

The complaint

Mr J bought a car with the aid of a loan provided by Santander Consumer (UK) Plc. He says that it did not have all the features he was told it would have. Because Santander provided the finance for the car, he says that it is equally liable with the dealership that sold it.

What happened

In January 2021 Mr J bought a used car from a dealership which I'll refer to as E. He paid a little under £14,500. Of that, £500 was an advance payment and the balance was paid to E by Santander, which in turn entered into a 60-month loan agreement with Mr J. Under the agreement he was to repay the finance at just under £300 a month.

Mr J says that, before he completed the purchase, he checked with the dealership that the car had certain safety features – including lane assist, front collision warning and lane departure warnings. It was not until he had taken delivery that he found out they were not included. He sought to reject the car and complained to Santander.

Santander did not accept that Mr J had been told that the car had the features he said he had wanted. His exchanges with the dealership did not show that; the individual with whom he had discussed the car no longer worked at E, so it was not possible to obtain their version of events.

Mr J referred the matter to this service where one of our investigators considered what had happened. He thought that E had misrepresented the car and that Mr J should therefore be entitled to reject it. Santander did not accept that, but also noted that, where goods are rejected, the seller can deduct from any compensation an allowance for any use the buyer has had of the goods. It noted that Mr J's mileage was relatively high and indicated that, based on a normal allowance of 0.25p a mile, this would amount to a deduction of £2,750. That was more than Mr J had paid by way of loan instalments.

Because the parties were unable to reach an agreement about this matter should be resolved, the case was passed to me for further consideration.

I thought it likely that I would reach a different conclusion from that reached by the investigator, so I issued a provisional decision. In that decision I explained that one effect of section 75 of the Consumer Credit Act 1974 is that, where goods are bought with a loan made under arrangements between the seller and the lender, a buyer who has a claim for breach of contract or misrepresentation against the seller has a like claim against the lender. I was satisfied that those conditions were met in this case. I therefore went on to consider whether Mr J had a claim for breach of contract or misrepresentation against E – and, therefore, against Santander.

I did not believe there had been a breach of contract. The additional features that Mr J had wanted were not mentioned in the sales contract. He was provided with the car that matched the description in the contract – in terms of make, model, registration, chassis number and mileage. Mr J had not said that the car was not of satisfactory quality – only that it lacked certain features he had expected it to have.

I then considered whether the car had been misrepresented. A misrepresentation is a statement of fact or law made by one party to a contract and which induces the other party into entering into the contract.

I noted that the evidence that Mr J had been told the car had the features he mentioned was limited. There was little other than his own recollection of telephone calls. The individual salesperson was no longer employed by E, but there was no mention of the specific safety features in WhatsApp exchanges.

I did observe however that the safety features Mr J wanted had been standard on his make and model of car since 2017. His car had been first registered in 2017 but it appeared it had been manufactured before the upgrade. It was therefore possible that both he and E had assumed it had been built to the newer specification.

I also noted that Mr J had had an opportunity to inspect the car before he bought it and, therefore, to check what features it had. So, even if he had been told that it had the safety features he required, it did not necessarily follow that he been induced by that into buying the car.

I also expressed the view that, even if Mr J were able to persuade me that he had a claim in misrepresentation, it would not be fair to allow him to reject the car. I noted that Santander had not supplied the car and was not its owner – in contrast to the position is a hire-purchase contract, for example. I suggested that a payment of compensation would be a fairer and more practical remedy than rejection. I said however that, on the basis of what I had seen, I did not intend to make any award.

Neither Santander nor Mr J had anything further to add in response to my provisional decision. Mr J said that he had provided everything he had.

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.

Since neither party has submitted any further evidence or arguments in response to my provisional decision, I see no reason to change my view.

My final decision

My final decision is that I do not require Santander Consumer (UK) Plc to do anything further to resolve this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 5 November 2021.

Mike Ingram

Ombudsman