

The complaint

Mr S is unhappy that a car supplied to him under a conditional sale agreement with Santander Consumer (UK) Plc was of an unsatisfactory quality.

What happened

In July 2022, Mr S was supplied with a used car through a conditional sale agreement with Santander. He paid a deposit of £8,000 and the agreement was for £23,495 over 37 months; with 36 monthly payments of £361.48 and a final payment of £15,677.49. At the time of supply the car was around four and a half years old and had done around 39,967 miles.

Mr S says that, in early January 2023, the car started to make a 'clunking noise'. He contacted the supplying dealership, but they had gone into liquidation. So, on 4 January 2023, he had the car inspected by a manufacturer's main dealership. And they said there was an issue with the timing chain that was causing a metal build up in the oil filter.

The manufacturer's dealership ordered the parts, and, on 31 March 2023, they replaced the timing chain tensioners at the cost of £659.16. However, this didn't fix the problem, and, on 4 April 2023, they refunded Mr S the costs of the repair.

Mr S complained to Santander about the issues with the car. But they said that, because the car had had an unauthorised third-party repair, they were unable to uphold his complaint. And they didn't think they could be held responsible for any issues that arose after a third-party repair had been completed. Unhappy with this response, Mr S brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said they were satisfied there was a fault with the car, and that an attempted repair has failed. But they didn't think the repairs being carried out by a main dealership had any bearing on the matter – Mr S had tried to take the car back to the supplying dealership, but they were no longer trading; and there was nothing in the Consumer Rights Act 2015 ('CRA') that means Santander's obligations cease as a result. What's more, they said that the fault had presented itself *before* the third-party repair, so Santander's comments about liability for issues arising after a third-party repair aren't relevant in this case.

The investigator spoke to the main dealer, who said they suspected a catastrophic engine failure was imminent. And the investigator didn't think this was reasonable in a car that was less than five years old, and which had done less than 45,000 miles. So, they said that the car wasn't sufficiently durable, and this made it of an unsatisfactory quality when it was supplied. And they didn't think the contaminated oil was the cause of the issue, as the supplying dealership had serviced the car just before it was supplied to Mr S, and this would've entailed changing both the oil and oil filter.

Because there'd already been a failed attempt to repair the car, albeit by the manufacturer's dealership as the supplying dealership were no longer trading, the investigator said Mr S should now be allowed to reject the car. And they said Santander should refund the deposit he paid, plus statutory interest, and pay Mr S an additional £150 for the trouble and upset he'd been caused.

Mr S agreed with the investigator. Santander said they wanted to provide comments but, despite being given the opportunity to do so, no comments have been made. Given this, the 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.

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. Mr 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.

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

So, if I thought the car was faulty when Mr 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.

I've seen the car was supplied to Mr S with a full service history, with the last service being carried out by the supplying dealership on 22 June 2022. And the service document clearly states that the oil and oil filter were changed. The MOT record shows the mileage on the car as 39,967 miles on 7 July 2022, around two-weeks before Mr S took possession of it. So, it's fair to conclude that the car was supplied to Mr S with around 40,000 miles on the clock.

It's not disputed that the supplying dealership went into liquidation so, when Mr S started to have problems with the car, he wasn't able to take the car back to them for inspection and repair. In these circumstances, I'm satisfied that Mr S acted reasonably by taking the car to a manufacturer's main dealer instead.

From what I've seen, the manufacturer's dealership inspected the car on 4 January 2023, and they suspected an issue with the timing chain. So, I'm satisfied that there was an issue with the car that developed within the first six months of supply. And the CRA implies it's for Santander to show this fault wasn't present or developing at the point of supply. Which they haven't done so.

The manufacturer's dealership has explained there was a "*heavy metal build up in [the] oil filter.*" But, if the supplying dealership serviced the car on 22 June 2022, and this service included changing the oil and oil filter, then this metal build up must've happened between when the car was supplied to Mr S in late-July 2022, and when the car was inspected in early-January 2023.

At the point of the inspection in January 2023, the car had done around 3,500 miles since it was supplied to Mr S. And the car was less than five years old at the time. I don't think it's reasonable to expect a car that's less than five years old, that's done less than 45,000 miles, and that has a full service history, to be having major issues with the timing chain to the point where the oil is badly contaminated with metal fragments within six months of a service.

Given that a timing chain would be expected to last for twice the mileage the car had done, I'm satisfied that it wasn't sufficiently durable. And this makes the car not of a satisfactory quality at the point of supply. So, I'm also satisfied that Santander should do something to put things right.

Putting things right

Where goods supplied weren't of a satisfactory quality, the CRA allows for one chance at repair. In this instance, the repair was carried out by a manufacturer's main dealership due to the supplying dealership no longer trading. And I've already explained why I think this was acceptable. And it's not disputed this repair failed, with the manufacturer's dealership explaining they couldn't fix the issue and have refunded Mr S the costs of repair as a result. They also explained why they thought that catastrophic engine failure was imminent.

When they considered Mr S's complaint, Santander chose not to either inspect the car, or to attempt a further repair. As such, even if they disagree that the one chance at repair has already taken place, they've declined the opportunity to undertake this chance. Because of this, I'm satisfied that Mr S should now be allowed to reject the car.

Mr S has continued to keep the car, and it's been available for his use. As such, I think it's only fair that he pays for this. So, I won't be asking Santander to refund any of the payments he's made. However, it's clear that Mr S has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. So, I think Santander should compensate him for this. The investigator had recommended Santander pay him £150, 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 nothing more to pay;
- collect the car at no cost to Mr S;
- remove any adverse entries relating to this agreement from Mr S's credit file;
- refund the £8,000 deposit Mr S paid;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payment to the date of the refund[†]; and
- pay Mr S an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

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

My final decision

For the reasons explained, I uphold Mr S's complaint about Santander Consumer (UK) Plc. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 September 2023.

Andrew Burford
Ombudsman