

## The complaint

Miss W complains about a car she acquired using a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance (“Santander”).

## What happened

In March 2023, Miss W entered into a conditional sale agreement with Santander for a used car. The car was around seven years old and had a cash price of £8,649. The car’s mileage at the point of supply was around 55,000.

Miss W says she began having some problems with the car in August 2023 as the engine light came on. She says she took the car to a garage who topped up the coolant and replaced the radiator. The car was returned to Miss W but she says the engine light came back on and so she took the car back to the garage. They advised her that the radiator was working fine but there appeared to be an issue with the timing belt.

Miss W took the car to an approved garage of the manufacturer in November 2023 who diagnosed an issue with the wet belt. The car was then inspected in the same month by the supplying dealership, who also diagnosed that the car needed a new wet belt. The dealership carried out the repair work in January 2024 and contributed just over £300 to the cost of this, billing Miss W for the remaining £522.81. The car’s mileage at this point was just under 60,000.

Miss W complained to Santander before the repair work was carried out as she was unhappy that there were issues with the car. Santander didn’t uphold the complaint. They said Miss W had taken the car to a third-party garage to have unauthorised repairs carried out. Santander said neither they nor the supplying dealership had any liability for faults or issues that developed after those repairs took place.

One of our investigators looked into what happened and recommended that Miss W’s complaint should be upheld. In summary, he felt the repairs carried out by the third-party garage had no link to the car subsequently needing a replacement of the wet belt. He felt the car wasn’t of satisfactory quality when it was supplied to Miss W, as he didn’t think it reasonable for her to expect that the wet belt had to be replaced so soon after she acquired the car, taking into account its age and mileage.

Santander disagreed having contacted the supplying dealership for their comments. The dealership said the third-party garage had misdiagnosed the fault and that the car wasn’t faulty at the time of supply.

As the matter remains unresolved, Miss W’s complaint was passed to me for a decision.

I issued my provisional decision on 26 November 2024, relevant extracts of which I include below.

*‘Santander supplied the car to Miss W under a regulated conditional sale agreement. Because of that, our service can consider complaints about the agreement and the goods, in this case the car. As the supplier of the car, Santander has an obligation to ensure it was of*

satisfactory quality – as set out in the Consumer Rights Act 2015 (“CRA”). Satisfactory quality is what a ‘reasonable person’ would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It’s reasonable in my view to note the car wasn’t new and had travelled around 55,000 miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same ‘as new’ showroom condition which it would have been when first supplied. But just because the car was used with some mileage, doesn’t mean that Santander had no requirements in relation to satisfactory quality.

It seems to me that Santander’s position is that Miss W isn’t entitled to a remedy under the CRA because she had the car repaired by a third-party garage. I don’t though agree with this. I do agree that Miss W should have reported the initial faults with the car to the supplying dealership for them to consider. However, there’s no dispute that the wet belt needed to be replaced and I’ve not seen anything particularly persuasive that the third-party garage contributed to this by carrying out repairs that weren’t needed.

The wet belt is, as far as I’m aware, a component of the car that isn’t linked to the radiator, so it seems unlikely that the repairs initially carried out then affected its operation. And I don’t think a reasonable person would expect a significant component such as this to need replacing on a car that had travelled less than 60,000 miles and after only around 5,000 miles of use. Nor do I think there is evidence to show that Miss W somehow caused the issue to occur with the wet belt.

On balance, I think it more likely than not that the car wasn’t of satisfactory quality when it was supplied to Miss W because of the issue with the wet belt. The fact she took the car to a different garage initially doesn’t negate that in my view. So, I think this entitles Miss W to an appropriate remedy to put things right.

The CRA sets out a number of possible remedies where goods were found to have not been of satisfactory quality. One of those remedies is to allow one opportunity for the goods to be repaired. The car has been repaired and Miss W has said that it’s running well. So the outstanding issue is whether I think Miss W is entitled to anything else to put things right.

