

The complaint

Miss P complains that a car acquired under a conditional sale agreement with Santander Consumer (UK) Plc (Santander) wasn't of satisfactory quality when it was supplied to her.

What happened

In February 2023, Miss P acquired a used car from a dealership (D). She paid a deposit for the car, with the balance of the purchase price being provided by Santander under a conditional sale agreement. The car was five years old and had covered approximately 64,000 miles when the agreement started. The agreement was for 60 months, and the cash price of the car was £13,095.

Miss P has said she noticed a rattling and tapping noise coming from the engine in June 2023. She took the car back to D, who serviced it and said they couldn't find anything wrong with the engine. Miss P has said the rattling noise was still audible a week later, but D weren't willing to look at it again as they said there wasn't anything wrong with the engine.

In September 2023, Miss P's car stopped working on the motorway. She called a roadside assistance company, who diagnosed a suspected timing belt issue. Miss P had the car towed back to D, who gave her an estimate of approximately £10,500 to repair the car. At this point, the car had travelled just over 68,500 miles.

Miss P wasn't happy about this and complained to Santander. Santander arranged for an independent inspection of the car – this happened in October 2023. The inspection report concluded that the car wasn't working, and it suggested that the timing belt had most likely failed. The report concluded that it didn't think the fault would have been present when the car was supplied to Miss P. Because of this, Santander didn't uphold her complaint.

Miss P brought her complaint to our service. Our investigator upheld it. She thought the evidence provided from both parties suggested the car wasn't suitably durable at the time Miss P acquired it, and therefore it wasn't of satisfactory quality. The investigator said Miss P could reject the car and the agreement should be ended. She said Miss P should get her deposit back and all monthly payments made after September 2023 should be returned to Miss P. She also said Santander should pay Miss P £200 for the distress having a car of unsatisfactory quality had caused.

Miss P accepted this. Santander didn't really respond to the points our investigator made, other than to suggest the timing belt wasn't due to be changed, as per the manufacturer's email to Miss P.

As Santander didn't accept, it's been passed to me to decide.

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.

As the conditional sale agreement entered by Miss P is a regulated consumer credit agreement this service is able to consider complaints relating to it. Santander are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Miss P entered. Because Santander supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Miss P's case, the car was used and had covered approximately 64,000 miles when she acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

Our investigator has explained that she thinks the car wasn't of satisfactory quality when it was supplied to Miss P. I agree in this case. There is no doubt that the car has a serious fault – the inspection and reports carried out confirm that to be the case. And I'm persuaded, from what I've seen, that the car wasn't of satisfactory quality when it was supplied to Miss P. I'll explain why.

Santander agreed to arrange an independent inspection of Miss P's car, and it is this inspection report that they have relied upon to determine that it was of satisfactory quality when it was supplied to her. The mileage of the car was recorded as 68,861 when the inspection took place.

Whilst I appreciate Santander didn't have to arrange this report, as Miss P had brought her complaint about the quality of the car to them outside of the first six months, I'm pleased to see that they did arrange it to try and help. However, I don't think the report is that persuasive in this case. The report does confirm that the engine is turning over very quickly, and the car isn't starting, which would suggest there's an issue with the timing system – but it also confirms that the timing belt itself wasn't able to be viewed during the inspection. The report also confirms that the engine would need to be stripped to confirm the exact cause of the problem, and in turn to help confirm liability for the fault. Finally, the report confirmed that the technician didn't feel the fault could have been present at the point of supply and that it 'appears to be wear and tear' since the car was acquired.

I'm not persuaded that this assumption can be made without an inspection of the timing belt taking place. I appreciate that, had the timing belt snapped suddenly, then it more likely than not would have taken place after the car was supplied to Miss P. But the evidence Miss P has supplied doesn't support that, and that is most persuasive here.

Miss P hasn't been able to provide any evidence from D that the engine was making a rattling and tapping noise in June 2023, other than an email from D in September 2023 saying they remembered a conversation about the car. But she has been able to provide an inspection report from an independent garage in November 2023, who have stripped the engine to look at the problems. The report confirmed that the '*wetbelt had missing teeth causing timing misalignment*' and that subsequent damage to the car has been caused to

the camshaft lobes and valves.

Miss P has also said that she received a notification from the manufacturer in January 2024 telling her that the car had a recall notice on it. I've looked at this recall notice on the manufacturer's website, and it confirms that Miss P's model of car is being recalled as the timing belt teeth are missing. This recall notice is consistent with the inspection report Miss P obtained in November 2023, which confirmed the belt had missing teeth – and I'm more persuaded than not that the belt missing teeth, or starting to lose them, is what led to the initial engine rattling and tapping that Miss P said she could hear in June 2023.

Miss P has also provided an email from the manufacturer that explains the expected lifespan of a timing belt for this model of car. The manufacturer has said it would expect a timing belt to need to be replaced after 75,000 miles, or after six years, whichever happened sooner. Miss P's car had covered approximately 68,500 miles when the engine stopped working and was under six years old. When I consider this information, along with the information supplied from Miss P's inspection report and the recall notice from the manufacturer I'm satisfied the car wasn't as durable as Miss P should have expected it to be when it was supplied to her. So, it follows that I'm satisfied the car wasn't of satisfactory quality at the point of supply.

Ordinarily, Santander should be given the opportunity to arrange for a repair to the car. But I don't think that is economical in this case. The quote to repair the damage caused by the failing of the timing system has been estimated at approximately £10,500 – which is only slightly lower than the cash price of the car when Miss P entered the agreement. I don't think it would be reasonable to expect repairs of this magnitude to be done. Because of that, I've decided that Miss P can reject the car, meaning Santander should take it back and end the agreement.

Miss P hasn't been able to use the car since it stopped working in September 2023, and she has continued to make her monthly payments. Santander should refund all payments made from September 2023. However, I'm satisfied that Miss P had full use of the car up to that point – the mileage covered certainly suggests that – so Santander can keep all the monthly payments made prior to September 2023.

Miss P has also explained the impact having to pay for a car she hasn't been able to use has had on her. It must have been difficult for her, and she has had to find alternative ways to get to and from work and continue with her life at work and at home, whilst continuing to make her monthly contribution to the agreement. She has suffered distress and inconvenience through that time, and Santander should pay her £200 to reflect this.

It's clearly been a challenging time for Miss P and her disappointment of being supplied with a car that wasn't of satisfactory quality has been made clear. However, I hope this decision allows her the space to put this behind her and look to move forward with things.

My final decision

For the reasons above, I'm upholding this complaint. Santander Consumer (UK) Plc must:

- End the agreement with nothing further for Miss P to pay;
- Collect the car (if this has not been done already) at no further cost to Miss P;
- Refund Miss P's deposit of £99;
- Refund Miss P's monthly payments from September 2023 to the date of settlement as she had stopped using the car at this point;
- Pay 8% simple interest on all refunded payments, from the date of payment until the date of settlement;*

- Pay Miss P £200 to reflect the distress and upset she's been caused due to the car not being of satisfactory quality when it was supplied to her;
- Remove any adverse information from Miss P's credit file in relation to this agreement.

*If Santander Consumer (UK) Plc consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss P how much they've taken off. They should also give Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 2 August 2024.

Kevin Parmenter
Ombudsman