

The complaint

Mr M's complaint is that a car supplied to him under a conditional sale agreement with Santander Consumer (UK) Plc ('Santander') was mis sold to him and not of satisfactory quality. He has asked Santander to take the car back and to provide a full refund, to repay the costs he has incurred in testing the car, replacing brake discs and servicing it.

When I refer to what Mr M has said and what Santander has said, it should also be taken to include things said on their behalf.

What happened

The background to this complaint was set out in my provisional decision dated 12 November 2024. I've set out below in italics what I provisionally decided and why. This forms part of my final decision.

"On 21 May 2022 Mr M was supplied with a used car through a conditional sale agreement ('CSA') with Santander. The cash price for the car was £36,999.00. Mr M paid a deposit of £10,000.00 and under the CSA, a total amount of credit of £26,999.00 was provided, with total interest charges of £6,280.60. Including the deposit, the total amount payable by Mr M under the CSA was £43,279.60, which was to be paid via 60 monthly instalments of £554.66. At the time of supply, the car was 4 years old, and had covered 44,152 miles.

Mr M says he was told at the point of supply that the car had a full manufacturer's service history, and he would not have entered into the CSA without that assurance.

Two days after the car was supplied a mechanic employed by Mr M noticed that a rear brake disc was cracked and rusty. Mr M purchased two new brake discs and had them fitted to resolve this problem, as he believed it would be quicker for him to fix it rather than take it back and wait for the dealer to do so.

Mr M says that in June 2023 a warning message came up on the car's vehicle monitoring system as follows: "Service B overdue by 23,900 miles"; he has provided a screenshot to confirm this. He says he checked the car's oil and oil filter and discovered metal fragments in both, and this indicated that the engine had suffered serious damage over a prolonged period of time or miles.

On 12 September 2023 Mr M emailed the dealer and said:

"Just to confirm this [car] was delivered to me with the rear brake discs cracked which I replaced at my expense plus when the service light come on.... I serviced the car with my mechanicThere was metal fragments in the oil and oil filter which suggests engine damage. This car hasn't been serviced for 23,000 miles. The documentation doesn't match up the service history ... I haven't driven this car for three months due to the engine damage. The vehicle still starts and drives okay but I'm too scared to drive it because of all the metal fragments in the oil.."

The dealer refuted his claims and advised him to contact Santander. Mr M notified Santander of the issues and asked for a full refund. They said they would investigate but would need evidence to demonstrate that the car was faulty before they could make a final determination. Mr M called Santander on 28 September; he said that he would have the car inspected, and oil analysed and that a full report would be provided once this had been done. He arranged for the car to be inspected by a third party. This took place on 5 October 2023 and the third party (an independent garage) said they had found small particles of metal fillings within the engine oil. They suspected the engine wear was due to lack of maintenance and a poor engine oil change and said:

“Service overdue on dash 24,900 miles. Customer advised to send sample of engine oil to labs for testing.”

Mr M provided this statement to Santander but he did not send the engine oil for laboratory testing and he did not provide a ‘full report’ on it.

On 8 November 2023, Mr M referred his complaint to this service.

Santander arranged to have the car inspected by a firm of consulting engineers. This took place on 29 November 2023; the consulting engineer’s report, dated 8 December 2023 said, amongst other things, that:

“The vehicle has covered some considerable mileage since point of sale and the condition does not appear to be a manufacturing defect which would be a primary concern for durability, in our view sufficient time has elapsed for such a condition to have solely developed in the period of the higher [sic] without being affected by durability aspects.”

And:

“It is our opinion there is clear evidence of metallic debris within the oil system as this was evident upon the engine oil dipstick. The cause for this is usually rubbing contacts between two metal parts and the most common is big end bearing wear. If indeed the vehicle has not been serviced for over 24,000 miles, this could also account for the condition seen.”

And:

“The oil, in our opinion, would require laboratory testing in order to confirm or refute if indeed the vehicle has been serviced.”

On 12 December Santander wrote a final response letter to Mr M. Relying on the consulting engineer’s report, they rejected his complaint.

