

## The complaint

Mr N complains about the quality of a car he acquired under a Conditional Sale Agreement with Santander Consumer (UK) Plc trading as MG Motor Financial Services (Santander).

When I refer to what Mr N has said and what Santander have said, it should also be taken to include things said on their behalf.

## What happened

In June 2022, Mr N entered into a Conditional Sale Agreement with Santander to acquire a brand-new car. The total cash price of the car was approximately £23,089. The total amount payable under the finance agreement was approximately £26,330. Mr N made an advance payment of £5,000. The agreement consisted of 48 consecutive monthly payments each of around £252 starting one month after the date of the agreement, followed by one payment of around £9,244 payable 49 months after the date of the agreement.

In July 2022, less than a month after point of sale, Mr N contacted Santander and said that the car was already in the garage due to faults with its Satellite Navigation system (Sat Nav). During that contact Mr N told Santander that he would like to reject the car.

In September 2022, Santander spoke to Mr N and told him the car had been repaired by the dealership. They also told Mr N that, as he was provided with a courtesy car while the car was being repaired, in effect, he accepted a repair to be done to the car.

In June 2023, Mr N made contact with Santander as he was having similar Sat Nav issues with the car again. Santander wrote to Mr N in June 2023. In this correspondence they said that after the first six months of purchase, the responsibility lies with the consumer to prove that the faults were inherent at the time of purchase. So they said that, to pursue this matter further, they needed evidence from an independent source that the goods were not of satisfactory quality at the point of sale, such as an independent inspection carried out by a qualified technician, or motoring organisation. They concluded the correspondence by saying that they are unable to uphold Mr N's complaint on this occasion.

Mr N was unhappy with this response, so he referred his complaint to our service. And later, in September 2023, Mr N provided an independent inspection report. This report said that they conducted a diagnostic test and retrieved various code issues with the electronics on the car. The report said that at the time of their inspection they did observe a fault in the Sat Nav. The report concluded that the observed fault with the car was with the Sat Nav not corresponding to the actual speed of the car and the suggested speed limit displayed on the screen. The engineer wrote that, in his experience, this would be due to a software issue and a software upgrade would be required. The engineer also said that the car has travelled 9,815 miles and would be under the manufacturer's warranty, advising that the car be returned to the selling agent for their consideration. Our investigator shared the report with Santander and they said they could look to have the software updated at no cost to Mr N.

Mr N was unhappy with this response and said that he wanted to reject the car. So, our investigator at our service issued an opinion on this complaint. The investigator was of the

opinion that the car was not of satisfactory quality when supplied. The investigator thought Mr N should be able to reject the car and that Santander should refund Mr N's deposit/part exchange contribution of £5,000, plus 15% of the some of the payments he made, to reflect the impaired use caused by the car not being of satisfactory quality. The investigator also thought it was fair that Santander pay Mr N £150 for the distress and inconvenience caused and refund the £276 Mr N paid for the independent report.

Santander disagreed with the investigator. So, the complaint has been passed to me to decide.

### **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities, – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr N acquired the car under a Conditional Sale Agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Santander is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr N entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr N's case the car was brand new, with a total cash price of approximately £23,089. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before any problems occurred, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

Santander said that Mr N came in for a service in June 2023 and did not mention new issues with the car, and that after the repair was completed in August 2022, the dealership did not have any further conversations with Mr N. So, they believe that the fault Mr N reported to them in June 2023 was not developing at the point of sale or finance arrangement inception. They also said that the dashboard of the car not showing the correct speed is due to the front camera picking up the road signs that state the speed limit, which they say can be affected by plenty of outside circumstances such as signs being damaged, missing, or being blocked by another car. So, Santander said this fault is different to the initial Sat Nav problems, as it displays in a totally separate part of the dashboard. As such, I've considered this, but I think it is most likely that these faults are related.

From the work sheet invoice provided I can see that shortly after supply, between 28 June 2022 to 10 August 2022, the car was taken for repairs. To fix the faults the car was

experiencing, the dealership had to investigate the Sat Nav that was not working. They also had to remove and send an electronic module to the manufacturer. I think most likely those issues were the same or related to the faults that have occurred in June 2023. I say this because the issues Mr N was experiencing are most likely to do with the same components that were affected in June 2022. The independent report that was carried out in September 2023 reported similar faults. This report said that they conducted a diagnostic test and retrieved various code issues with the electronics on the car. The report said that at the time of their inspection, they did observe a fault in the form of the Sat Nav not corresponding to the actual speed of the car and the suggested speed limit displayed on the screen. The engineer wrote that, in his experience, this would be due to a software issue and a software upgrade would be required. So, taking all the above into consideration, I think it is most likely this was a fault that was developing or present at the point of supply. And considering the price, age, and mileage of the car when it was supplied, I do not think the car was of satisfactory quality when supplied.

The CRA sets out that where the supplied goods are not of satisfactory quality, the consumer can require the supplier (Santander in this case) to fix any faults. But considering that the repair had already been attempted between 28 June 2022 to 10 August 2022 and was not fully repaired, I think Mr N should be allowed to reject the car. The CRA allows for this and in these circumstances it is also a fair outcome. As such, the Conditional Sale Agreement should be cancelled with nothing further to pay. Santander should remove any adverse information from Mr N's credit file. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

Mr N has been able to use the car, and when the car was in for repair he had a hire car provided, so I think it is reasonable that he pays for this use. Also, driving the car with this fault present is likely to have been somewhat stressful and annoying to him, especially as he was unable to rely on some of the electronic/Sat Nav features. So, this would have reduced the utility and enjoyment of the car for Mr N. There is no exact method to quantify the impact on Mr N having to drive the car with this issue, but having considered the circumstances, I think that Mr N should be entitled to receive back 15% of the monthly payments from 10 August 2022 to the date of settlement, to fairly reflect the impaired use caused by the car not being of satisfactory quality.

I have considered that this matter has caused Mr N distress and inconvenience while trying to resolve it. Mr N had to take the car back to the dealership as well as make time for the inspection that was carried out on the car. I think, he would not have to do so, had Santander supplied him with a car that was of a satisfactory quality. So, I think Santander should pay him £150 in compensation to reflect the distress and inconvenience caused.

Santander should also refund Mr N £276 he paid for the independent report which he would not have to pay for and arrange had Santander supplied him with a car that was of a satisfactory quality.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Santander Consumer (UK) Plc trading as MG Motor Financial Services to:

1. End the Conditional Sale Agreement with nothing further to pay;
2. Collect the car at no cost to Mr N;
3. Refund Mr N's deposit/part exchange contribution of £5,000;
4. Refund £276 Mr N's paid for the independent report;

5. Refund 15% of the repayments he has made from 10 August 2022 to the date of settlement;
6. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
7. Pay Mr N £150 for the distress and inconvenience caused;
8. Remove any adverse information recorded on Mr N's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If Santander Consumer (UK) Plc trading as MG Motor Financial Services considers tax should be deducted from the interest element of my award, they should provide Mr N with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 28 March 2024.

Mike Kozbial  
**Ombudsman**