

## **The complaint**

X complains the car they acquired financed through a conditional sale agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance, wasn't of satisfactory quality.

X is represented in this complaint by legal counsel, S.

## **What happened**

X acquired a used car financed through a conditional sale agreement with Santander they signed on 29 January 2021. Shortly after X took delivery of the car, they experienced problems, and it was repaired in June 2021. X experienced further problems with the vehicle in June 2022 and May 2023. The car broke down in September, so X raised a complaint with Santander.

Santander organised an independent inspection. In its final response it said the inspection did not find the faults to be present or developing at the time of purchase due to the mileage covered and so did not uphold the complaint. X brought the complaint to this service.

X and S provided additional evidence including a diagnostic report of an oil sample from the vehicle. Our investigator acknowledged there was a fault with the vehicle but concluded there wasn't any evidence to show which parts had failed so didn't recommend upholding the complaint. X didn't agree and asked for a decision from an ombudsman.

## **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.

First, I've seen that X and S have made numerous points in support of X's complaint. I know I've summarised it in far less detail and in my own words and I trust X won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it to reach the right outcome.

In considering what is fair and reasonable I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. X's conditional sale agreement is a regulated consumer agreement and as such this service can consider complaints relating to it.

Santander, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to X. Whether or not it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it. Satisfactory quality also covers durability which means that the components within

the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors. If I am to decide the car wasn't of satisfactory quality, I must be persuaded faults were present or developing at the point of supply. Faults that developed afterwards are not relevant, moreover even if the faults reported were present at the point of supply this will not necessarily mean the car wasn't of satisfactory quality. This is because a second-hand car might be expected to have faults.

The car supplied was used, around four years old with approximately 44,000 miles on the clock.

*Is there a fault with the vehicle?*

I'm persuaded there was and currently is a fault with the vehicle. I say this because job sheets from June 2021 indicate the engine required a service replacement. I also note that more recently in 2023/4 an independent inspector, R, and a third-party garage, T, indicated there is engine failure. R concluded there is a fault with the vehicle but was unable to identify it specifically. It said:

*"...based on the visible evidence we would conclude that we were able to identify faults with the vehicle as we found when a boost pack was applied and when attempting to start the engine from cold the engine would not start and the engine would just crank over."*

On its job sheet T said:

*"Suspected timing belt failure. Vehicle will not run. Need engine to be stripped".*

*Was the fault present or developing at the point of delivery?*

It's not clear to me when X took delivery of the vehicle. The agreement was signed in January 2021 and in its complaint to Santander dated 1 December 2023 S said X took delivery of the car in May 2022. But I believe X actually took delivery of the vehicle between January and June 2021. From the manufacturer's garage job sheet, it is evident that in June 2021 the car engine failed and a service engine replacement was required. This was paid for under warranty and I think it likely that at that time faults had been present or developing at the point of delivery and the car wasn't of satisfactory quality. It was repaired with the engine replaced after 43,980 miles. The business is entitled to one opportunity to repair.

So, it's left for me to decide if this repair failed or are there other faults with the vehicle that were present or developing at the point of delivery that may indicate the car wasn't of satisfactory quality when supplied. Neither party has provided conclusive evidence of the nature and cause of the vehicle's current faults.

In June 2022 X took the vehicle in for repairs to the Exhaust Gas Recirculation (EGR) cooler and Diesel Particulates Filter (DPF) which required replacement. The vehicle mileage was 68,161. When the engine failed in 2021 a service engine was installed. The invoice states that the ancillaries were swapped over to the new engine. Both the EGR cooler and the DPF would be considered ancillaries, so it doesn't appear these were replaced in June 2021. Nor is there any indication of problems with these at that time. It's not clear to me these problems were present at the point of supply.

In May 2023 the car was recovered as exhaust was blowing and a new EGR pipe was fitted. The garage confirmed the fault was rectified.

The vehicle broke down again in October 2023. S told this service that T advised the timing chain had failed. But according to T's job sheet, as I mentioned above, there is a suspected

timing *belt* failure. The timing chain and timing belt are not the same. An engine would have one or the other. They are made from different materials and timing chains last significantly longer than timing belts. The latter being considered a serviceable item. I note from the June 2021 invoice the mechanic said “*removed top timing cover to inspect timing chains...*” so it appears X’s vehicle had timing chains not a timing belt. I’ve also seen a statement that the new engine came complete with timing chains. It is possible T meant timing chain not belt, but this does render T’s evidence less reliable to me. And even if T did mean timing chain this was only a suspected fault. It concluded the engine needed to be stripped.

