

The complaint

Mr B complains that the car he acquired financed through a conditional sale agreement with Santander Consumer (UK) Plc wasn't of satisfactory quality.

What happened

In August 2022 Mr B acquired a used car financed through a conditional sale agreement with Santander. Mr B said that on 24 July 2024 the car suffered a head gasket failure with no warning which has irreparably damaged the engine. He said the car needs a new engine which effectively wrote it off. He said he couldn't contact the dealer as it had gone into administration. So he contacted Santander.

Mr B said Santander gave him the choice to exit the agreement for around £900 which he felt was unfair but reluctantly agreed and requested voluntary termination on 25 July 2024. Mr B said the collections department from Santander then told him he was liable for the rest of the finance totalling over £9,000. He complained to Santander.

In its final response Santander said it couldn't uphold Mr B's complaint because the issues occurred after the first six months of purchase and the vehicle would need to be repaired by Mr B or for him to voluntarily terminate the contract. Mr B wasn't satisfied and brought his complaint to this service. He said this situation came as a complete shock. He said the advisor told him the best thing Santander could do was collect the car, auction it as a non-runner where it could fetch anywhere between £3,000 and £5,000 and he would be liable for the difference.

Our investigator concluded that the vehicle wasn't of satisfactory quality when supplied and Santander should put things right. Santander didn't agree and asked for a decision from an ombudsman. It made some additional comments to which I have responded below where appropriate.

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 agree with the conclusions reached by the investigator for the reasons I've outlined below.

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. Mr B'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 Mr B. 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. The car that was supplied to Mr B was about four years old and had been driven for approximately 55,000 miles. 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 depend on several factors.

If I am to decide the car wasn't of satisfactory quality, I must be persuaded faults were present 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 from wear and tear, but this will not necessarily mean the car is not of satisfactory quality.

Mr B no longer has the vehicle as he voluntarily terminated the agreement so to make my decision I must rely on existing evidence. I'm persuaded there is a fault with the vehicle. Mr B provided a diagnostic invoice which confirmed an engine fault and coolant leak and that the remedy is a new engine. The car failed at 71,653 miles.

With sufficient maintenance the engine on the model of car Mr B acquired would be expected to last beyond 100,000 miles so I must consider if the car was durable. Mr B said he completed some wear and tear repairs and the car had a full service history. At the time of writing the investigator's view, the car was for sale. I've listened to the call between our investigator and the selling dealership who confirmed the car had been serviced in September 2023, September 2022, July 2021 and October 2019. It was due a service in the September after the engine failed. I'm persuaded the vehicle was well maintained. I've looked at the MOT history of the vehicle, it passed the MOT a month before the engine failed. There were no advisories related to the engine.

There is no independent inspection of the vehicle so I must rely on Mr B's testimony and the diagnostic job card from 25 July. The job card says:

Coolant pipe to radiator (top hose) is hot to touch, however coolant pipe (bottom) hose is stone cold – suspected thermostat failure may have caused damaged the internals of the engine. This is therefore causing the engine to burn coolant out the tail pipe of the exhaust. Coolant is boiling and pushing out the expansion bottle cap.

Where the evidence is incomplete, inconclusive or contradictory I must reach my decision on the balance of probabilities - in other words what I consider is most likely considering the available evidence and the wider circumstances. I don't think it reasonable the engine on this vehicle should fail at 71,653 miles and I think it likely the car wasn't of satisfactory quality, specifically, not reasonably durable.

In response to our investigator's view Santander said

We work under the perimeters of the Consumer Rights Act 2015 which states if a vehicle is outside of six months the consumer must provide evidence that the fault first occurred within six months... Mr B hasn't been able to provide any proof that there were issues with the vehicle within six months.

And in its final response to Mr B dated 8 August Santander said:

Whilst we can appreciate the difficulties you have been experiencing with the vehicle the Consumer Rights Act states that after the first six months of purchase, the responsibility lies with the consumer to prove that the faults were inherent at the time of purchase. In order to pursue this matter further, we need evidence from an independent source that the goods were not of satisfactory quality at the point of

sale, such as an independent inspection carried out by a qualified technician, or motoring organisation.

I accept the burden of proof lies with Mr B when the fault occurred after six months have passed. From the evidence I've seen Santander only informed Mr B he would need an independent inspection by a qualified technician after he had already voluntarily terminated the contract and incurring the costs associated with this.

Mr B told this service that when he contacted Santander he was given only two options – either to carry out the repairs himself or to voluntarily terminate the agreement as a non-runner. The car failed on 24 July and the date of the diagnosis invoice is 25 July. I've seen a copy of an email from Mr B to Santander confirming he wanted voluntary termination on 25 July at 4.26pm. Santander acknowledged receipt of this on 26 July. So it doesn't appear Santander gave Mr B any opportunity to provide an independent inspection which might confirm the fault and if it was present or developing at the point of sale. I haven't seen any evidence it explained this is what might be needed in order for Santander to allow him to reject the car or for it to pay for repairs.

In Santander's final response it repeated that Mr B only had two options –

Further to this, faults of the vehicle have occurred after the first six-months of purchase and the options would be to either carry out the repairs yourself or voluntary termination the agreement as a non-runner.

I don't think it fair or reasonable to expect him to provide this as the car was collected and sent to auction so wasn't available to him to organise such an inspection. And I'm persuaded Santander hasn't acted fairly by not giving him the opportunity to provide an independent inspection before he terminated the agreement.

Santander also said one would expect the vehicle to have suffered wear, tear and deterioration and Mr B had had the car for just under two years before any issues have been raised. It said

A fault like this (the coolant and the head gasket) would have occurred much earlier into the agreement.

As I explained above, goods should be durable and last a reasonable period of time. A problem with engine failure with relatively low mileage, absent any obvious warning signs through services or MOTs, might not show itself for some time even though it might be an inherent problem, including beyond the first six months of ownership having only been driven in total approximately 71,000 miles (approximately 16,600 by Mr B). Engine failure is a major problem and with this relatively low mileage, shows itself not reasonably durable. A reasonable person would not normally expect the engine to fail at this point. And as I explained above the car was serviced and maintained and there were no MOT advisories related to the subsequent failures.

I'm persuaded the car likely had an inherent fault and was not sufficiently durable. And so I believe it wasn't of satisfactory quality at the point of sale and Santander must put things right.

Putting things right

Mr B has had reasonable use of the car up until it failed so I don't think it fair to ask Santander to refund payments up to then. Payments made after this date must be refunded due to loss of use. Mr B explained to this service this situation has caused him distress

including having to buy another car as he felt he didn't have a choice but to voluntarily terminate. Mr B also incurred costs related to the diagnosis of the faults which I think it fair Santander refund.

To put things right Santander Consumer (UK) Plc must:

- end the agreement with nothing further to pay;
- refund Mr B's deposit/part exchange contribution of £3,822.27;
- refund the customer all rentals/payments for the period from 25 July 2024 to the date of settlement;
- refund the customer £84 for the diagnosis report;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £200 for any distress or inconvenience that's been caused due to the faulty goods;
- remove any adverse information from Mr B's credit file in relation to the agreement.

My final decision

My final decision is I uphold this complaint and Santander Consumer (UK) Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 February 2025.

Maxine Sutton
Ombudsman