

The complaint

Miss C complains about a car she acquired with finance provided by Santander Consumer (UK) Plc.

What happened

In November 2022 Miss C entered into a regulated conditional sale agreement with Santander Consumer in respect of a new car. She paid a deposit of £2,345.

Shortly afterwards, Miss C discovered some faults with the car. The infotainment system didn't work smoothly (this affected navigation), the indicators didn't make a noise, and error messages were displayed. After taking the car to the dealership – there is a dispute about whether this happened twice or three times – Miss C complained to Santander Consumer in April 2023.

Santander Consumer arranged for the car to be inspected by an independent expert in May 2023. A second inspection was conducted in July, by a different engineer, after Miss C reported further problems: the car made a humming noise when driven above 40 mph; on one occasion when the vehicle was parked it had spontaneously reversed by itself, breaking one of the rear lights; and the air conditioning would randomly turn itself on.

The experts found problems with the instrument panel and the indicators, and recommended further investigation by an authorised dealer under the manufacturer's warranty. But because the experts did not think these faults had been present when the car was delivered to Miss C, Santander Consumer did not accept responsibility for them.

Miss C then brought this complaint to our service. She said the car was performing emergency brakes unexpectedly. Meanwhile, she took the car to be repaired in September, but she said that the faults were still not fixed when she got it back.

Our investigator thought that as these faults had appeared so soon after Miss C acquired the car, and the car had been brand new, then the faults must have actually been present all along. So he upheld her complaint, and recommended that Miss C be allowed to reject the car. He said the agreement should be ended with nothing further to pay, and her deposit refunded with interest, along with £300 compensation for her inconvenience.

Santander Consumer said it was prepared to accept that decision in principle, but that it wanted a third inspection to confirm that the faults were still present, and if they were related to any failed repair attempts. The investigator didn't think that was necessary, because Miss C had recently provided a lengthy video showing the faults were still present. He referred this case for an ombudsman's decision.

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 Consumer is only responsible for faults that were already present or developing when the car was delivered to or collected by Miss C, not for anything that goes wrong later on. So I need to decide when these issues began.

At the time of the first inspection, in May, the mileage was 7,839 miles. This found two fault codes: high speed CAN¹ bus off, and "Lost communication with front infotainment control module". The indicators made no noise. The battery main earth cable had been removed, and the expert concluded that this was likely to be the cause of all of the problems. He said that Miss C had told him that she had removed it on the advice of the AA; Miss C says that is wrong and it was not the AA, but the dealer who told her to do that. (That could just be a simple mistake and so I do not propose to make any finding about that dispute.)

The second expert was instructed to investigate the issue with the car reversing when it was in park; he could not replicate this fault. However, he did report an error message which read "traction control and ABS fault," indicating that other issues had developed with the electronic systems. He confirmed that the indicators and hazard lights made no noise when activated, and the media unit would not illuminate. He also thought that all of this could be because the earth cable had been disconnected; between that and the mileage driven since the point of sale, he did not think that these faults would have been present at the point of sale.

I think that the mileage is a red herring, because Miss C reported several of the faults quite early on, in December. So I think it is likely that these faults were present at the point of sale, unless of course they were caused by the earth cable being disconnected. Apart from that point, I have no reason to doubt the experts' reports, and I accept the rest of their findings, but not their conclusions about liability.

As for the cable being disconnected, Miss C had already taken the car to a garage before she was given any advice about doing that, which means there must have already been a problem before it was disconnected. So it is likely that there must have been at least one fault which already existed before that happened, and that that fault was present all along. It is possible (and actually likely) that the disconnection caused some additional faults, and on balance, I think that probably explains the newer faults that developed later, and which were the impetus for the second inspection. But I think that Santander Consumer is responsible for the earlier problems. (I have taken into account section 19(14) and (15) of the Consumer Rights Act 2015, which says that faults that are discovered within six months of the point of sale may be presumed to have been present all along, unless it is proved that they were not.)

Santander Consumer, or the dealership, is entitled to one attempt to repair the whole car (not one attempt per fault). If that repair fails, then Miss C becomes entitled to reject the car. So I don't need to decide whether there were three attempts or only two before she complained to Santander Consumer in April 2023. It is not in dispute that there were at least two software updates because the fuel injection control module (FICM) had been malfunctioning.

In October 2023 the FICM was replaced altogether. So clearly the software updates had not solved that problem. That does not appear to be in dispute, but just in case I have not understood Santander Consumer's position, I think that the fault had not been fixed prior to the October repair.

The controversy now is about whether any faults are still present, or if they were resolved in October. Miss C insists that the problems still persist, but Santander Consumer wants to

¹ Controller Area Network. The high speed CAN bus is a data network that connects control modules.

verify that. That is quite understandable, but I think that the video evidence she has provided is sufficient proof that the infotainment system is still not working as it should.

The video is 26 minutes long, and was recorded on 28 October 2023; it has been shared with Santander Consumer. It shows the infotainment with a smartphone plugged into it, on which music is playing, and also a satnav. From time to time, the connection to the smartphone fails, causing both the music and the satnav to stop. That happened several times, most of them with the phone in full view (so that I can rule out deliberate sabotage by Miss C or her passenger). So I'm satisfied that this fault has still not been repaired. As that was one of the earliest faults reported, I'm also satisfied that Santander Consumer is responsible for it, for the reasons I gave above.

I therefore don't think I need to have the car inspected by a third expert to fairly resolve this complaint.

Putting things right

I agree with the remedy proposed by my colleague. I require Santander Consumer (UK) Plc to:

- End the conditional sale agreement with nothing further to pay;
- Collect the car at no cost to Miss C;
- Refund Miss C's deposit of £2,345, and pay simple interest on that refund at the rate of 8% a year from the date it was paid to the date of settlement; and
- Pay Miss C £300 compensation for her inconvenience.

My final decision

My decision is that I uphold this complaint. I order Santander Consumer (UK) Plc to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 May 2024.

Richard Wood
Ombudsman