S provided a diagnostic report of an oil sample from the car and high levels of aluminium and iron were found in the sample. The report lists the components of the car across four categories - engine, transmission, gear and hydraulic - which might be the source of metals present in the oil. For aluminium and iron contamination there are several components across all four categories. But the results don’t state specifically the source of the metal in the oil from X’s car nor whether there was a fault at the time of delivery. In addition, I note that the car has been serviced with regular oil changes and has driven about 20,000 miles between services.

In its response to our investigator’s view S has argued the car wasn’t of satisfactory quality based on the replacement engine not being durable. It said:

*“There is no cogent information anywhere which supports the life span this specific model of vehicle or any vehicle diesel engine, having been regularly maintained, being expected to fail after 2-3 years and 45,000 miles. Equally there is no information anywhere which supports the following internal engine components being expected to fail after 2-3 years and 40,000 miles: Cylinder Liners, Rings, Crankshaft, Camshaft, Pistons, Thrust Bearings, Turbo bearings, Main Bearings.”*

I do understand the point S makes but the oil sample analysis wasn’t able to locate the source component of the contamination. So it’s not clear to me which component from the list above, if any, has failed.

The independent inspection noted the vehicle wouldn’t start even when a boost pack was applied. The report said:

*“There was an oil leak noted towards the offside of the engine at the rear, dripping onto the exhaust system and a heavy oil stain towards the nearside engine undertray.  
With the current evidence available to ourselves at the time of inspection the customer has completed 46,103 miles within 952 days from the time of purchase to the time of our inspection and as such we would consider that the faults identified would not have been developing at the time of purchase.”*

The inspector has only been able to identify that there is a fault and has said it would not have been developing when X acquired it based on the number of miles X has driven. As I mentioned above it’s not clear to me when X took delivery of the vehicle but when it was inspected X had had the car between two and two and a half year so had driven the car significantly above average mileage. So a degree of wear and tear would have occurred but I’m not able to say how much.

Based on the evidence I’ve seen I’m unable to say the current faults were present or developing when the car was supplied and that it wasn’t of satisfactory quality. I accept it is possible the current engine problem is related to the original repair. But it is also possible it’s not.

In its submissions before and after our investigator's view S believed the fault is related to known manufacturing issues.

I do understand there may be known issues with certain vehicles or engines, but my role is to look at the circumstances of this complaint as it relates to X's specific car not the model or engine in general. I haven't seen any evidence or indications on any of the job sheets or inspections that confirms X's car is an affected car or that directly links its current problems with known manufacturer issues. There are no outstanding recalls on GOV.UK affecting X's registration number.

One issue raised by S is related to a recall (non-UK) on the timing chain for X's model. In the information provided by S it's not clear to me when this timing chain issue was discovered by the manufacturer though an internet search of its technical service bulletins appears to confirm the issue was known to the manufacturer as early as 2018 and instructions for repair were communicated again in 2019. So it is possible the engine replacement, which included timing chains, in June 2021 took account of this, though I can't say for sure. S has concluded the timing chain failed at around 45,000 (mileage since the replacement engine was installed) and so had failed prematurely likely because of inadequate lubrication due to oil dilution. But as I mentioned earlier the only related evidence I've seen is from T, referring to suspected timing *belt*. I haven't seen enough evidence to persuade me the timing chain has failed.

S also told this service that the manufacturer, *"the retail dealer network and the retail motor industry in general will be well aware vehicles fitted"* with this specific engine *"have some engineering challenges affecting the ability to complete the burn off of soot in the [diesel] particulate filter."* S said X's vehicle is an affected vehicle. It said when the DPF becomes full regeneration is triggered which burns off the soot and oil dilution is a side effect of higher-than-expected active regeneration. It said this then affects the lubricating properties and can cause a number of issues including timing chain stretch/failure and engine failure. I haven't seen evidence confirming X's car is affected by this issue but I'm not disputing this is a possible explanation for the faults with X's vehicle. In its response to our investigator S also outlined an explanation as to why soot was present in the oil sample as well as the metallic shavings (aluminium and iron) and related this back to the DPF. I do understand the possible causal chain S has described and I'm not disputing it is a possibility. But we are an evidence-based service. I haven't seen any evidence outlining exactly what the fault is, nor whether it was present or developing at the point of supply. I'm not persuaded there is enough evidence for me to say what caused the car to fail and breakdown so I'm not able to say which aspect of the car has failed and/or is not durable.

Based on the evidence I've seen I'm unable to say the car wasn't of satisfactory quality when supplied and I won't be asking Santander to do anything further.

I understand X will be disappointed with my conclusions. Nothing in this decision prevents them from pursuing the complaint through the courts. Although of course this would come with other costs and risks.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 6 May 2025.

Maxine Sutton

**Ombudsman**