

The complaint

Mr L complains that Santander Consumer (UK) Plc supplied him with a car that wasn't of satisfactory quality under a conditional sale agreement.

What happened

In July 2023, Mr L acquired a used car financed by a conditional sale agreement from Santander. The agreement set out that the cash price of the car was £35,048. Mr L paid a deposit of £3,000 and the remaining amount, including interest, was to be repaid by 60 monthly repayments of £687.10.

Soon after taking possession of the car Mr L reported a number of issues to the supplying dealership. These included problems with the sunroof, infotainment system, cruise control, error messages, various cosmetic issues and a smell coming from the engine when driving.

The dealership took the car back to complete various repairs and by September 2023, these issues were remedied. Although Mr L says the smell from the engine was never investigated.

At the end of February 2024, Mr L raised a complaint with Santander to say that the engine in the car required replacement. Mr L also raised a claim with his warranty provider to cover the costs of the repair work, but it declined to cover the costs. Santander didn't uphold the complaint. This was because it said there was no evidence to suggest the problems with the engine were present or developing at the point of supply.

Our investigator didn't recommend the complaint be upheld. He didn't think there was any persuasive evidence to suggest the car wasn't of satisfactory quality when it was supplied.

Mr L didn't agree. In summary, he said he raised the issue of the smell from the engine within a few days of taking possession of the car. He said that a diagnostic report had shown there were historic fault codes stored in the car's computer which pre-dated his ownership.

The complaint has been passed to me for a 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.

Mr L acquired the car under a conditional sale agreement and our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mr L entered into.

The CRA implies terms into the agreement that the goods that are supplied are of satisfactory quality. Santander is the "trader" for the purposes of the CRA and is responsible for dealing with a complaint about the quality of the car that was supplied.

The CRA says that the quality of the goods is satisfactory if they meet the standard a

reasonable person would consider satisfactory – taking into account the description of the goods, the price and all other relevant circumstances. I think the other relevant circumstances in this case include the age and mileage of the car at the point of supply.

The car supplied was used and around 6 years old. There is no clear evidence to show exactly how many miles the car had covered at the point of supply, but it appears to have been around 35,000 to 37,000 miles. It had a cash price of £35,048. What would be considered satisfactory would therefore be considerably different if Mr L had acquired the same car brand new and at a greater cost.

There is no dispute that the car requires a new engine. However, just because the engine has failed it doesn't automatically mean the car wasn't of satisfactory quality when it was supplied to Mr L.

While Mr L has provided a breakdown report, an estimate for the cost of replacing the engine and a conclusion from a garage that confirms the engine requires replacement, none of these sources have explained why the engine failed.

I note that Mr L's warranty provided declined to cover the cost of repairs because there was "*no sudden mechanical failure*". It says it reached this conclusion following receipt of a diagnostic report on the cause of the engine failure. On referring to the warranty terms it says the following was not covered: failure "*caused by wear and tear, normal deterioration or negligence*". So, it seems the diagnostic report on the cause of the engine failure must have likely concluded that one of those three was the cause.

I've not seen that diagnostic report. I think it's also worth highlighting that Mr L has not provided anything by way of diagnostics or inspections carried out by a garage between October 2023 and March 2024. Yet, he made his complaint to Santander and warranty claim concerning a replacement engine prior to any of the visits to the garages he has told us about. It seems likely he did take it somewhere else, but where and what the conclusions of that garage were are unclear. However, it seems the warranty provider was not persuaded that garage's conclusions indicated an inherent mechanical or durability problem with the engine.

Based on the evidence that has been provided, I don't have anything persuasive to demonstrate that the car wasn't of satisfactory quality at the point it was supplied.

Mr L says that he reported a smell from the engine a few days after taking possession of the car and the dealership has not provided any job cards showing it completed any work to resolve that issue. While I agree that no job card has been completed for that, Mr L did not report that problem again until around 5 months later and after he had covered around a further 15,000 miles. I think if the dealership hadn't looked to resolve any issue with a smell (or it was a significant issue), Mr L would have noticed it again much sooner, if not immediately.

Mr L has also said that this smell issue is linked to the engine failing now. However, I've not seen anything persuasive to support that conclusion. The two issues could just as easily be entirely unrelated.

Finally, Mr L has provided a print-out of some fault codes that were stored on the car's computer. He says these pre-dated his ownership of the car. However, the print-out doesn't confirm when the fault codes first appeared nor does the mechanic confirm when they first appeared, other than to say they were 'historic'. But even if I was satisfied that these fault codes were present prior to Mr L taking possession of the car, these on their own would not be enough to say the car was of unsatisfactory quality. Just because there are historic fault

codes it doesn't mean those faults are still present (the codes might simply have not been cleared after being fixed). Further, I've not seen anything to demonstrate that they are linked to the engine failure Mr L has now experienced.

I appreciate the cost of replacing the engine is a significant financial burden. However, I've not seen anything to persuade me that the car wasn't of satisfactory quality when it was supplied to Mr L. Mr L was able to cover almost 20,000 miles in the car while in his possession (the car having covered close to 60,000 miles in total) and I've not seen anything to show that the engine failure was unexpected or due to it not being reasonably durable. I therefore don't think Santander needs to do anything to put things right.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 December 2024.

Tero Hiltunen
Ombudsman