

The complaint

Mr G complains that a car he acquired via a conditional sale agreement with Santander Consumer (UK) Plc was mis-sold to him.

What happened

In January 2019 Mr G saw an advertisement for a used car. The supplying dealer stated that its policy was to provide cars with at least six-months of a valid MOT and if there was less than six months left, then a new 12-month MOT would be provided. Mr G also says the car was advertised with other features such as electric wing mirrors and cruise control.

Mr G agreed to purchase the car and a conditional sale agreement for 48-months was arranged with Santander. The car was delivered to Mr G. Mr G says that at that time the car was under private plates and there was a delay before the V5 arrived showing the car's registration number.

Mr G says that when the car arrived it didn't match the spec as advertised, there were no electric wing mirrors or no cruise control. He says this was raised with the supplying dealer who made a payment of £150 in February 2019 as a gesture of goodwill.

Mr G says that the car was used by his son. In November 2019 Mr G's son was stopped by the police. Mr G says the police informed his son that there was no valid MOT on the car which could impact on the validity of the car's insurance. His son was also issued with a fixed penalty notice that carried an endorsement due to the tint in the windows being too dark. Mr G says the police told his son that a charge of dangerous driving could be considered in the future due to the condition of the windows.

Mr G was very upset to discover that there was no valid MOT and on investigating the matter discovered the MOT had actually expired around two weeks after he had acquired the car and that the dealer hadn't supplied it with a new MOT as per its policy. Mr G says the lack of MOT invalidated both his insurance and the warranty that had come with the car. He arranged for an MOT to be undertaken.

Mr G says due to concern about the car and what might happen to his son if he continued to use it in its current state led him to decide to voluntarily terminate the agreement. He says he had no choice but to do so.

Mr G complained to Santander about the mis-selling of the car with an MOT that was only valid for a few days as opposed to what he'd expected. He said he thought the car had come with a valid 12-month MOT.

Santander upheld his complaint about the MOT. It said the dealer accepted they had overlooked renewing it and had offered to cover the cost of a new MOT, but as Mr G had now returned the car it recommended Mr G contact the dealer for it to reimburse the cost of the MOT he had paid for.

Mr G was unhappy at Santander's response and complained to this service. Mr G

complained that the car had been mis-sold to him due to the lack of a valid MOT of at least 6 months and that the tints on the windows were too dark and so illegal. Mr G says he had no choice but to voluntarily terminate the agreement as he was afraid his son would be banned from driving if he continued to use it.

Our investigator didn't recommend Mr G's complaint should be upheld. He said that although the dealer had accepted that it had overlooked the MOT when supplying the car to Mr G, he didn't think this meant the car had been misrepresented. This was because Mr G wasn't induced to acquire the car based on a valid MOT being provided, our investigator said he thought Mr G would have purchased the car if he'd known that there was only a short time left on the MOT.

The supplying dealer had denied that the car had been supplied to Mr G with additional tints to the windows. Our investigator said he wasn't persuaded that the tints had been added before Mr G had acquired the car. The dealer had also said that Mr G had raised the lack of MOT in February 2019 and had received £150 compensation for that. Our investigator said that it was possible Mr G had been aware of the lack of MOT earlier than November 2019.

Mr G disagreed with the view of our investigator. He said that the £150 compensation had been paid for the car not having the electric wing mirrors and cruise control but not for the lack of MOT. He says he wasn't aware of the expired MOT or that the tint on the windows was illegal until his son was stopped by the police.

Mr G says that the lack of MOT meant the value of the car had depreciated because there was now a missing record and he had paid for insurance which for 10 months had been invalid.

As the parties were unable to reach an agreement the complain was passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. And where evidence is missing or contradictory then I have to decide what I think is the most likely thing to have happened.

It isn't disputed that the supplying dealer overlooked renewing the MOT at the time the car was supplied to Mr G. It also appears that it's accepted that the car should have been supplied with a valid MOT of either at least six months or a new one.

Santander has raised that MOT records are publicly available and so Mr G could have checked the MOT on the car when he'd acquired it. Mr G says that when the car was provided, the MOT only had 11 days left before it expired and as the car was supplied on private plates he had to wait for the V5 to arrive to learn the registration number for the car. He says this document didn't arrive until after the MOT had expired.