One of our investigators reviewed Mr M’s complaint and issued his view on 26 February 2024. He said that based on the evidence provided he was unable to say the issues with the car were present or developing at the point of sale, and so he did not uphold the complaint.

Mr M did not agree with this; on 3 June 2024 Mr M advised our service that he was going to take legal action and therefore the case was closed. However, in July 2024 the case was reopened at Mr M’s request, and a second investigator reviewed Mr M’s complaint. She issued her view on the complaint on 25 September 2024; she said, in brief, that there was not sufficient evidence to prove that the issue with the car was present or developing at the point of supply, and therefore she too did not uphold Mr M’s complaint. Mr M did not accept this view, and therefore this matter has been referred to me for final determination.

What I’ve provisionally 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.

Where evidence has been incomplete or contradictory, I've reached my provisional 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. Mr M 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.

Complaint handling

Before I explain why I've reached my provisional decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Mr M has complained about how Santander handled and responded to his complaint and the impact he says this had. But complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Santander handled Mr M's complaint hasn't been considered as part of my decision.

Was the car mis sold?

A misrepresentation is, in very broad terms, a statement of fact or law made by one party to a contract which is untrue, and which induces the other party to enter into that contract.

Mr M's complaint is that he was told by the dealer prior to the point of supply that the car had a full manufacturer's service history; he says that without this assurance he would not have entered into the CSA. Mr M claims that the car's service history has been falsified or not been completed correctly and, as a result, the car was mis sold.

Based on his evidence, I'm satisfied that Mr M did make an enquiry to the dealer about the car's service history before entering into the CSA; and I think it's more likely than not that he was told the car had a full-service history, and that he relied on this statement of fact before entering into the contract. So, if what he says he was told was in fact incorrect, then this would suggest that the car was mis sold. I discuss this further below.

Was the car of satisfactory quality?

The Consumer Rights Act 2015 ('CRA') covers agreements such as the one Mr M 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 Mr M 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.

In this case, it's been clearly established that the car had a fault with its engine as evidenced by the discovery of metal fragments in the engine oil. That is confirmed in the report from

consulting engineers commissioned by Santander and in a statement from an independent garage, obtained by Mr M.

However, the time that a defect first manifests itself is an important consideration when applying the provision of the CRA to the quality of the car. The CRA implies that if the fault occurs within six months of supply, then the onus is on Santander to demonstrate that the car supplied was of satisfactory quality. Where the threshold of six months has passed, then that responsibility would fall to the consumer. Here the fault with the engine was found more than 13 months after the date of supply. Therefore, the onus is on Mr M to prove his complaint about the engine failure by providing persuasive supporting evidence. In this case, I do not think Mr M has done that; I'll explain why.

Overdue service warning

As regards the overdue service warning on the car's dashboard, this is not in my view conclusive. One might reasonably expect the car's electronic service record to be updated when the car was serviced but a failure to update it doesn't mean that the service itself has not been undertaken. One might also expect the overdue service warning to have been on display before Mr M says he first noticed it in June 2023. However, Mr M has said that because he had not done much mileage this would explain why it took time for the warning to appear.

Mr M said the motor sales company that purportedly serviced the car on 21 April 2022 do not perform such services. So, we asked them if they had actually serviced the car and they confirmed to one of our investigators that they had done so. They also confirmed that they do service vehicles, and the sale of this car to the dealer who supplied it to Mr M was conditional upon the car being serviced. When asked if they had updated the electronic service record, they said it may not be possible to do so unless a scheduled service is due. In this instance they said they serviced the car 5,000 miles after the last service, so they thought this may explain why the service record was not updated. Examination of the service records confirms that prior to this service, a "Service B" had been undertaken on 7 May 2021 at 39,888 miles, and that the next service, a "Service A" was due on 7 May 2022 at 55,388 miles. This is consistent with the motor sales company's explanation, as it appears that the car was not due a service until May 2022, whereas the service was actually undertaken in April 2022, after 44,149 recorded miles.

