

The complaint

Miss B is unhappy that a car supplied to her under a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance was of an unsatisfactory quality.

What happened

In October 2022, Miss B was supplied with a used car through a conditional sale agreement with Santander. She paid an advance payment of £1,500 and the agreement was for £24,650 over 49 months; with 48 monthly payments of £397.94 and a final payment of £12,943.67. At the time of supply, the car was just over two years old.

Miss B says that she started having problems with the car within a few days of it being supplied to her – there was an intermittent screen fault that meant she was unable to view information such as the speed and gear selection. She unsuccessfully attempted to resolve this with the supplying dealership so, in April 2023, she complained to Santander.

Santander accepted there was a fault with the car and arranged for it to be repaired. However, Miss B says these repairs didn't fix the fault and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was evidence the supplying dealership had attempted a repair to the car, and that Miss B had supplied photo and video evidence that showed the fault was still present after the repair attempt. As the issue first occurred shortly after the car was supplied, and a repair attempt had failed, this made the car of an unsatisfactory quality and the investigator said that Miss B should now be allowed to reject the car. The investigator also said that Santander should refund 5% of the payments Miss B had paid; and pay her an additional £200 compensation for the distress and inconvenience she'd been caused.

Santander didn't agree with the investigator's opinion. They said *"if the vehicle has had a failed repair, we could look to enforce rejection, but we would need confirmation the vehicle has suffered a failed repair and is still faulting ... it would need to be inspected before we can accept rejection."*

Because Santander didn't agree, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss B was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Santander are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Santander can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss B to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss B took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Santander to put this right.

Santander's case notes show that, on 2 May 2023, they were advised by the supplying dealership that they were happy for Miss B to take the car to another garage for diagnostic and repair, and they advised Miss B of this on 22 May 2023. The repair took place on 19 June 2023 but, on 26 June 2023, Miss B advised Santander the faults still remained.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Santander – the first attempted repair is the single chance at repair. The CRA is also clear that, if the single chance at repair fails, then Miss B has the right of rejection.

Santander have said that they require an independent inspection on the car to establish if the fault still remains. From reviewing their case notes, I can see they initially arranged this inspection in late June 2023, but it didn't go ahead because the engineer didn't have the necessary equipment to identify a fault of this nature, and a different engineer would need to be booked. However, Santander decided not to go ahead with the inspection and instead asked Miss B to provide evidence the fault still remains.

Following this, Miss B provided Santander with photo and video evidence of the screen not working when the car was operating. What's more, Miss B has continued to provide ongoing evidence that the fault with the car remains. While I appreciate that Santander have now asked for an independent report to show there is an ongoing fault with the car, they chose not to proceed with this report in July 2023, and instead ask Miss B to provide evidence of the ongoing fault, which she did. As such, I don't think it would now be fair for them to insist this report now goes ahead.

I'm satisfied the evidence Miss B has provided shows the fault with the car remains and, as there has already been an unsuccessful attempt to repair the car, Miss B now has the right of rejection.

Putting things right

Miss B has been able to use the car while it was in her possession, and, while it was being repaired, she was also provided with a courtesy car to keep her mobile. Because of this, I think it's only fair that she pays for this usage.

However, given the ongoing issues with the car, I'm also satisfied that Miss B's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Santander refund some of the payments Miss B made. And I think 5% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality.

It's also clear that Miss B has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. And she's explained the impact of having to drive a car where key safety information such as speed and gear selection isn't always available. So, I think Santander should compensate her for this. The investigator had recommended Santander pay her £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Santander should:

- end the agreement with no further monthly payments to pay;
- collect the car at no collection cost to Miss B;
- remove any adverse entries relating to this agreement from Miss B's credit file;
- refund the deposit Miss B paid (if any part of this deposit is made up of funds paid through a dealer contribution, Santander is entitled to retain that proportion of the deposit);
- refund 5% of the monthly payments Miss B has paid from the outset of the agreement to the date the agreement is ended;
- apply 8% simple yearly interest on the refunds, calculated from the date Miss B made the payment to the date of the refund[†]; and
- pay Miss B an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Santander to take off tax from this interest, Santander must give Miss B a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss B's complaint about Santander Consumer (UK) Plc trading as Santander Consumer Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 August 2024.

Andrew Burford
Ombudsman