

complaint

Mrs S complains a car supplied to her by Santander Consumer (UK) Plc through a conditional sale agreement wasn't of satisfactory quality.

background

On 2 June 2018 Santander supplied Mrs S with a car through a conditional sale agreement. It was four years old, had travelled about 47,000 miles and cost about £9,000.

Mrs S says the car broke down on 11 June 2018. But the car corrected itself so no further action was taken. On 21 June 2018 the car broke down again. The car was taken to the dealership which had sold the car. It ran some diagnostic tests but couldn't find a fault. The engineer said it was possible a diesel particulate filter (DPF) regeneration was required.

On 25 June 2018 the car broke down again. While Mrs S waited for recovery the car wasn't secured by the handbrake. It rolled into a barrier which caused damage to the front of the car. Around the same time Mrs S complained to Santander. She thought there was something wrong with the car so she wanted to swap it for another. Mrs S's insurer arranged for repairs to be completed to the front of the car.

Over the following weeks the car was repaired by the insurer, Mrs S had a diagnostic test completed and Santander had an independent inspection completed. No faults were identified. Mrs S got the car back on 22 August 2018.

On 5 September 2018 it broke down again. It was returned to the dealership which did a forced DPF regeneration because it found the DPF to be blocked. On 11 September 2018 a further independent inspection was carried out. This said, in summary, that there was a fault, most likely the result of a DPF issue, but that it wouldn't have been present or developing when the car was supplied to Mrs S.

Santander's response to Mrs S's complaint was that it thought it had supplied a car of satisfactory quality, so it didn't think it needed to do anything more. Mrs S didn't think this was fair. She said she'd had problems with the car almost as soon as she got it. She wanted to reject the car and receive compensation for the additional costs she'd incurred because of the problems she'd had with it. She brought the complaint to our service.

The investigator thought the complaint should be upheld. This was because he didn't think a reasonable person would expect this car to have the problems it had within such a short time of getting it. So he didn't think Mrs S had been supplied with a car of satisfactory quality. He recommended Santander allow Mrs S to reject the car and pay her compensation for the costs she'd incurred and for the distress and inconvenience she'd been caused.

Mrs S accepted this. Santander didn't. It thought Mrs S's driving habit - short journeys which didn't allow for DPF regeneration - had led to the problems with the car. It also thought if the complaint was upheld it should be given the opportunity to repair the car before a rejection was considered. As an agreement couldn't be reached the complaint was passed to me to decide. I issued a provisional decision saying I thought the complaint should be upheld. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Consumer Rights Act 2015 ("CRA") implies a term into the conditional sale agreement that the car must be of satisfactory quality. As the supplier and finance provider, Santander is responsible for the quality of the car it's provided under the agreement. Satisfactory quality is what a 'reasonable person' would expect, taking into account all of the relevant circumstances, such as the age, mileage and cash price of the car.

The independent report carried out on 11 September 2018 commented on how the dealership found the DPF to be blocked and completed a forced regeneration. Following this the independent engineer started the car and took it for a road test. This was abandoned because the engine started to develop an abnormal knocking noise. When questioned about this he said the noise was consistent with a big end bearing failure and meant the car was unsafe to drive. In his opinion this was a result of an issue with the DPF. He further said he didn't think there was an issue with the DPF at the point of sale, or when he took the car for a road test in June 2018.

From what the independent engineer has said I'm satisfied there is a fault with the engine which means the car is unsafe to drive, and that the cause of the fault is most likely related to an issue with the DPF. So what I need to decide is whether this was a result of a problem present or developing at the point of sale, the result of normal wear and tear, or the result of Mrs S only making short journeys which prevented the DPF from regenerating.

On 11 June 2018, within less than 10 days of getting the car, Mrs S says the car broke down. It corrected itself without the intervention of an engineer so no fault was diagnosed. As I understand it, a DPF warning light wasn't showing. This breakdown in itself suggests to me something was amiss.

10 days later, on 21 June 2018, the car broke down again and was recovered to the dealership. Diagnostic tests didn't identify any fault codes, such as a DPF fault code. But the engineer did comment on a possible DPF regeneration being required. Again, although no fault was identified, the breakdown in itself suggests to me something was amiss.