Santander has provided details of all services which they say were undertaken since the car was first registered in 2018. On examination, the service records provided appear to be reasonably comprehensive. The car appears to have been serviced in March 2019 and March 2020 by dealers approved or appointed by the manufacturer; services undertaken in May 2021 and April 2022 by others appear to have used only manufacturer's recommended parts and materials and to have been performed in accordance with the manufacturer's recommended service intervals. I have seen no persuasive evidence to suggest that the records are false or that a service as recommended or required by the manufacturer was missed or overdue at the point of sale. So, on balance I don't think I have sufficient evidence to say the service records have been falsified or that they were materially incorrect at the point of sale or that the car was mis sold in any material respect.

Metal particles in engine oil.

The consulting engineer confirmed that: "if services were not done as recorded this may account for the damage to the engine". Their recommendation was that:

"The oil, in our opinion, would require laboratory testing in order to confirm or refute if indeed the vehicle has been serviced."

Unfortunately, no laboratory testing has been undertaken. Mr M told Santander in September 2023 that he would provide a full report on this, but he did not do so. He has said that the Consulting engineer should have had the oil tested, but for the reasons explained above, the onus here is on Mr M to do so.

I note that the consulting engineer said that:

“As we were unable to identify when the fault occurred, we cannot confirm if the fault was present or in development at the point of vehicle sale.”

However, they also said that in their view sufficient time had elapsed from the date of supply for such a condition to have:

“.... solely developed in the period of the hire without being affected by durability aspects”.

Given the opinion of the consulting engineer, I think that Mr M's failure to service the car within 13 months after the point of delivery may well have contributed to the damage found, notwithstanding the relatively low mileage recorded post supply.

The consulting engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

Damaged brake disc

Mr M said that the damage to the brake disc is evidence that the car was not in satisfactory condition at the point of supply. He also said that this proved that the car had not been serviced as represented to him at the point of supply.

It is perhaps unfortunate that Mr M did not report the alleged defect to the dealer when he discovered it, or that it did not prompt him, given his background as a mechanic, to make a further inspection of the car, which may have led to the discovery of the issues with engine, if indeed they were present at that time.

I think it's most likely that the brake disc damage would have occurred before the point of supply. Even if so, given that this fault was rectified by Mr M any right to reject the car within 30 days of supply, under the CRA was lost.

A statement from Mr M's mechanic refers to discs being cracked and rusty:

“...due to excessive mileage far beyond their capability...”.

Mr M says this is evidence that the service recorded as being undertaken in April 2022 was not undertaken. However, I note that at the point of supply the car had covered 44,152 miles; and, on 28 January 2022 the car passed its annual MOT test with a recorded mileage of 42,001. The MOT certificate also records that the car's mileage when tested on 25 January 2021 was 32,017, which is consistent with the mileage recorded in the service records. So again, I can't say that this statement conclusively evidences that the service records are false. Whilst it is probable that the brake disc was defective or damaged at the point of supply it could simply have been missed when the car was serviced.

In conclusion, I am not satisfied that the evidence presented demonstrates that services to the car reported as done were either not done at all or were not completed correctly; and /or the records of the service have been falsified or are otherwise incorrect.

My provisional finding based on the evidence presented is that I am unable to say the car was mis sold or was of unsatisfactory quality at the point of supply.”

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.

My provisional decision was issued and sent to the parties on 12 November 2024. The covering letter asked Mr M and Santander to make any final points or to provide any further information by 26 November. Santander did not respond. Mr M responded on 12 November. He said he wished to complain about the way he'd been treated: he didn't think that the case had been handled properly and he said it had taken too long to publish the decision. He also disagreed with the findings and asked for all of the evidence that Santander had provided with regard to his complaint to be sent to him. This was done on 18 November. Thereafter our investigator wrote to Mr M and his representative on 6 December to confirm that if no further information was provided by 13 December, a final decision would be issued. Since then, there has been no further correspondence and no further information has been provided. As such, Mr M's comments didn't change my view about this complaint and no new evidence was provided. Given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

My final decision

For the reasons explained, I don't uphold Mr M's complaint about Santander Consumer (UK) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 February 2025.

Michael Hoggan
Ombudsman