

The complaint

Mr R complains about the quality of a car that was supplied to him under a conditional sale agreement with Santander Consumer (UK) Plc (trading as Santander Consumer Finance). He also complains that the car was misrepresented to him.

What happened

In May 2021 Mr R took out a conditional sale agreement with Santander for a used car. The car was just under five and a half years old and had travelled approximately 36,652 miles. The cash price was £7,520. Mr R agreed to pay £3,000 in advance, followed by 36 monthly repayments.

Mr R says the dealer told him this was a family car, but he discovered it was classed as a sports car when he applied for insurance. He says the dealer also told him he'd be the second owner, but he later found out he was the fifth person to have the car.

Mr R says that around the end of March 2022 a dashboard warning came on while he was driving, saying the oil pressure had dropped to 51%. He arranged for the car to be recovered to a local garage for diagnosis of the problem.

The garage sent Mr R a video explaining what they'd found. The mechanic said the engine needed to be replaced - and that a replacement turbo was also likely to be needed. Mr R says the garage told him these repairs were likely to cost more than £6,000.

Mr R complained to Santander that he was reliant on the car for regular hospital visits and that he couldn't afford such an expensive repair. Santander didn't uphold his complaint. They said that, as the fault hadn't occurred within the first six months of the agreement, he'd need to provide evidence showing this was an inherent issue when the car was supplied to him. Dissatisfied, Mr R brought his complaint to us.

Our investigator said he hadn't seen enough evidence of how the dealer described the car to be able to say whether it had been misrepresented to Mr R. But he didn't think the car had been of satisfactory quality when it was supplied, because it hadn't been reasonably durable. He felt it wouldn't be fair and reasonable to insist Santander carried out repairs due to the cost involved. So instead, he thought Mr R should be able to reject the car.

The investigator said Santander should end the agreement and collect the car, with nothing further for Mr R to pay. And he said they should refund Mr R's deposit and all rentals he'd paid since the end of March 2022, when he'd stopped using the car.

The investigator thought Santander should pay Mr R £250 for the distress and inconvenience he'd been caused due to the car being faulty, and that they should remove any adverse information about the agreement from Mr R's credit file.

Santander didn't agree that a fault found after 21,317 miles and ten months showed there was an inherent issue with the car when it was supplied. They said it was Mr R's

responsibility to show the fault had been present when the car was supplied to him, and this hadn't happened.

Santander said they felt the mileage travelled was more relevant than the length of time Mr R had the car. They said that the car had covered roughly the same mileage as an average user would cover in three years – and so they found it difficult to accept a conclusion that the vehicle wasn't sufficiently durable. They asked for an ombudsman to review the case.

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.

Mr R's complaint is about a car supplied under a conditional sale agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr R's concerns about Santander.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory.

The CRA says the quality of goods includes their state and condition. It says things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case, I bear in mind that the car was more than five years old and had covered around 36,652 miles when it was supplied to Mr R. It cost £7,520, which represents a significant reduction on what the car would've cost new. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage.

I don't think a buyer would expect the car to be in perfect condition - I think they'd probably expect some parts of the car to have suffered a bit of wear and tear. But I do think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive the car for a reasonable amount of time without major issues.

Was the car of satisfactory quality?

I've seen a copy of the video the garage sent to Mr R. The mechanic said:

"We have come to the conclusion that your vehicle does require a new engine and possibly a new turbo as I imagine the turbo won't be in good order".

So, I'm satisfied that there's a significant fault with the car. Santander say this doesn't mean the car wasn't sufficiently durable when they supplied it to Mr R, ten months earlier. They say he hasn't provided evidence that this was an inherent fault. I've considered the points they've made.

I bear in mind that this car cost £7,520. And Mr R has provided pictures of the service history booklet showing the car had been regularly serviced since it was new – sometimes more frequently than the manufacturer's recommended service intervals. So, I think he was entitled to expect the engine to last for a reasonable period of time.

But Mr R told us the car had only travelled around 56,000 miles when the engine failed. And I'm satisfied a reasonable person would have expected the engine to last significantly longer than this – particularly given its service history. For these reasons, I don't consider the car to have been sufficiently durable. I don't consider any further evidence to be necessary here. It follows that I find the car wasn't of satisfactory quality at the time it was supplied.

Santander feel more weight should be given to the relatively high mileage the car had travelled during the ten months Mr R had it. The evidence I've seen shows the car had covered around 20,000 miles in this time. Although I accept this is more than an average consumer would typically travel in ten months, I don't consider it to be excessive. And this doesn't change my decision, because I wouldn't expect the engine to fail after this amount of mileage.

All things considered, I find the car wasn't of satisfactory quality when it was supplied to Mr R because it wasn't sufficiently durable.

Was the car misrepresented or misdescribed to Mr R?

Mr R says the dealer told him this was a family car – and that he'd be the second owner. He says he later discovered these things weren't true.

I'd consider the car to have been misrepresented if Mr R was told false statement(s) of fact about the car, which led him to enter into the agreement when he otherwise wouldn't have. I've also thought about whether the car was misdescribed to Mr R.

I haven't seen any supporting evidence to confirm what the dealer told Mr R about the car. But I don't find it necessary to make a decision about whether the car was in fact misrepresented or misdescribed to him, because it wouldn't change what I think is the right outcome in this case - or what I think Santander should do to put things right.

Putting things right

Although the CRA gives Mr R a right to have the car repaired, it goes on to say that he can't require Santander to do this if the cost of a repair would be disproportionate, taking into account the car's value. I'm satisfied this would be the case here, given the figures involved.

For that reason, I think Mr R should now be given the right to reject it. This means the agreement will come to an end with nothing further for Mr R to pay, and his £3,000 deposit should be refunded.

Mr R told us he hasn't been able to use the car since the end of March 2022, when the engine failed. He says that, as a pensioner, having to pay for taxis has put a strain on his finances. He says he had to cancel the direct debit payments to Santander for this reason. So, I think it's fair for Santander to refund the payments Mr R has made since 31 March 2022 to reflect his loss of use of the car, and to remove any adverse information from his credit file about this agreement.

I think Mr R has been caused additional distress and inconvenience because he was supplied with a car that wasn't of satisfactory quality. He had to arrange for the car to be recovered to the dealer to find out what was wrong with it. He's explained that he and his

wife have health conditions that limit their mobility - and that they relied on the car to get to their regular medical appointments. Although he hasn't told us that any appointments were missed due to the problems with the car, I think it would be more inconvenient for him to have to arrange a taxi each time.

Having thought about all of this, I think Santander should pay Mr R £250 for the distress and inconvenience he's been caused.

My final decision

For the reasons I've explained, I uphold this complaint and direct Santander Consumer (UK) Plc (trading as Santander Consumer Finance) to:

- Collect the car and end the finance agreement, at no further cost to Mr R.
- Refund the £3,000 deposit Mr R paid.
- Refund the amount Mr R paid under the agreement since 31 March 2022.
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr R £250 compensation for the distress and inconvenience he's been caused.
- Remove any adverse information about this agreement from Mr R's credit file.

If Santander consider tax should be deducted from the interest element of the award, they should tell Mr R how much they've taken off. They should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 September 2022.

Corinne Brown
Ombudsman