A job sheet for 24 May 2018 (about a week before Mrs S got the car) shows it had 46,973 miles on the odometer. The job sheet for when the dealership looked at the car on 21 June 2018 shows 47,611 miles on the odometer. So in the space of three weeks and less than 650 miles the car had broken down twice.

There was a third breakdown (and an accident) a few days later, on 25 June 2018. The insurer undertook repairs and on 9 July 2018 Mrs S had a diagnostic test completed. This showed two fault codes, but as I understand it, these didn't relate to the engine or the DPF. On 13 August 2018 Santander arranged for an independent inspection. At this point the car had 47,851 miles on the odometer, so Mrs S had travelled 240 miles since the dealership looked at the car on 21 June 2018. The independent inspection involved a diagnostic test and a 556 miles road test. No faults were identified. But again, the breakdown in itself suggests to me something was amiss.

I don't think the accident caused the engine or DPF problems. I say this because it hasn't been suggested that it did, and because my understanding is that the accident

caused the car to need body work repairs to the front, and didn't affect the engine or DPF.

Mrs S got the car back on 22 August 2018. The fourth and final breakdown occurred about two weeks later, on 5 September 2018. The recovery service noted the car was in limp mode and there was "*...some fault somewhere in the stop start operation*". The car was recovered to the dealership which found the DPF to be blocked so it completed a forced DPF regeneration.

When the second independent inspection took place, on 11 September 2018, there were 48,677 miles on the odometer. This means between the two independent inspections 826 miles were travelled, 556 miles by the independent engineer and 260 by Mrs S. So in total, Mrs S had use of the car for about five weeks and covered 1,150 miles before the car was unsafe to drive, experiencing four breakdowns.

Given the time and mileage involved here I don't think wear and tear is likely to be the cause of the problems with the engine and DPF.

I accept that problems with a DPF are often the result of continuous short journeys preventing regeneration. A DPF issue (such as a blockage) wasn't, although mentioned as a possibility, identified by the dealership in June 2018. Nor was it identified by Mrs S's diagnostic test in July 2018 or the independent engineer in August 2018. The independent engineer, following the second road test in September 2018, didn't think there was an issue with the DPF at the point of sale, or when he did the road test in August 2018. Nonetheless, the car did break down three times, which from what the independent engineer has said, he likely wasn't aware of. And if all that was required was a long drive to allow DPF regeneration, I would have thought the 556 road test in August 2018 would have accomplished this.

Following the August 2018 road test Mrs S travelled 270 miles. I've asked her about her journeys and she's provided a detailed account of them. These show she undertook a mix of journeys in terms of distance and roadway (urban and a-class/motorway) including a 23/24 mile journey (each way) on 31 August 2018 on the motorway, and a 24 mile journey (each way) on 2 September 2018 on the motorway. I find her testimony here detailed and persuasive.

Taking the above into account, as well as how soon the breakdowns occurred, I'm not persuaded Mrs S's driving habit caused a DPF issue which led to an engine issue, which has meant the car is unsafe to drive.

Having discounted wear and tear and Mrs S's driving habit, I think it's most likely Mrs S was supplied with a car which had an underlying problem present or developing at the time of sale. I think this presented itself within about 10 days of getting the car and got progressively worse to the point the car needs what appear to be significant repairs. I don't think a reasonable person would expect to experience these sorts of issues with this car so soon after getting it, or expect this car to be unsafe to drive after only about five weeks' worth of moderate use. It follows that I don't think Santander supplied Mrs S with a car of satisfactory quality and that this complaint should be upheld.

putting things right

Santander has said if the complaint is upheld it wants the chance to repair the car. I don't think this is appropriate in the circumstances. Mrs S's relationship with the dealership has broken down, so I don't think a repair there would be suitable. And following the number of breakdowns without a diagnosis I think Mrs S would - understandably - have ongoing concerns about reoccurrence. I'm also mindful the repairs are likely to be substantial and so take time to complete. I think a clean break by allowing Mrs S to reject the car is the fair and reasonable way forward. I think Santander should:

- take the car back at no cost to Mrs S, and ensure she isn't charged for any storage costs;
- cancel the conditional sale agreement with nothing further owing by Mrs S, and remove any adverse information from her credit file; and
- refund the deposit she paid (£700) plus simple interest at 8% a year from when it was paid until when it's refunded.