I don't know what was said to Mr G about the MOT by the supplying dealer. Mr G has said he thought the car had a 12-month MOT when he acquired it but also says he was relying on the advertised policy operated by the dealer. This policy said that all cars were supplied with an MOT of not less than six months and, when this wasn't possible, the MOT would be renewed. However, as I haven't seen that the MOT was actually discussed between Mr G and the dealership, I don't know why Mr G thought it was a new 12-month MOT in place

rather than one which was at least six months in length. Since I think it's likely the actual length of the MOT was unclear, I think it would have been reasonable for Mr G to have checked the MOT position once he was able to do so having received the V5. And, if he had done so, this would have mitigated the length of time the car didn't have a valid MOT in place.

However, I accept that even if Mr G had checked the MOT position earlier, he would have still been provided with a car that didn't have an MOT when it had been advertised as having one. There would also have been a period of time when the car had no valid MOT.

The dealer has raised that Mr G received £150 compensation for the lack of MOT in February 2019, however Mr G disputes that and says this payment was for a different reason. As I haven't seen any correspondence such as emails between the parties nor any notes that were made by the dealership that had been made at the time the offer of the £150 was made, I think it's likely the dealership has been mistaken about why this payment was made. I'm satisfied Mr G wasn't aware about the MOT not being valid until the police stopped his son around 10 months later.

For me to be satisfied that the car was misrepresented to Mr G due to the lack of the MOT then I would need to be satisfied that the supplying dealer had made an untrue statement of fact *and* that this had induced Mr G into entering the contract. Here although Mr G was under the impression the car came with a valid MOT, I don't think this was the reason he went ahead with the acquiring the car. I think it's more likely than not that if he had been aware the car needed an MOT then he would have still gone ahead. So, I don't think the test for misrepresentation has been met.

Mr G has also raised the tinted windows which he says were illegal. I've seen that Mr G's son was issued with a fixed penalty notice ("FPN") due to a modification with the car when he was stopped by the police in November 2019. And although the FPN doesn't specify it was for the windows I accept this was the reason it was issued.

However, I've seen that Mr G hasn't raised any complaint about the tinted windows with either Santander or the dealer. This does surprise me as Mr G says his son was told by the police that if he continued to drive the car in that condition, he could end up disqualified from driving. And Mr G says this was the reason he decided to terminate the conditional sale agreement. I think it's more likely than not if the car had been supplied to Mr G with additional tints to the windows that he would have immediately raised a complaint about those windows following the FPN being issued and the comments from the police. I think the police had been clear the windows were unacceptable and illegal when speaking with Mr G's son and issuing the FPN.

I've seen the supplying dealer states that no modification was carried out to the car. Mr G suggests the condition of the windows could be the reason the dealer didn't renew the MOT in January 2019. But I don't have any evidence that the dealer was aware that the car's windows had been modified and I don't think I can reasonably rule out that they were modified after Mr G had acquired the car. I don't have enough evidence to reasonably say the car was misrepresented to Mr G in respect of the illegally tinted windows.

So, as I have set out above, I don't think the car was misrepresented to Mr G, but I do think there was a breach of contract in regard to the MOT. In light of that I must now consider what would be fair redress in these circumstances.

Mr G says the invalid MOT rendered both his insurance and the warranty invalid and that the car has depreciated in value due to the missing MOT. He also says that it led to his son being stopped by the police.

While I accept Mr G's insurance could have been rendered invalid, fortunately there was no claim and so I don't know what action the insurance company would have taken. I appreciate learning you may not have cover when driving would be concerning but there hasn't been any actual financial detriment caused to Mr G. I also think, as set out above, that it would have been reasonable for Mr G to have checked the MOT position which would have reduced the length of time the car was without a valid one in place.

In regard to any depreciation in value of the car, I don't have any evidence as to that and I note Mr G chose to voluntarily terminate the agreement. I haven't seen any evidence he discussed other alternative options with Santander. I don't think I can reasonably say on the evidence I have, that the missing valid MOT caused Mr G any financial detriment and caused him to have no option but to terminate the agreement.

I appreciate Mr G's son being stopped by the police would have been distressing but it is possible the car was stopped over the windows rather than the lack of MOT. Also, Mr G's son, not being a party to the agreement isn't someone I can consider in respect of any compensation from Santander.

I've seen that the supplying dealer had originally offered to cover the cost of the car's next MOT, but Mr G no longer has the car. The supplying dealer therefore then offered to cover the cost of the MOT undertaken by Mr G. And I agree with Santander that this was a fair resolution and so I think Santander handled Mr G's fairly by upholding his claim and confirming the cost of the MOT would be covered. And I'm not asking it to do more.

For the reasons set out I'm not upholding Mr G's complaint.

My final decision

As set out above, I'm not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 July 2022.

Jocelyn Griffith
Ombudsman