H's ability to drive the car, they would have reduced her enjoyment of the vehicle, and I can understand there would be a concern they would lead to expensive repairs.

The independent inspector wasn't able to confirm there wasn't a problem with the fuel consumption. Ms H had complained, and still does, that she was only able to get about 180 miles from a full tank and that she had been able to get 300 miles originally. I think it was incumbent on Santander to fully investigate that matter. They didn't commission the 500-mile test that the inspector had recommended and, in those circumstances, they had no evidence to contradict Ms H's testimony on the matter.

I'm persuaded that there are still faults on this car that suggest it was supplied in an unsatisfactory condition. As repairs haven't been successful, I think Santander should now allow Ms H to reject the car. They'll need to collect it at no cost to Ms H and they'll need to end the finance agreement.

Ms H has had reasonable use of the car and it's only fair that she should pay for that use. But her use of the car has been hampered by the problems she's experienced. It's unclear whether the car has been consuming too much fuel, but it seems likely, on the evidence we have, that there have been some issues. In the circumstances, I'm therefore expecting to tell Santander to refund 10% of the finance instalments she has paid and waive 10% of any that have been due but haven't been paid. That is to compensate Ms H for the hampered use and any additional fuel costs that may have been incurred.

The finance agreement doesn't suggest that a deposit was paid or that there was a part exchange contribution. If I'm wrong about that Santander should refund it and add interest to the refund.

Ms H has experienced some distress and inconvenience here. She's had to escalate her complaint to this service when I think it could have been resolved earlier, and she's had to take her car back for repairs. She's explained that she's been anxious about the car's condition and the thought of it failing. In the circumstances I'm expecting to ask Santander to pay her £200 in compensation.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Santander Consumer (UK) Plc to:

- *Allow Ms H to reject the car and end the finance agreement.*
- *Collect the car at no cost to Ms H.*
- *Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund 10% of all finance payments (waive 10% of any that have been due and haven't been paid) that have been made, in order to compensate for loss of use and any additional fuel costs that may have been incurred.*
- *Pay Ms H £200 to compensate her for the distress and inconvenience she's experienced.*
- *Remove any adverse reports they may have made to Ms H's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest, they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

The parties' responses to my provisional decision

Santander didn't respond and Ms H agreed with the provisional decision. She explained that the car was now experiencing some new issues. It was clunking when accelerating and the multimedia screen was freezing. She said that the car had turned off on a couple of occasions and that the high beam would also randomly turn on.

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.

The issues Ms H has mentioned are new issues and this service wouldn't usually consider them before the business had had a chance to provide their view. As I've not been provided with any further comments or evidence that would lead me to change my provisional decision, and as that means the car will be rejected, it seems a complaint about those faults will be unnecessary.

Ultimately, I've not been provided with any new evidence that would lead me to change my provisional decision and that provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Santander Consumer (UK) Plc to:

- Allow Ms H to reject the car and end the finance agreement.
- Collect the car at no cost to Ms H.
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund 10% of all finance payments (waive 10% of any that have been due and haven't been paid) that have been made, in order to compensate for loss of use and any additional fuel costs that may have been incurred.
- Pay Ms H £200 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Ms H's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest, they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 9 January 2025.

Phillip McMahon
Ombudsman