

## **complaint**

Miss D complains that a car she bought with a hire purchase agreement with Santander Consumer (UK) plc (Santander Consumer Finance) was not of satisfactory quality.

In making her complaint, Miss D is represented by her solicitor.

## **background**

Miss D bought a used car from a local dealership. After paying a deposit for the car, she took out a hire purchase agreement with Santander Consumer Finance to repay the remainder of the purchase price.

She collected the car from the supplying dealership a few days later. But she found a few of the internal fittings of the car were broken and so the car was returned for these to be repaired. A warning light then began to show on her dashboard, and so she again returned the car to the supplying dealership.

But, a few weeks later, she began to experience further problems with the car and so the supplying dealership agreed to arrange for a main dealership of the make of car to assess it.

Miss D continued to experience problems with the car and so she took it to an independent garage to be looked at. The garage found there to be some faults with the car's turbocharger and suggested she take it to another main dealership. A further report found that the catalytic converter and turbocharger both needed removing and replacing.

The supplying dealership then offered her a replacement car or a refund. But Miss D could not find a suitable vehicle and so it was agreed that her car would be repaired. Miss D understood that this would be completed by a specialist for her make of car, but instead the repairs were completed at the supplying dealership.

Unfortunately, Miss D found the problems continued and she arranged for a main dealership of the make of car to carry out a full diagnostics report on these problems. This found the same problems as had been there before the repairs had been carried out.

Miss D complained and said that under the Sale of Goods Act 1979 a product must be of satisfactory quality. She said that the car had never been without fault and so was not of satisfactory quality when she bought it. She asked to reject the car and have a full refund of the amount she had paid towards it.

Santander Consumer Finance considered the complaint and the report Miss D had received from the main dealership which showed that the car's catalytic converter and turbocharger needed replacing. Santander Consumer Finance said that the problems were the result of general wear and tear considering the age of the car and its mileage. It said it was Miss D's responsibility to ensure that the car was maintained.

Miss D was not happy with Santander Consumer Finance's response and so it contacted the supplying dealership which provided photographs of the parts that it had replaced on Miss D's car. It said that it had done all it could to rectify the problem. Santander Consumer Finance arranged for the car to be inspected by an independent third party to determine what faults there were with the car. The inspector's report said that the car had a diesel

particulate filter (DPF) rather than a catalytic converter and this had begun to soot up with age. It said that this was unlikely that the defect was not present when Miss D bought the car. Santander Consumer Finance reviewed this report but did not agree to Miss D's request for a full refund.

*our adjudicator's opinion*

Our adjudicator did not recommend that the complaint should be upheld. He considered the report on Miss D's car completed by the independent third party and clarified some of the contradictory wording in it. He found that the inspector considered the fault with the DPF was likely to be caused by Miss D's style of driving and this was unlikely to have been present when the car was sold to her. The adjudicator therefore concluded that he could not be satisfied that the faults were there at the time of the sale and so did not find the car to be of unsatisfactory quality under the Sales of Goods Act 1979.

Miss D's solicitors did not accept the adjudicator's findings. They said the car's defects had appeared immediately after the car was sold. They said the supplying dealership had refused to allow the main dealership of the make of car to carry out the repairs to the car based upon the findings of the inspection and tests it had carried out. Miss D's solicitor said that the adjudicator had ignored the background history Miss D had given and relied upon the findings of one report. They questioned the adequacy of this report and said that Miss D's driving style had been hampered by the car's underperformance because of the faults with it. It said the main dealership that had inspected the car had given its opinion that the faults were more than likely to have been there when Miss D bought the car. They said the supplying dealership was guilty of misrepresentation and breach of contract and Santander Consumer Finance was jointly and severally liable for this.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Miss D and Santander Consumer Finance in May 2014. In summary, I found that Miss D had experienced a number of problems with her car since she bought it.

The Supply of Goods (Implied Terms) Act 1973 has an implied term that the goods should be of satisfactory quality when they are sold. They would be considered of satisfactory quality if a reasonable person would consider their standard to be satisfactory. This should take into account the individual relevant specifics of the goods.

