

## **The complaint**

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

## **What happened**

In August 2023 Mrs W was supplied with a used car through a conditional sale agreement with Santander. She paid an advance payment of £2,500 and the agreement was for £37,915 over four years; with 48 monthly payments of £421.50 and a final payment of £15,183. At the time of supply, the car was around five years old and had done 65,633 miles.

Mrs W said on the way home from collecting the car she noticed the air conditioning wasn't working. She took it to a local main dealer who repaired the air conditioning (the supplying dealer later paid for this). It also inspected the car and reported, amongst other things, an oil leak from the rear of the engine, and a whistling noise from the turbo. It said both required further investigation.

Mrs W arranged a further investigation. This was carried out in March 2024 and reported the car was low on oil despite Mrs W topping it up just eight days previously. It found excessive oil was passing through the turbo, and suspected internal damage due to oil loss from turbo.

Mrs W complained to Santander after the supplying dealer refused to pay for repairs or further investigation. Santander arranged for an independent inspection.

The independent inspection concluded that the car had suffered from a turbocharger failure, and this had drained the oil level, causing increased soot accumulation in the turbocharger. The report said further stripping of the engine was needed to confirm this, but it said it was supported by the frequent oil top ups, and the symptoms displayed.

It said that the DPF blockage and the EML being on were likely to be a consequence of the turbocharger failure.

It said that whilst confirmation was required, it suspected that the fault was deemed to have been developing at the time of sale. This was because the fault was first reported by an independent manufacturer specialist approximately 1,000 miles after it was supplied to Mrs W, and there was no evidence that they were caused by wear and tear.

Mrs W told Santander she wanted to reject the car given the length of time that had passed since she reported the issues to the supplying dealer.

Santander said that Mrs W had complained about noise from the engine, the engine management light, a minor oil leak, and a slight whistle from the turbo. They arranged for an independent inspection, and based on the report's conclusions, agreed to arrange and pay for repairs. They said they would consider allowing Mrs W to reject the car if these repairs failed.

Mrs W was unhappy with this response. She was unhappy with the length of time that had passed before the supplying dealer agreed to do repairs, and she had lost faith in them. She said she wanted to reject the car. So she referred her complaint to our service for investigation.

Our investigator said he was satisfied that there was a fault with the car, and that it was likely to have been developing at the point of sale. He said that due to the time that had passed it was fair and reasonable that Mrs W be able to reject the car.

Santander didn't agree with the investigator and provided reasons why from the supplying dealer. It said it disagreed with the findings of the independent inspection, and that the report suggested further investigation was required. It also said the delay in repairs ignored a genuine dispute over liability for the repairs.

Because Santander didn't agree, this 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mrs W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mrs W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mrs W 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.

The issue I need to decide in this case is whether the car was faulty, and if so, when did this fault develop.

I've seen a copy of the independent engineer's report dated 21 May 2024. He found that the turbocharger had failed. He also explained that this was the likely cause of the problems Mrs W had described. So I'm satisfied that the car was faulty.

I've seen the earlier reports. The report from March 2024 suspected internal damage had been caused by the oil loss from the turbocharger. And the report from an independent manufacturer specialist in August 2023 identified a whistle from the turbo.

The independent report in May 2024 also confirmed the presence of a "*whistle from the turbocharger*".

The engineer expressed his view that because the independent manufacturer specialist had inspected the car "*approximately 1,000 miles following sale indicating that the turbocharger was displaying a whistle*" he considered that "*this fault would have been in the stages of development at the point of vehicle sale*".

I acknowledge that the independent engineer said that the car would need stripping to confirm the actual cause of the turbocharger failure. But he also said that in his view there were:

*"no faults we consider to have developed due to wear and deterioration solely within the ownership of the current client", and*

*"we consider that the turbocharger failure has caused for (sic) the consequential damage to the DPF and EML illumination".*

So, based on the engineer's conclusions, supported by the earlier report from the independent specialist, and Mrs W's description of the issues she's had since she got the car, I'm persuaded that it's more likely than not that the faults were developing at the time of sale.

## **Putting things right**

Section 23 (2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must – (a) do so within a reasonable time and without significant inconvenience to the consumer*

Thinking about Mrs W's rights under the CRA, I don't think a repair would be appropriate. I say this as this situation has been going on for several months.

The supplying dealer told Santander that the delay was due to a "*genuine dispute regarding liability for the repairs*".

I've carefully considered that comment. Mrs W reported the issues to the supplying dealer within six months. But it told her to obtain evidence that the fault was present at the point of sale. In March 2024 Mrs W provided evidence that the car was using too much oil and this was related to a faulty turbocharger. But the supplying dealer referred her to the warranty provider and told her to get a full diagnostic report – despite the onus being on it, or Santander, to show that the car was of satisfactory quality at the time of supply.

I don't deny the right to dispute liability, but I think the supplying dealer could have investigated the problems Mrs W reported in February 2024. And Mrs W had to wait four months before the dealer finally agreed to inspect the car.

So, in this case, I don't think the repairs were done "*within a reasonable time*". The delay also caused "*significant inconvenience*" to Mrs W. I say that because she had to buy another car, and borrow other vehicles to carry out her normal family life.

I'm persuaded that, in these circumstances, Mrs W should be able to reject the car.

Mrs W told us she stopped using the car in March 2024 and the mileage remains the same as on the independent inspection – 72,109 miles. I've seen nothing to suggest Mrs W was advised to stop driving the car. But given the failures noted in the report, and the engineer's comment that running the engine could cause further consequential damage, I don't think that was an unreasonable decision. So, I think it would be fair for Mrs W to receive a full refund of the payments she's made for the period after March 2024.

### Costs

Mrs W incurred costs for diagnostics and repairs to the car. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Santander reimburse these costs. Mrs W told us the supplying dealer paid for the work done in August 2023. Santander should reimburse Mrs W the cost of other reports and diagnostics – if she can provide proof of payment, such as a receipt or bank statement.

Mrs W asked if she could be reimbursed the cost of keeping the car insured whilst she wasn't using it. I won't be asking Santander to pay that cost as Mrs W was legally required to keep the car insured whilst it was in her possession

### Distress & Inconvenience

Mrs W has described the inconvenience caused by being supplied by a car that wasn't of a satisfactory quality. This disrupted her daily family life, including transporting her children to normal daily activities. So, I think Santander should pay her £300 in compensation to reflect the distress and inconvenience caused. I understand Santander has already paid £200 to Mrs W so they need to pay her an additional £100.

Therefore, Santander should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mrs W;
- remove any adverse entries relating to this agreement from Mrs W's credit file;
- refund the £2,500 deposit Mrs W paid (if any part of this deposit is made up of funds paid through a dealer contribution, Santander is entitled to retain that proportion of the deposit);
- refund the payments Mrs W has made from 1 March 2024 until the agreement is ended;
- on production of receipts, refund Mrs W costs for diagnostics and other reports not already refunded as explained above;
- apply 8% simple yearly interest on all refunds set out above, calculated from the date Mrs W made the payment to the date of the refund<sup>†</sup>; and
- pay customer an additional £100 (a total of £300) to compensate her for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If Santander considers that tax should be deducted from the interest element of my award, they should provide Mrs W with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

### **My final decision**

For the reasons explained, I uphold Mrs W'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 Mrs W to accept or reject my decision before 4 June 2025.

Gordon Ramsay  
**Ombudsman**