

The complaint

Mr C complains about the quality of a car Santander Consumer (UK) Plc supplied to him under a conditional sale agreement.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint and how I thought the dispute should be resolved. I've reproduced my provisional findings below, which form part of this final decision.

My provisional decision

In early February 2023 Mr C entered into a conditional sale agreement with Santander so he could get a Range Rover 2.0L Diesel he'd seen at a dealer "P". The car was five years old at the time, and its mileage stood just under 34,000. It had a cash price of £38,771, to be repaid over 48 monthly payments of £672.62, with a final lump sum payment of £17,624 due at the end of the term.

Unfortunately, in mid-August the car suffered an engine failure, diagnosed as being caused by a snapped timing chain. The failure wasn't covered by the warranty on the car and Mr C faced a repair bill of nearly £10,000. He didn't think the feel the car was of satisfactory quality and complained to Santander.

Santander obtained a report from A, an independent engineer. A noted the car's mileage was by that point just over 45,000. It said the car had a fault in the form of the engine not starting, and that the problems were consistent with a failed timing chain. A advised further investigation to establish the root cause, but concluded that the fault if had identified would not have been present or developing at the point the car was supplied to Mr C. On this basis, Santander said it wasn't liable to Mr C. Mr C was unhappy with Santander's response and referred his complaint to us.

Our investigator noted the obligations implied into the contract by the Consumer Rights Act 2015 ("CRA"); particularly that there was a duty to ensure the car was of satisfactory quality. He wasn't persuaded that the evidence suggested he should uphold the complaint. The investigator felt that A's report pointed towards the car being of satisfactory quality when it was supplied. And he considered the problems with the car were down to a lack of general maintenance, such as the car not being serviced in accordance with the manufacturer's specified intervals, rather than a lack of durability.

Mr C didn't accept the investigator's conclusions and asked for this review.

What I provisionally decided – and why

Because Mr C acquired the car from Santander as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 ("CRA"). One effect of the CRA is that the sale agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by

reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Mr C's claim is that the car Santander supplied to him failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm fully aware the car was not new. The standard a reasonable person might expect from it would be lower than for a car that was new. Buying a used car carries some inherent risks, not least of which is that sooner or later items will need repair or replacement. That said, the overall mileage of the car was not particularly high for a five-year-old car. Bearing this in mind together with the price attached to the car, and the general expectation of durability suggests that one might expect such a car not to fail in the way it did only a few months after it was supplied.

I've noted what our investigator said about the service history of the car. But I don't think that points away from a lack of durability. The car's service record shows it was last serviced (at a Range Rover dealership) in March 2020, having covered 12,396 miles at the time. The recommended service intervals would be something known to P, as should the impact a lack of regular servicing and oil changes might have on the condition of the car when supplied. If the timing chain failed due to the failure to have the car serviced properly, then it seems to me more likely than not that this was a situation that existed when the car was supplied to Mr C, rather than something that only arose during his brief use of it.

That conclusion doesn't run contrary to A's report, which simply expressed an opinion as to whether the current fault – the snapped timing chain – was present when supplied. I don't think anyone has suggested it was; Mr C hasn't argued that the car had a failed timing chain when he acquired it. His case is that the timing chain should not have failed at the age and mileage of the car, and thus it must have done so because of an underlying problem.

That ought to have given Santander cause to review what was in A's report. A's report was based on the condition of the car at the time it was carried out. It noted the fault with the car and concluded that this could not have been the case when the car was supplied. But while A didn't give any indication of the possible cause of the fault, it advised that there should be further investigation into this. I can't see that Santander undertook any such investigation. Because of this, its response to Mr C's claim is based only on one aspect of A's report, which spoke only to the current condition of the car.

Given the timing chain failure's occurrence at only 45,000 miles and the relatively short period of Mr C's use, there was a clear line of enquiry that should have prompted further investigation. I'm not minded that Santander acted reasonably in concluding that, based on A's report, the car was of satisfactory quality when supplied. The report makes no supported commentary about the condition at point of supply, possibly because once the current problem was identified, no further investigation took place.

That isn't a criticism of the report itself. Rather, it's the way in which Santander appears to have placed greater weight on the conclusion that the timing chain hadn't failed at point of supply than it did on the possibility that the failure was merely a consequence of an underlying issue that was present at that point.

On balance I'm not currently minded to find that Santander has dealt fairly with the situation by declining Mr C's claim for the reasons it has. I'm also inclined to find that the

failure of what was a relatively premium-priced car after only just over six months is not something a reasonable person would be likely to consider indicative of satisfactory quality.