If the car had been of satisfactory quality Mrs S would have made monthly payments towards the conditional sale agreement - about £400 a month. Because of what's happened Mrs S hasn't had much use of the car and had to make alternative arrangements - such as spending money on taxis to get her disabled son to school and back, and on her daughter taking buses. Santander did reimburse her for these costs up to 5 September 2018, and it reimbursed the cost of the diagnostic test she had completed.

Mrs S has sent me a breakdown of the costs she says she's incurred since 5 September 2018. Overall, in part because of changes in personal circumstances (Mrs S's son was awarded school transport), these are less than what she would have paid to the conditional agreement over the same period. So I'm satisfied if Santander refunds the payments made over this period Mrs S isn't financially worse off. I will however go on to consider the distress and inconvenience not having the car caused Mrs S.

I think Santander should refund some of her the payments she made towards the conditional sale agreement, with interest. To recognise that Mrs S had use of the car for about five weeks in total, had use of a courtesy car for a period, and that Santander reimbursed her costs up until 5 September 2018 (about three months into the agreement) I think this should be from the fourth payment onward. So I think Santander should:

- refund the fourth payment Mrs S made to the conditional sale agreement, as well as any payments made from then on, with simple interest at 8% a year from the date each was paid until the date each is refunded.

Mrs S has said she was supplied with a courtesy car by the dealership for a period of time, it broke down, and another was provided by a third party firm. She says she was asked by the third party firm to pay £60 towards this second courtesy car. I think Santander should:

- refund to Mrs S the £60 she paid towards the courtesy car, with simple interest at 8% a year from the date she paid it, to the date it's refunded, on the condition of her providing proof of payment.

Mrs S has explained in detail the effect this matter has had on herself and her family. I can only make an award for the distress and inconvenience caused to Mrs S, but I'm satisfied that the upset and inconvenience caused to her son and daughter have contributed to the distress she's felt by not having use of a car.

She's told us about the need to rely on taxis and buses and the inconvenience this has caused and about the stress she's been under (exasperated by a longstanding mental health condition). She's told us about the worry of keeping up with payments towards the conditional sale agreement while paying for taxis and buses at the same time and the embarrassment of having to borrow money from family. I'm also mindful the breakdown was in June 2018, meaning this has now been ongoing for the better part of a year. All told, I think Mrs S has been caused considerable distress and inconvenience. I think Santander should:

- pay Mrs S £750 in recognition of the distress and inconvenience she's been caused.

Mrs S agreed with my provisional decision. Santander didn't respond by the deadline I set.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and in the absence of disagreement from Mrs S or Santander, I see no reason to change my mind.

my final decision

I uphold this complaint and require Santander Consumer (UK) Plc to:

1. take the car back at no cost to Mrs S, and ensure she isn't charged for any storage costs;
2. cancel the conditional sale agreement with nothing further owing by Mrs S, and remove any adverse information from her credit file;
3. refund the deposit she paid (£700) plus simple interest* at 8% a year from when it was paid until when it's refunded;
4. refund the fourth payment Mrs S made to the conditional sale agreement, as well as any payments made from then on, with simple interest* at 8% a year from the date each was paid until the date each is refunded;
5. refund the £60 Mrs S paid towards the courtesy car, with simple interest* at 8% a year from the date she paid it, to the date it's refunded, on the condition of her providing proof of payment; and
6. pay Mrs S £750 in recognition of the distress and inconvenience she's been caused.

Santander Consumer (UK) Plc must pay the compensation within 28 days of the date on which we tell it Mrs S accepts my final decision. If it pays later than this it must also pay interest* on the compensation from the date of my final decision to the date of payment at 8% a year simple.

*If Santander Consumer (UK) Plc considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 July 2019.

James Langford
ombudsman