This was further clarified by the Sale and Supply of Goods Act 1994, so 'satisfactory quality' includes: being fit for purpose; appearance and finish; free from minor defects; safe and durable.

I gave careful consideration to all of the reports and quotations into the problems with the car, which were obtained from a few different sources. I found that the inspection reports appeared to agree that the main problem with the car was with the turbocharger and the DPF or catalytic converter. On my behalf, the adjudicator clarified with the inspector that the DPF required occasional driving at higher speeds to allow it to regenerate and clear. The inspector also confirmed that it was not possible to know the condition of the DPF or how the car had been used before the time that Miss D had bought it. They said that it was likely that the DPF was well on its way to becoming ineffective at the time Miss D bought the car.

After considering all of the circumstances, I was not satisfied that the car could be said to have been of satisfactory quality when it was sold to Miss D. The problems that were traced to the DPF and turbocharger presented themselves at a very early stage in Miss D having the car and these problems may have been the reason why Miss D had difficulty achieving the higher speeds necessary.

I acknowledged that Miss D had had some use of the car, but that this had been hampered by the problems. I also said that Miss D had taken some considerable effort to try and get the problems with the car resolved and had incurred costs in obtaining a full diagnostic report.

For this reason, I said that Miss D should be allowed to reject the car and should be given a full refund of the repayments she had paid towards the agreement to represent her inconvenience despite some use of the car. I also considered that she should also be refunded the cost of the full diagnostics report that she needed to arrange through the main dealership in order to assess the on-going problems with the car. I understood this to have been £119.52 from the invoice.

Subject to any further representations by Miss D or Santander Consumer Finance, my provisional decision was to uphold the complaint.

The adjudicator confirmed that both Miss D and Santander Consumer Finance had received my provisional decision.

Miss D's solicitors responded to say that she accepted my provisional decision but that the cost of the diagnostic report had actually been £118.80 rather than the £119.52 I had understood it to be. The solicitors also asked that I consider the costs Miss D had incurred for its services to date and her postage costs.

Santander Consumer Finance responded that it had nothing further to add.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It was Miss D's decision to request the help of her solicitor in bringing her complaint about Santander Consumer Finance. Although I understand the representations it has made on her behalf, such assistance is not a requirement for bringing a complaint to this service. I would not therefore generally award any costs incurred by such representation, when this was at the discretion of the consumer.

It is because of this that I do not consider that it would be reasonable to require Santander Consumer Finance to pay for the representation Miss D chose to have.

Aside from the matter of Miss D's costs incurred in making her complaint, neither party has added any further submissions for my consideration in respect of the outcome of my provisional decision. In reaching my provisional decision, I took into account all of the particular circumstances when setting out my intended remedy. As I set out, my overall consideration did include that Miss D had been able to have some use of the car.

However, I found that Miss D should receive a refund of all of the payments she made to her hire purchase agreement including interest. I consider this fairly reflects her inconvenience and postage costs, and takes into account the use of the car she did have.

Therefore, I see no reason to depart from the conclusions I set out in my provisional decision other than to reflect the revised cost of the diagnostic report of £118.80.

### **my final decision**

My decision is that I uphold this complaint. I require Santander Consumer (UK) plc (Santander Consumer Finance) to:

- allow Miss D to reject the car and arrange for it to be returned to the dealership at no cost to Miss D;
- refund Miss D the £118.80 for the cost of the diagnostic report carried out by the main dealership;
- cancel the hire purchase agreement and anything further that was due under the agreement;
- refund the deposit Miss D paid when entering into the hire purchase agreement; and,
- refund all of the monthly repayments Miss D has made to the agreement, including any further repayments made until the car is taken back.

Interest at an annual rate of 8% simple should be added to each of the refunded payments from the date of each payment until the date of settlement. If Santander Consumer Finance considers it has to deduct tax from the interest element of my award, it should send Miss D a tax deduction certificate when making payment, which she can use to reclaim the tax, if she is entitled to do so.

Cathy Bovan  
**ombudsman**