

## The complaint

Miss S's complaint is that a car supplied to her under a Conditional Sale Agreement ("CSA") with Santander Consumer (UK) Plc ("Santander") was of an unsatisfactory quality. She has asked that Santander take the car back, cancel the CSA and refund her money.

When I refer to what Miss S 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 25 February 2025. I've set out below in italics what I provisionally decided and why. This forms part of my final decision.

*"On or about 28 November 2023 Miss S entered into the CSA with Santander to finance the purchase of a second-hand car. Under the CSA ownership of the car was vested in Santander and the car was hired to Miss S until all payments due under the CSA had been made. The cash price for the car was £14,000.00; the amount of credit provided was £13,719.37, and Miss S paid a deposit of £280.73. Under the CSA, Miss S was required to repay the credit, plus interest of £3,975.45, in 48 monthly instalments of £368.24 each. The total amount due and payable was £17,975.45. At the time of supply, the car was around five years old and had travelled 41,997 miles.*

*On 1 December 2023 the supplying dealer carried out an MOT, replaced the battery and offside front door handle cover. On 29 January 2024 the dealer replaced a noisy wheel bearing free of charge, the mileage at this time was 44,366 miles. On 25 April 2024 Miss S took the car back to the dealer again as she could hear a loud knocking noise. They stated this was an early sign of engine failure, and they estimated it would cost approximately £7,500.00 to replace the engine with a new unit from the manufacturer.*

*On 2 May 2024 Miss S called Santander and made a complaint. She wished to return the car due to the problems with the engine. Santander agreed to investigate her complaint and Miss S agreed that the dealer, to whom the car had been returned on 25 April, could strip it down and verify the faults with it.*

*The dealer reported back to Santander and their findings are summarised in the final response letter ("FRL") sent by Santander to Miss S on 10 July 2024. It's not necessary for me to repeat everything they said but in summary they said that they had found evidence of damage to a piston; that they removed injector number 3 and looked down the bore with a bore scope and found a significant crack in the cylinder block. They suspected the piston had caused the damage to the block resulting in engine failure, and that the car would require a new engine. They recognised that it was their responsibility to evidence that the fault with the car was not present at the point of sale and to do so they referred to three documents which they say proved that the car was not faulty at the point of sale: first they referred to a 76-point check pre-sales inspection including an oil and filter change which they said was undertaken on the 14 October 2022; second they referred to the MOT undertaken on 1 December 2023, which they said included a standard emissions test which was passed;*

*and third they referred to the replacement of a wheel bearing on 29 January 2024; they said that on all three occasions the car was driven with no fault present. They concluded by saying that as the car had travelled 5,134 miles since the point of supply this would not have been possible with a failed piston and cracked cylinder block.*

*After hearing from the dealer Santander issued its FRL.*

*They summarised what the dealer had told them and concluded by saying that after a “full review and investigation” into the points raised they were unable to uphold Miss S’s complaint “due to the vehicles age and mileage covered, we cannot hold the dealership liable for the repairs”.*

*Nevertheless, Santander refunded Miss S £1,474.56 “to cover the time spent without the use of the vehicle while it was being inspected by the supplying dealership”.*

*Miss S was unhappy with this response, so she referred her complaint to our Service for investigation.*

*One of our investigators reviewed her complaint; she said that based on the evidence and information provided, she did not think the car was of satisfactory quality when it was supplied, in particular, that it wasn’t reasonably durable. And, as the car was not of satisfactory quality when supplied and Miss S did not want to continue with it, she should be able to reject the car.*

*Santander didn’t agree with our investigator. They more or less repeated what they had said in the FRL: they referred to the 76-point presale inspection and said no faults were found; they said that because of the age and mileage of the car at the time of supply it would be expected to have suffered some wear, tear and deterioration; that based on information provided by the dealer, the cylinder no3 piston had failed and broken down, which meant the engine would need to be replaced; and that it was highly unlikely the car was sold with this fault as:*

*“..this would have been apparent within days of purchase not months.”*

*Because Santander didn’t agree with our investigator, this matter has been passed to me to make a final decision.*

### ***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 also 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. In this case, Miss S was supplied with a car under a conditional sale agreement, which is a regulated consumer credit agreement which means this Service can consider this complaint.*

*The Consumer Rights Act 2015 (“CRA”) covers agreements such as the CSA Miss S entered into. Under the CSA, there is an implied term that the goods supplied will be of*

satisfactory quality. And, in certain circumstances there is a right for consumers to reject unsatisfactory goods.

