

The complaint

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

What happened

On 14 July 2022, Miss S was supplied with a used electric car through a conditional sale agreement with Santander. She paid an advance payment of £2,554.52 and the agreement was for £20,705.48 over 49 months; with 48 monthly payments of £359.37 and a final payment of £9,367.49. At the time of supply, the car was around two and a half years old and had done 9,383 miles.

In October 2022, Miss S complained to Santander that she was experiencing problems with the brakes, the battery wasn't holding its charge, there was water leaking into the car, and there were issues with the anti-collision system and cameras. Santander arranged for the car to be inspected by an independent engineer.

The independent engineer said there were no issues with the battery or anti-collision system and cameras; and the brakes were working as expected. However, the engineer did identify the point where water was getting into the car. Santander upheld the complaint, and repairs to fix the water leak were completed in December 2022.

Miss S said the repairs weren't completed correctly, and the communication from the supplying dealership about this had been poor. So, she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator agreed there was a fault with the car but said this had now been repaired. And there was no evidence the repairs had failed. He also said that the communication from the dealer wasn't something Santander could be held responsible for. So, he didn't uphold the complaint.

Miss S wasn't happy with this, and she provided photos she said showed the repairs to the water leak had failed, and water was still getting into the car. Based on these photos, the investigator changed their view. They said that, as the attempted repair had failed, Miss S should now be allowed to reject the car.

The investigator recommended that Santander take back the car and end the agreement; refund 20% of the payments Miss S had made; and pay Miss S an additional £250 for the distress and inconvenience she'd been caused.

Santander didn't agree with the investigator. They didn't think the evidence was sufficient to show the repairs had failed, as this leak related to a different area in the car to where the repairs were carried out. They also said that Miss S didn't report the failed repairs to the dealership. So, they believed they should have the opportunity to reinvestigate the matter, and that the car should be independently inspected again.

Miss S agreed with the investigator but raised issues about the V5C document meaning the car couldn't be taxed, which has resulted in the car being impounded by the local council.

I issued a provisional decision on 7 December 2023, where I explained my intention not to uphold the complaint. In that decision I said:

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 S 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.

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.

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 S to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss S 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.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Miss S is unhappy with how the dealership communicated with her about the repairs to the car, and when it was ready for collection. While I appreciate her frustration with this, the dealership is a separate company, and don't form part of Santander. As such, it's not reasonable for me to hold Santander responsible for the dealership's communication. So, I won't be considering this as part of my decision.

Miss S has also raised the issue of the V5C document. While I've noted this was initially mentioned in the complaint form she submitted to the Financial Ombudsman Service in January 2023, I've not seen anything to show me that she's ever raised this issue with Santander. The Financial Ombudsman Service are only able to consider complaints that have been raised with the financial business, and where the financial business have had the opportunity to investigate and respond to the complaint. As I've not seen this is the case here, the issues with the V5C also won't form part of my decision.

I've seen a copy of the independent engineer's report, dated 15 November 2022. In this report, the engineer concluded the only issue with the car was water ingress into the boot, that was causing dampness, "heavy misting and condensation within the vehicle." The engineer said that the cause of the water ingress was missing bolts securing the spoiler to the tailgate and that this issue was present or developing at the point of supply.

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

It's not disputed that the dealership undertook repairs on the car in December 2022. And the dealership says the water ingress issues raised by the independent engineer were fixed. Where the identified issues have been successfully repaired, I would normally conclude that no further action needs to be taken.

I've seen an email from the dealership dated 21 March 2023 stating they still had the car as their ongoing attempts to contact Miss S for collection/delivery continued to be unsuccessful – Miss S failed to answer their calls and didn't respond to voicemails. In an email dated 21 April 2023, Miss S confirmed that the dealership had been in contact with her in January 2023 about collecting the car, and the car was delivered back to her that day.

Miss S wasn't happy with the quality of the repairs and has said the water leak remains. She's provided photographs dated 21 April 2023. While these show what is potentially a loose trim, and water droplets around the arial on the outside of the car; I'm not satisfied they are sufficient evidence that the repair was unsuccessful and the water leak remains.

Given that Miss S has had the car in her possession for a number of months, I'd expect there to be further evidence of the water leak continuing i.e., photo/video evidence of the water ingress, the misting and condensation resulting from this, and/or a report from an independent engineer or garage which says that the previous repair failed and/or a water leak remains.

Without any additional evidence from Miss S, and based on the photos from 21 April 2023 alone, I'm unable to agree with the investigator that the repair failed, and Miss S should now be allowed to reject the car. And I don't intend to ask Santander to do anything more.

Responses

Santander accepted my provisional decision without further comment.

Miss S didn't accept my provisional decision. She said that she'd told Santander "*many times*" that she'd never received the V5C document, evidence of which can be found on her emails to Santander. But she says we never requested copies of these from her.

Miss S also said that she was never asked to provide any further evidence of the ongoing issues with the car, despite asking us if we needed her to provide this. She feels it's unfair for us to not ask for this, and then make a decision based on the lack of evidence when this now can't be provided.

Finally, Miss S has said that she only ever received one text message from the dealership to let her know the repairs to the car had been completed, and that "*no one ever called or said anything until the email [a] few months after this.*"

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.

I've considered Miss S's comments about the missing V5C document. The evidence she's provided of her complaints to Santander doesn't show that she ever raised this. Despite it being clear in my provisional decision that we haven't seen any evidence, and Miss S saying

she has it available, she again chose not to provide this to us along with her comments on my provisional decision.

As the registered keeper, the DVLA will have issued the V5C to Miss S. Publicly available records show this was issued on 20 July 2022, six days after the car was supplied to Miss S. While I don't doubt Miss S never received this, it's the DVLA who are responsible for issuing this document, not Santander. And the information on the DVLA website shows that a replacement V5C is issued within two weeks of a request from the registered keeper (in this instance Miss S).

As such, even if I were to accept that Miss S complained to Santander about this issue (despite having no evidence to show this was the case), as the registered keeper she would always have had to contact the DVLA for a replacement document, something she was able to do with or without Santander responding to this complaint point. As such, I can't hold Santander responsible for the consequences of Miss S failing to tax the car because she failed to request the document from the DVLA that would allow her to do so.

With regards to the ongoing issues with the car, I've seen we asked Miss S to provide evidence of this on 24 April 2023 (before the investigator issued their initial view). On 11 August 2023, after receiving the initial view, Miss S said that we'd not requested any evidence of the ongoing fault and asked to be able to provide this. In reply, she was advised by the investigator, *"you can send any additional information to me."*

Given this, I can't agree that Miss S wasn't both asked and given the opportunity to prove the ongoing fault with the car.

Finally, I've noted Miss S's comments about not being chased by the dealership to collect the car after initially being advised it had been repaired. While I note this differs from what I've already seen, as I explained in my provisional decision, this is a complaint about the dealership, not Santander. And Santander aren't responsible for when and how the dealership contacted Miss S about the repairs. As such, this has no bearing on my decision about Santander.

For the reasons already given, the comments from Miss S don't change my view. And I remain satisfied that there is no compelling evidence to show me the repairs in December 2022 failed. As such, I won't be asking Santander to do anything more.

My final decision

For the reasons explained, I don't uphold Miss S's complaint about Santander Consumer (UK) Plc trading as MG Motor Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 January 2024.

Andrew Burford
Ombudsman