

The complaint

Miss E complains about a car she got under a conditional sale credit agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance. The car has broken down with significant engine failure, which Miss E believes was due to the car not being of satisfactory quality when it was supplied to her.

What happened

In November 2022, Miss E entered into a conditional sale agreement for a used car, sourced through a broker "B". At the time, the car was around five years old and, according to MOT history, had covered around 52,300 miles. B had attached a cash price of £35,995 to the car. Miss E made a £12,000 advance payment, with the balance financed by Santander at monthly payments of £547.02 over a five-year term. I understand Miss E says the car came with a six-month warranty.

After she'd had the car about a year, Miss E contacted Santander to report an engine failure. Santander initially told Miss E it couldn't help, as the problem had arisen more than six months after it supplied the car. Miss E disputed Santander's position and it asked her to supply a report of the car's condition. Miss E obtained this, but Santander wasn't willing to accept it, saying it was from a garage ("T") that wasn't VAT-registered. So she referred her complaint to us.

Our investigator noted that T's letter Miss E bore a VAT registration number and asked it to reconsider its stance in light of this. T's letter said that it had investigated the engine failure and determined the likely cause to be carbon build-up over an extended period of some years due to oil dilution and starvation.

Santander obtained a report from an independent inspector "A", who said there was a serious mechanical failure, evidenced by an extended cranking time and what appeared to be low compression, possibly linked to valve seat wear, head gasket defects or piston damage due to abnormal combustion. A added that that dismantling the engine would be required to determine the root cause of the fault and any damage caused. However, given that Miss E had driven some 13,000 miles since getting the car, A said the fault would not have been developing or present at the point of supply.

Our investigator noted the apparent conflict between the two reports. She considered T's report sufficiently persuasive that the problem was likely to have developed over an extended period predating Miss E getting the car. The investigator noted the car had been serviced while in the possession of the previous owner, and that Miss E had herself arranged an interim service during her first six months of possession. Noting the point at which the engine failure had occurred, which was still fairly early on in the engine's expected lifespan, the investigator felt this pointed towards a lack of durability.

The investigator proposed that Santander contribute 50% of the cost of repairing the car to a satisfactory condition, and that it refund – with interest – Miss E's payments while the car was unavailable for use. She also recommended that Santander pay Miss E £200 for her

distress and inconvenience caused by the problems she'd had with the car and in her attempts to rectify them.

Responses to our initial conclusions

Neither Santander nor Miss E has accepted the investigator's conclusions. Miss E feels the proposed resolution doesn't go far enough. She wants Santander to cover the repair cost in full, or to be able to reject the car and receive a full refund. Santander doesn't think it should be liable for any of the cost. It says A's report and comments from the supplying dealership support its position in saying that the issues found wouldn't have been present at supply.

Due to the current impasse the case has now been passed to me for review and determination, as the final stage in our process.

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.

Because Miss E acquired the car from Santander as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 ("CRA"). One effect of the CRA is that the sale agreement is to be read as including a term that the car would be of satisfactory quality.

Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability. Miss E's claim is that the car Santander supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm fully aware the car was not new and so the standard a reasonable person might expect from it would be lower than for a car that was. Buying a used car carries some inherent risks, not least of which is that sooner or later items will need repair or replacement. That said, the age and mileage, the price attached to the car, and the general expectations of durability and freedom from minor defects all suggest to me that one might expect such a car not to breakdown in the way it did within a year of it being supplied.

While the CRA says that goods that don't conform to contract at any time within six months of the consumer taking delivery are to be taken as not conforming to it at the point of supply, unless it is established that the goods did conform to contract on that day, that doesn't mean that as long as goods last more than six months they should be deemed to have been satisfactory. That falls to be determined by the available evidence; a claim raised outside the six-month period merely removes the CRA presumption that the issues were present when supplied.

That brings me to the reports from A and T. I recognise the weight Santander has attached to what A has said, and A has the appropriate qualifications and experience to undertake an inspection of this nature. I'm satisfied it's reasonable to rely on A's findings insofar as they set out the current position.

But what Santander doesn't appear to have picked up on is that A's conclusions are about the current issue with the car; that is, that it has a serious mechanical fault with its engine. It's not in dispute that this is something that happened after Miss E got the car. Clearly the car was running for 12 months and some 13,000 miles prior to the eventual failure.

What A's report does say is that further investigation would be necessary to establish the root cause of the failure. A's report mentions the possibility that there were underlying issues, such as valve seat wear, head gasket defects or piston damage due to abnormal combustion. It doesn't venture an opinion as to how these potential problems could have occurred, or why it should be concluded that they could only have started developing after Miss E acquired the car.

Bearing this in mind, there's perhaps less inconsistency between A and T's reports than might first appear. T's report gives a cause that is more strongly connected to issues that have developed over a much longer period than Miss E's possession of the vehicle. I also note it includes commentary about a commonly reported problem with the type of engine fitted to Miss E's car and the manufacturer's service intervals.

I don't think that's strong enough in itself to be able to say that this is definitively the root cause of the engine failure. But in light of the maintenance Miss E had carried out on the car, I don't see there's any basis to say that the problems are connected to any misuse or failing on her part.

I don't consider the report Santander obtained contained sufficient depth of investigation to safely conclude that the car was of satisfactory quality when Santander supplied it to Miss E. That isn't a criticism of the report itself; I don't understand that Santander asked A to undertake a more detailed inspection. Given the report indicated this would be needed to establish the root cause of the problem, I think Santander ought to have done more rather than placing the weight it did on other aspects of the report.

On balance I'm not currently minded to find that Santander has dealt fairly with the situation by declining Miss E's claim for the reasons it has. I can further understand why Miss E has the concerns she does about the car, and why she's been unhappy about having to maintain the payments for it while having to use another vehicle. I've no doubt this has added to the stress and worry that Miss E has experienced and it's only right she's compensated for this.

However, I also need to recognise that a definitive explanation for the underlying cause has yet to be established.

With this in mind, I can see why our investigator proposed the resolution she did, and I share her view that it's a fair way to settle the dispute. While I'm aware of the remedies available to Miss E under the CRA, I think Miss E might need to provide more evidence in support of her claim in order to be entitled to exercise any right to full reimbursement of the cost of repair, or to reject the car at this point. It's also for Miss E to establish whether the manufacturer has any additional liability to contribute towards the cost of repair, which may be an option if the underlying fault is down to a latent manufacturing defect.

Putting things right

For the reasons I've set out here, I require Santander to take the following steps to resolve the complaint:

1. within 28 days of Miss E's acceptance of my final decision, contact Miss E to make mutually agreed arrangements to collect the car and arrange for its repair to a satisfactory condition. Once repaired, return the car to Miss E. This should all be done without significant inconvenience to Miss E, with the cost of repair being shared equally between Miss E and Santander;

2. reimburse the monthly payments Miss E has made under the conditional sale agreement since the engine failure in November 2023, to reflect the impairment to her use of the car;
3. pay interest on the amounts in 2. at a rate of 8% simple annually, from the date each payment was made until the date it pays this settlement. If Santander deducts tax from this interest element of my award, it must provide Miss E with a tax deduction certificate if she asks for one;
4. rework Miss E's account as if any missed payments (if there were any) were suspended during the period of the dispute so that no adverse payment information is shown on her credit file; and
5. pay Miss E £200 in recognition of her distress and inconvenience due to its handling of her claim

My final decision

My final decision is that I uphold this complaint. To settle it, I require Santander Consumer (UK) Plc trading as Santander Consumer Finance to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 22 July 2024.

Niall Taylor
Ombudsman