Bearing in mind my findings around the car not being of satisfactory quality, I think that it’s fair and reasonable for Santander to refund Miss W the contributory payment of £522.81 she made to repair the car, and that interest should be payable on this amount.

Miss W didn’t have the use of the car between November 2023, when it was taken in by the supplying dealership, and January 2024 when it was repaired and returned to her. I think it unreasonable to expect Miss W to meet the costs of the monthly repayments under the conditional sale agreement while not having use of the car. So, any repayments Miss W made to the conditional sale agreement from November 2023 to January 2024 should be refunded to her with interest.

Miss W has said she incurred the following costs as a result of what happened with the car:

- £120 diagnostic fee.

- £99 diagnostic fee from the BMW approved garage – who diagnosed that the wet belt needed replacing.
- £83 for the car to be towed to the supplying dealership.

*I'm satisfied that the latter two costs are ones that flow directly from the quality issues with the car. So, I think Santander should refund these costs with interest on the proviso that Miss W shows them that she paid those costs, and when she paid them.*

*It's less clear that the £120 diagnostic fee relates to the wet belt issue, as there's nothing on the screenshot I've seen about this that indicates who charged this, and why. If this resulted from the issue with the wet belt, then it's reasonable for Santander to refund this cost, assuming of course that Miss W paid it. I would ask that Miss W sends me more detail on this cost and what it relates to in her reply to my provisional decision so I can consider whether this is a cost to be refunded.*

*I note our investigator recommended that Santander should refund Miss W with the cost of the repair to the radiator carried out by the third-party garage. I don't currently intend to direct Santander to refund this cost for a couple of reasons. The first is because Miss W should have taken the car back to the supplying dealership for them to inspect the car and I've not seen any particular reason why she was unable to do this. The second reason is because I've not seen any evidence that this work was carried out, what the cost of that work was or any details on why the repair needed to be carried out.*

*I also note that Miss W asked for £79.49 to be refunded in relation to a hire car cost. I understand this was for a family holiday that had been booked. Presumably though, Miss W always intended to use a car for this trip and that would have come at some cost, for example petrol costs. It's not clear to me whether Miss W used a hire car because she wanted the reassurance of being able to use a car, and that the car she was using until then was undriveable. With these things in mind, I currently don't intend on directing Santander to refund this cost.*

*I do though consider that being supplied the car that wasn't of satisfactory quality has caused Miss W some inconvenience. Being without the car, making arrangements with garages to determine the issue, are things that would have been inconvenient to her. In addition to what I've set out above, Santander should make an additional payment of £150 to Miss W.*

*If Santander has recorded any adverse information, such as missed or late payment markers, with the credit reference agencies that relates to this dispute, these should be removed'.*

I asked Miss W and Santander to provide me with any further comments or evidence that they wanted me to consider.

Miss W replied saying she agreed with my provisional decision. Santander didn't reply.

### **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 neither party has provided me with anything further to consider, I see no reason to depart from my provisional decision and what I proposed to resolve the complaint. So, for the reasons I gave in my provisional decision, which I have included above, I uphold Miss W's complaint.

## **Putting things right**

Santander will need to do the following:

- Refund Miss W the contributory payment of £522.81 she made to repair the car and pay interest on that at 8% simple each year, from the date she made the payment to the date of settlement.
- Refund Miss W any repayments she made to the conditional sale agreement from November 2023 to January 2024, and pay interest on that at 8% simple each year, from the date of payment to the date of settlement.
- Refund the diagnostic fees of £120 and £99, on the proviso that Miss W shows them that she paid those costs, and when she paid them, and pay interest on that at 8% simple each year, from the date of payment to the date of settlement.
- Pay Miss W £150 for the inconvenience this matter has caused her.
- Remove any adverse information, such as missed or late payment markers, with the credit reference agencies that relates to this dispute.

## **My final decision**

I uphold this complaint and direct Santander Consumer (UK) Plc trading as Santander Consumer Finance to settle the complaint in accordance with what I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 10 January 2025.

Daniel Picken  
**Ombudsman**