That the failure was down to a snapped timing chain speaks either to a defective part on the car or a lack of appropriate preventative maintenance before Mr C acquired it. I don't need to establish which of these applies; both are indicative that the car was supplied to Mr C in a state that fell some way short of being sufficiently durable. It follows that I intend to conclude that the car was not of satisfactory quality when Santander supplied it to Mr C.

Putting things right

Noting the remedies available to Mr C under the CRA¹, Mr C ought to have been entitled to exercise his right to require repair of the car at no cost and without significant inconvenience to him. It's unclear to me what the current position is with the car, other than that it has a valid MOT and as such, is presumably now back up and running.

If Mr C has arranged for the repairs to be carried out at his own expense, then subject to him providing receipted documentation for this, Santander should reimburse him in full. If, on the other hand, Mr C no longer has the car and incurred only limited costs such as diagnostic testing, then a different remedy would be more appropriate. Such a remedy might include treating the car as having been rejected (a timely repair not having been undertaken) and reimbursement of sums paid other than a deduction for the use Mr C did have of the car.

I'll take this opportunity to ask Mr C to provide details, supported where possible by evidence, that will enable me to set out in my final decision which of these represents an appropriate resolution.

Whichever remedy is appropriate, I recognise that Mr C has been put to material distress and inconvenience in his efforts to resolve matters with Santander. He has had to continue to pay significant monthly sums for a car that for an extended period he was unable to use. While such sums ultimately will have reduced the outstanding finance balance and as such I don't propose to treat them as a loss to Mr C, I don't doubt that this has added to his frustration and difficulty. To reflect this, I propose that Santander pays Mr C £400 as compensation for his distress and inconvenience.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional findings

Mr C accepted my provisional findings. He said he still had the car and had to pay over £10,000 to get it back on the road. We've asked Mr C to provide copies of any invoices or receipts for the payments he'd made to have the car fixed. However, at the time of writing he hasn't done so.

Santander didn't accept my findings. Its response read as follows:

"Unfortunately, we cannot agree with the findings for the below reasons

¹ Section 23 of the Consumer Rights Act 2015

1. *The vehicle was serviced by the dealership in 2022, and no faults were found, but the 2021 service was missed due to Covid 19.*
2. *The vehicle had an independent inspection carried out and no fault was found. A fault with the timing chain/engine would have been apparent right away, such faults are not intermittent.*
3. *[A] also stated the vehicle has covered 11,316 miles since purchase in six months [Mr C] has covered the yearly average, the engineers prospective [sic] is that the fault would not have been present or developing at the point of sale.*

Because of the above reasons we cannot agree with the findings and ask this complaint is referred to the ombudsman for their consideration.”

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'm not persuaded that Santander has said anything new or substantive that would lead me to reach any different findings. Based on what it has said, Santander has rather missed the point of the findings I set out in some detail in my provisional decision. Its response seems to have adopted much the same position as it did originally in respect of the weight I felt it had wrongly placed on certain aspects of A's report.

The issue at hand in this case is not whether the fault identified in A's report – the timing chain failure – was present or developing when the car was supplied. It is, as I believe I made clear in my provisional decision, a matter of whether the car (which includes all aspects of the engine design and operation) was sufficiently durable such that a reasonable person would consider it was of satisfactory quality when supplied. For the reasons I've set out in my provisional decision, which I adopt in full in this final decision, I'm not persuaded the car Santander supplied to Mr C met that requirement.

Putting things right

Mr C has indicated he has already carried out repairs to the car, which I have to assume have been sufficient to ensure it conforms to contract. Under the remedies available to him in the CRA and at common law, he's entitled to be reimbursed by Santander for the cost of those repairs.

As Mr C hasn't provided us with the requested documentary evidence to show the repair work carried out or the sums he paid for that work, I can't state with any certainty how much Santander needs to pay Mr C. Instead, I require that in addition to paying Mr C the £400 compensation I mentioned for his distress and inconvenience, Santander must contact him to establish the costs incurred. On receipt of documentation showing the work and amounts paid, Santander must reimburse Mr C for all reasonable costs he incurred in making the car conform to contract.

My final decision

My final decision is that I uphold this complaint. To settle it, Santander Consumer (UK) Plc must, within 28 days of receiving Mr C's acceptance of this decision, take the following steps:

1. Pay Mr C £400 in recognition of his distress and inconvenience
2. Pay Mr C an amount equivalent to the sums he has evidenced as having incurred as

reasonable costs in order to have the car repaired so that it conforms to contract

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 December 2024.

Niall Taylor
Ombudsman