

The complaint

Mr M complains that a car he obtained through a conditional sale agreement with Santander Consumer (UK) Plc is not of satisfactory quality. He wants Santander to accept his rejection of the car and refund his payments.

What happened

Mr M obtained a second-hand car using a conditional sale agreement with Santander in March 2018. In February 2020, after he'd driven around 27,000 miles, the car broke down and had to be recovered. The breakdown engineer reported that the engine had seized.

Mr M complained to Santander and it arranged an independent report. The report concluded that the engine had seized, but that the exact cause couldn't be found unless the engine was dismantled. The independent engineer didn't consider that the fault was present or developing when the car was supplied. So Santander didn't uphold Mr M's complaint. Taking into account Mr M's personal and financial circumstances, it said it would accept the car back with only the termination fee of £2,067.96 payable by Mr M and that it would accept manageable payments over a suitable period. This would mean Mr M would not be liable for the repair costs, which he'd been told could be around £20,000.

Mr M arranged for his own independent report. The engineer concluded that the engine "*has seized due to an issue with the crankshaft bearings and their associated shell bearings.*" But the report said it couldn't be sure of the damage unless the engine was dismantled. The report referred to a service bulletin issued by the manufacturer. Taking this into account, the engineer concluded that the failure was not due to normal wear and tear and would have existed when the car was supplied.

But Santander did not change its view of the complaint, so Mr M referred it to us.

Our investigator initially didn't recommend that the complaint should be upheld. But Mr M then arranged for a further independent inspection to confirm the cause of the engine seizure. This time the engine was dismantled. The inspector concluded that "*the engine failure was due to crankshaft bearing failure due to oil starvation and inadequate lubrication caused by main bearing shell rotation and obstruction of the lubrication process of the main bearings*". He considered this to be the same issue identified in the manufacturer's service bulletin and that the engine failure was not due to normal wear and tear.

Having considered the conclusions of this report, our investigator concluded that the complaint should be upheld. He thought Santander should:

- End the agreement with nothing further for Mr M to pay and collect the car.
- Refund any deposit, plus interest.
- Remove any adverse information from Mr M's credit file.
- Refund Mr M's monthly payments from March 2020, plus interest.
- Pay Mr M £300 for the trouble and upset caused.

Santander didn't agree. It said, in summary, that:

- The car was manufactured in 2011, the service bulletin was issued in 2014, but there was no fault with the car until 2020.
- The car wasn't subject to a recall.
- The car was regularly serviced, so any fault would have been identified.
- Nothing was ever raised when the car was subject to an MOT.
- All cars are subject to wear and tear and parts will need replacing or repairing over time. The issue with the engine would not have been identifiable when the car was supplied and didn't manifest itself until the car failed.

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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The conditional sale agreement is a regulated consumer credit agreement. As such, this service can consider complaints relating to it. Santander is the supplier of goods under this agreement and is responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there's an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint, I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.

In deciding whether a car is of satisfactory quality, some of the factors to consider are its age and mileage when it was supplied, and how long after supply the fault(s) materialised.

The car in this case was around seven years old when it was supplied and had been driven around 67,000 miles. The engine seized around two years after the car had been supplied and after Mr M had driven it 27,332 miles.

The first two independent reports could not say for certain what the cause of the engine seizure was. But the third inspection included dismantling of the engine and the inspector was able to conclude that:

"The engine failure was due to crankshaft bearing failure due to oil starvation and inadequate lubrication caused by main bearing shell rotation and obstruction of the lubrication process of the main bearings."

The report highlights that the manufacturer's service bulletin issued in May 2014 said:

"Low incidents of crankshaft/crankshaft bearing failure are being encountered, caused mainly by:

- *incorrect location of the main bearing shells during assembly,*
- *or through rotation of the shells during normal use."*

And the independent inspector noted that in 2012 the manufacturer had introduced a new crankshaft bearing design to prevent crankshaft bearing failures.

The report concludes:

“...it is clearly evident that this failure cannot be attributed to any normal wear and tear and the issue would have been present and in existence at the time of purchase of the vehicle.”

And that:

“On the balance of probability, this engine failure is as a direct result of the original manufacturer and the fault having been undetected, and progressively and gradually deteriorating during the course of the vehicle’s history from the point of leaving the factory until the point of the engine failure...”

I find it is clear from this inspection and report that the engine seized because of a manufacturing fault and not because of normal wear and tear. It follows that I find the car was not of satisfactory quality when it was supplied.

I've carefully considered what Santander said after it had seen the report. It may have taken several years for the car to fail and the manufacturer didn't consider the problem widespread or serious enough to recall the car. But that doesn't make a difference to my conclusion – the car had a fault when it was manufactured which meant it wasn't of satisfactory quality when it was supplied to Mr M. I wouldn't expect this fault to have been identified during an MOT or service as it required the engine to be dismantled to find it. And the fact that the supplying garage may not have known that the car wasn't of satisfactory quality does not make a difference – it, and - through the finance agreement – Santander, is responsible for supplying an unsatisfactory quality car to Mr M.

Putting things right

In the circumstances, I agree with our investigator that Santander should accept Mr M's rejection of the car and end the agreement with nothing further for him to pay. The paperwork shows he paid a £2,000 deposit and this should be refunded, plus interest.

Mr M hasn't had use of the car since it broke down on 24 February 2020. Santander should refund all payments since then, until the date of settlement, plus interest.

Mr M should also be compensated for the trouble and upset this has caused. I've thought very carefully about this in the light of the extremely difficult personal circumstances Mr M found himself in at the point when the car broke down. Mr M was able to obtain another car, so remained mobile, although I understand this put him under financial strain. Our investigator recommended £300 compensation, and I think this is fair and reasonable in the circumstances.

Mr M has provided evidence that he paid £375 for the third independent report. Santander should reimburse this cost, plus interest.

Mr M also arranged the second report (in July 2020). He says he paid for the cost of this, £250, in cash and that he doesn't have a receipt. He says he's contacted the engineer who carried out the inspection, but that he can't issue a receipt. Unfortunately, I can't ask Santander to reimburse Mr M for the cost of this report without a receipt to evidence how much he paid.

Mr M told us he did incur some taxi costs. But as I'm ordering Santander to refund the monthly payments for this period, I think this will adequately cover the costs he incurred.

My final decision

My final decision is that I uphold this complaint. Santander Consumer (UK) Plc should:

1. Cancel the agreement with nothing further for Mr M to pay.
2. Collect the car at no cost to Mr M.
3. Refund any deposit, plus 8% simple interest from the date of payment to the date of settlement. *
4. Refund all repayments Mr M made after 24 February 2020 to the date of the settlement, plus any proportionate refund from 24 February 2020 to reflect that he hasn't had use of the car. The refund of the repayments should include 8% simple interest from the date of payment to the date of settlement. *
5. Pay Mr M £300 for the trouble and upset caused.
6. Reimburse Mr M for the cost of the independent report dated 3 December 2020, £375, plus interest at 8% simple from the date of payment to the date of settlement.
7. Mark the agreement as settled on Mr M's credit file or remove it altogether.

* HM Revenue & Customs requires Santander Consumer (UK) Plc to take off tax from this interest. Santander must give Mr M a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 September 2021.

Elizabeth Dawes
Ombudsman