

## **The complaint**

Mr G complains that a new car he purchased with the assistance of finance from Santander Consumer (UK) Plc trading as Santander Consumer Finance has been misrepresented to him.

## **What happened**

Mr G made enquiries in July 2020 with a car dealership to purchase a used car with All Wheel Drive (AWD). Mr G looked at the used cars in person and selected a blue AWD used car which was priced at around £35,000. Mr G was attempting to negotiate the price and was advised by the salesman that a new vehicle would be a similar price as there were various promotions applicable to new cars. Mr G asked for further details and an email quotation was sent to him. Mr G decided to proceed with ordering a new vehicle which he was advised was available from stock.

Mr G discovered in February 2021 when he booked the car in for a service that the car that had been supplied to him did not have AWD. Mr G asked the dealership to swap his car for a like for like car in the same colour with AWD. This was not possible given the respective value of the cars without Mr G making an additional contribution. Mr G complained to Santander that the car had been mis-sold. Santander did not uphold Mr G's complaint because it said that Mr G was told that the car did not have AWD at the point of sale. Mr G didn't agree and brought his complaint to this service.

Our investigator looked into the complaint and thought that it should be upheld. They thought that Mr G's account was consistent with his complaint that he was specifically looking to purchase a car with AWD. They thought that the emails sent by the dealership, together with the other paperwork supported Mr G's testimony that he wasn't aware that the new car did not have AWD. They thought that Mr G should be able to unwind the agreement subject to Santander retaining the payments for fair usage.

Santander initially didn't agree and maintained that Mr G was told when the order was processed that the car did not have AWD. It later accepted the view of the investigator and agreed to unwind the agreement.

Mr G doesn't agree that Santander should be allowed to keep the monthly repayments. Mr G has provided various calculations which he says shows he will be out of pocket. The car that Mr G wanted with AMG is no longer available in the specification required and used car prices have increased so he would be unable to afford one if the agreement was unwound. Mr G suggests either a compensation payment or a swap of his car to a like for like replacement on the basis that he pays the difference in the list price of a car with AWD compared to one without.

As the parties have been unable to agree the complaint has 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.

The facts aren't substantially in dispute so I won't repeat them in detail in this decision but I will focus on giving reasons for my decisions.

Although Santander initially said that Mr G wasn't mis-sold the car it has now accepted the investigator's view that the car was misrepresented and the agreement should be unwound. I don't think I need to say much more about this aspect other than I agree with the investigator's view because it is clear from Mr G's testimony and the emails from the business comparing the new/used models that he was looking for an AWD car from the outset. He complained as soon as he discovered the issue and I don't think he would have gone ahead with the purchase of the new car if it had been clear that it didn't have AWD.

The issue between the business and Mr G is how this should be sorted out. The investigator has recommended that the agreement is unwound, subject to Santander retaining the monthly repayments made so far. Mr G is unhappy with this because he says he will be out of pocket. He has suggested a number of settlement options and he doesn't agree that Santander should be able to keep the monthly instalments.

The usual way to put things right for misrepresentation is to try to put the person back into the position they would have been in if the misrepresentation hadn't happened. There is no way to "retro-fit" the AWD and because of the changes in specification Mr G can't source the car he originally thought he was getting.

I can't ask Santander, as the finance provider to source a like for like car. It appears that this cannot be done without Mr G having the benefit of a significant improvement in his position. Mr G was never really able to obtain the car specification he wanted on a new car within his budget. The misrepresentation about the AWD was the likely reason he thought he was getting a better deal on a new car. It isn't fair or reasonable to put Mr G in the position he thought he was going to be in if the misrepresentation had been true. The only fair way to deal with matters is to unwind the agreement and put Mr G back where he was if the misrepresentation hadn't happened.

I also think it is fair that Mr G should pay for the use he has had of the car. The AWD hasn't materially affected Mr G's ability to drive or use the car and so I think that it is fair for Santander to keep the monthly instalments to reflect Mr G's use of the car. I agree that it has been a distressing experience for Mr G and I think that £200 would adequately reflect the trouble and upset of sourcing a new car together with a full refund of the deposit together with 8% simple interest. This means that Mr G has not lost the value of his deposit whilst he has been driving the car.

Mr G should get his full deposit back, the finance agreement should be unwound and removed from Mr G's credit file and the car collected at no cost to Mr G. Mr G will then be in a position to begin again with his search for a car that meets his requirements.

### **Putting things right**

1. End the finance agreement with nothing further for Mr G to pay and remove it from his credit file.
2. Collect the vehicle from Mr G at no cost.
3. Refund the total amount of the deposit together with 8% simple interest on the amount from the date of the agreement to the date Mr G gets it back.

4. Pay Mr G £200 compensation to reflect the trouble and upset caused.
5. Santander can retain all monthly instalments to reflect fair usage of the car.

**My final decision**

My final decision is that I uphold this complaint and Santander Consumer (UK) Plc trading as Santander Consumer Finance should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 April 2022.

Emma Boothroyd  
**Ombudsman**