

The complaint

Mrs M complains about the quality of a car she has been financing through an agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance, who I'll call Santander.

What happened

I issued a provisional decision on this complaint last month. An extract from that provisional decision is set out below.

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

I'm issuing a provisional decision here as, while I agree that the complaint should be upheld, the redress I'm expecting to order is different than the investigator had suggested. Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Santander have agreed that there's been a breach of contract here, as the car they supplied to Mrs M wasn't of satisfactory quality and repairs have been unsuccessful.

In those circumstances, we'd expect a business to support rejection of the car and to terminate the finance agreement that funded the purchase. We'd also expect a refund of some of the finance if the consumer had impaired use of the goods, and we'd expect the business to compensate the consumer for any distress and inconvenience caused by their actions.

Putting things right

I understand the car was collected in February 2023 at no cost to Mrs M and that the finance agreement was marked as settled at that point. I'd agree with those actions.

Santander have already provided some redress, they've explained they have refunded all nine of the monthly instalments Mrs M paid, refunded £100 to cover hire car expenses, and paid £150 of the charge the dealership levied in relation to refurbishment of damage on the car when it was returned to them. They've agreed to refund the advance payment but want to deduct £3,845 (8,546 miles x 0.45p per mile) from that advance payment in respect of the use Mrs M has had from the car.

I don't think the charge for usage is a fair one. I can see no basis for Mrs M having to pay more than she would have done had she had full use of the vehicle. The finance agreement allowed her to cover 12,000 miles per year before additional mileage charges could be applied if the car was returned at the end of term. And, pro-rata, Mrs M had travelled a little less than that.

I'm asking Santander to put things right in the way I've set out below. Once they've calculated this new redress they can offset it against anything that has already been paid.

Mrs M had reasonable use of the car and had been able to cover more than average mileage in it. A courtesy car was provided when her car was being repaired. But the courtesy car was a lesser model, and her use and enjoyment of the car would have been impaired by the faults she had with it. On balance, I think Santander should be allowed to retain 80% of the finance instalments due, or paid, under the agreement. The rest should be refunded to Mrs M with interest.

The finance agreement explains that Mrs M made an "advance payment". Any advance payment/deposit/part exchange should be refunded to her, with interest, as she's been deprived of that money.

Santander should refund the charges made to Mrs M for the courtesy car provided.

I can't see that Mrs M had an opportunity to put any damage right before the car was returned so I think it's fair for Santander to waive the refurbishment charge levied by the dealership.

Mrs M has had to escalate her complaint to this Service when I think Santander could have resolved it earlier for her. I think Santander's actions have therefore caused Mrs M some distress and inconvenience and, in the circumstances, I think they should pay her £275 in compensation.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and tell Santander Consumer (UK) Plc to calculate:

- 1. A refund of the advance payment plus 8% simple interest* per year from the date of payment to the date of settlement.*
- 2. A refund of 80% of all finance instalments paid plus interest* of 8% per year from the date of payment to the date of settlement.*
- 3. A refund of all charges paid by Mrs M for the use of courtesy/hire cars when her car was being repaired. Add 8% interest* per year from the date of payment to the date*

of settlement.

4. A refund any refurbishment charges paid by Mrs M in relation to damage on the car, if any was paid. Add 8% interest per year from the date of payment to the date of settlement.*

5. Compensation of £275 for the distress and inconvenience caused by Santander's actions in addition to the good will payment of £100 already offered.

6. Remove any adverse reports they may have made to Mrs M's credit file in relation to this agreement.

7. Deduct payments already made from payments due under points 1 to 5 inclusive and pay the balance to Mrs M.

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and/or evidence

Santander accepted my provisional decision. They also noticed that I'd made a mistake in it when I suggested they retain 80% of the finance instalments paid instead of the 20% I had explained I'd be likely to order in my pre-amble. I can see that our investigator was able to explain that error to Mrs M. I thank Santander for noticing it.

Mrs M responded too. She said:

"I have re-read your email and I'm not sure I would agree with deduction of 80% and us keeping 20%. We have already been refunded the full amount for our monthly payments this was never in dispute.

If the sums were round the other way I feel this would be more fair after all this time I would like to think Santander would agree."

Mrs M provided copies of emails she had with the dealership and with Santander setting out the basis of her original settlement and confirming the refund of all nine of her monthly payments.

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 not been persuaded to change my provisional decision.

While I appreciate that Santander had offered to refund all of the instalments, they did that on the basis that they would make what I considered to be an unfair deduction from Mrs M's deposit for the mileage she was entitled to cover. The calculation I've provided refunds the whole of that deposit with interest. It's only fair that Mrs M pays something towards the, albeit limited, use she had from the car and, as I've explained, I think that should be 80% of the instalments paid.

Putting things right

As I've not been persuaded to change my provisional decision that now becomes my final decision on this complaint, but I have rectified the error that was contained in point two.

My final decision

For the reasons I've given above, I'm expecting to uphold this complaint and tell Santander Consumer (UK) Plc to calculate:

1. A refund of the advance payment plus 8% simple interest* per year from the date of payment to the date of settlement.
2. A refund of 20% of all finance instalments paid plus interest* of 8% per year from the date of payment to the date of settlement.
3. A refund of all charges paid by Mrs M for the use of courtesy/hire cars when her car was being repaired. Add 8% interest* per year from the date of payment to the date of settlement.
4. A refund any refurbishment charges paid by Mrs M in relation to damage on the car, if any was paid. Add 8% interest* per year from the date of payment to the date of settlement.
5. Compensation of £275 for the distress and inconvenience caused by Santander's actions in addition to the good will payment of £100 already offered.
6. Remove any adverse reports they may have made to Mrs M's credit file in relation to this agreement.
7. Deduct payments already made from payments due under points 1 to 5 inclusive and pay the balance to Mrs M.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 14 November 2023.

Phillip McMahon
Ombudsman