#### Satisfactory quality

*In this instance, it's not disputed there was a problem with the car, but it's disputed whether the problem was present or developing when the car was supplied to Miss S. I therefore need to consider whether the car was of satisfactory quality when it was supplied.*

*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 Miss S 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 fact here is that within 5 months after delivery the car's engine failed and needed to be replaced. 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 within 6 months after the date of supply. Therefore, the onus is on Santander to prove that the defect was not present or developing at the point of supply by providing persuasive supporting evidence. In this case, I do not think Santander has done that; I'll explain why.*

#### Evidence presented

*I have looked carefully at the evidence presented by Santander. In cases such as this, before reaching any conclusion it is good practise to have the car examined by an independent expert who would inspect the car, report on the problems, their likely cause and remedy.*

*In its FRL, Santander told Miss S that it had undertaken a "full review and investigation" before making its decision, but they had not: they simply relied on what the supplying dealer told them.*

*I note that the 76-point pre-sale inspection that Santander rely on was reportedly undertaken in October 2022, over 13 months prior to the date of supply. If so, this would also call into question its relevance and, as we have not seen it, its scope is also uncertain. As our investigator pointed out, to identify the cause of engine failure the dealer would have to strip the engine with specialist tools (which is reportedly what was done in May 2024) and no evidence has been presented to suggest that this was done during the course of that inspection.*

*In its response to Santander, the dealer said that they had attached a copy of this inspection report. On 18 September 2024, our investigator wrote to and asked Santander to provide a copy of it. On 5 November 2024, she wrote and asked again but Santander didn't respond. On both occasions she noted that she hadn't received any independent evidence, and on 18 September 2024 she said it was usual in cases such as this and Santander may wish to*

*consider obtaining an independent inspection, as this would seem to be “the fairest approach” but Santander did not respond.*

*Relying on the dealer’s comments, Santander also said that when each of the 76-point inspection, the MOT and the wheel bearing replacement were undertaken, the car was driven without any faults and as the car had travelled 5,134 miles since the point of supply this would not have been possible with a failed piston and cracked cylinder block. But the car clearly had faults that required work which was undertaken after the inspection and MOT took place and there’s no independent evidence to confirm the status of the piston or engine block at any point.*

*Moreover, there is no evidence to suggest that the fault with the engine was one of a catastrophic nature which might result in an immediate failure. The fact that Miss S was able to return the car to the dealer when she heard a knocking noise, which the dealer referred to as an “early sign of engine failure” [emphasis added] suggests that the fault was more likely than not a slowly developing fault which would manifest itself over time, and that was why it was necessary to strip the engine down to find it. And this would also explain why Miss S was able to travel over 5,000 miles since the point of supply. The prior issues with the car would also call into question whether it was of satisfactory quality at the time of supply or not, irrespective of the issues with the engine.*

*In conclusion, for the reasons explained above, I cannot be satisfied that that the evidence presented demonstrates that the defects with the car and in particular with the engine were not present or developing at the time of supply.*

#### **Durability**

*I also agree with our investigator’s comments on durability. Her view was that the car was not of satisfactory quality when it was supplied to Miss S and in particular that it wasn’t reasonably durable as evidenced by the damage to the engine caused by piston failure. The fact that this occurred within five months from the date of supply, when the car had done less than 50,000 miles, leads me to conclude, that more likely than not, the car was not sufficiently durable at the point of supply and therefore was not of satisfactory quality.*

*My provisional finding based on the evidence presented is that the car was not of satisfactory quality at the point of supply.*

#### **Putting things right**

##### **Impaired Usage**

*Miss S was able to use the car while it was in her possession; Because of this, I think it’s only fair that she pays for this usage. So, I won’t be asking Santander to refund any of the payments she made prior to the car being returned to the dealer for inspection and repair on 25 April 2024.*

##### **Distress & Inconvenience**

*However, it’s clear that Miss S has been inconvenienced by having to return the car and thereafter not being able to use it. Had Santander supplied her with a car that was of a satisfactory quality, she would not have suffered such distress and inconvenience. I think Santander should pay her £250.00 in compensation to reflect the distress and inconvenience caused.*

*Therefore, I intend to ask Santander to:*

- *end the CSA with nothing more to pay;*
- *collect the car at no cost to Miss S;*
- *remove any adverse entries relating to the CSA from Miss S’s credit file;*

- refund the £280.73 deposit Miss S 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 any payments made under the CSA in the period after 25 April 2024 when the car was returned to the dealer for inspection;
- apply 8% simple yearly interest on the refunds, calculated from the date Miss S made the payment to the date of the refund\*; and
- pay Miss S an additional £250.00 to compensate her for the trouble 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 Miss S with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.*

### **My provisional decision**

*For the reasons explained, I intend to uphold Miss S's complaint. And I intend to ask Santander Consumer (UK) Plc Limited to follow my directions above."*

### **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 both parties on 25 February 2025. They were each asked to make any final points and/or to provide any further information by 11 March 2025.

Miss S replied on 26 February and accepted the decision. Santander replied on 11 March and said it did not have anything else to add.

Having considered this claim, and the responses of both Miss S and Santander to my provisional decision, I have reached broadly the same conclusion as set out in my provisional decision. That is, due to the issues with the car, Miss S had the right to reject the car. Therefore, I uphold this complaint, and Santander is responsible for putting things right.

### **Putting things right**

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Miss S was able to use the car while it was in her possession; because of this, I think it's only fair that she pays for this usage. So, I won't be asking Santander to refund any of the payments she made prior to the car being returned to the dealer for inspection and repair on 25 April 2024.

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Therefore, Santander should:

- end the CSA with nothing more to pay;

- collect the car at no cost to Miss S;
- remove any adverse entries relating to the CSA from Miss S's credit file;
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### **My final decision**

For the reasons explained, I uphold Miss S's complaint about Santander Consumer (UK) Plc, and I require it to carry out the remedy set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 22 April 2025.

Michael Hoggan  
**Ombudsman**