

The complaint

Mr H complains about the quality of a car he acquired under a conditional sale agreement with Santander Consumer (UK) Plc (Santander).

When I refer to what Mr H has said, and Santander have said, it should also be taken to include things said on their behalf.

What happened

On 29 March 2022, Mr H entered into a conditional sale agreement with Santander to acquire a brand-new electric car. The cash price of the car was around £32,568. There was an advance payment of around £6,500. Mr H's monthly repayments on the agreement were around £321 over a 48-month period. Followed by one payment of around £12,119.

Mr H said that, when he was viewing the car at the supplying dealership, the driving range per battery charge was shown on the windscreen, and he said that he emphasised to the salesperson, that he needed the 250-mile range. Mr H said that the salesperson confirmed the range, but after Mr H used the car for 13 days, and charged it four times during this period, he couldn't obtain the 250 miles range. He said this caused him "range anxiety", so he wanted to reject or exchange the car for another electric car with a longer driving range as he felt that the one supplied to him was not fit for purpose. He said that the supplying dealership told him that there was nothing wrong with the car, so he complained to Santander.

On 17 May 2022, Santander wrote to Mr H and didn't uphold his complaint. They said the reason for this was because the independent inspection, completed on 10 May 2022, found no fault with the battery charging to its capacity of 250 miles.

Mr H was not happy with this, so he referred his complaint to our service. The car in question has since been traded in, so to put things right Mr H would like Santander to compensate him for the losses he incurred.

Our investigator thought that the car wasn't mis-sold, but she was of the opinion that, on balance, the car wasn't of satisfactory quality at the point of supply.

Mr H agreed with the investigator. But Santander disagreed. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 4 August 2023. In the provisional decision I said:

'What I've provisionally 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. But I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Mr H acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Santander is the supplier of the goods under this type of agreement and can be liable if the goods provided weren't of satisfactory quality or if the supplier misrepresented the car or the finance at the point of sale.

Mr H said that when he was viewing the car at the supplying dealership, the driving range per battery charge was shown on the windscreen. He said that he emphasised to the salesperson, that he needed the 250-mile range. Mr H said that the salesperson confirmed the range, but after Mr H said that in cold charging overnight, he reached only 170 miles. On charging during the daytime with an outside temperature of 14 degrees, the best range he has reached was 183 miles. He said that during this period he and his wife drove the car on normal routes they have taken for many years. Overall, he said that after using the car for 13 days, he couldn't obtain the 250 miles range on any of the times he charged it. He said that the supplying dealership told him that there was nothing wrong with the car. Mr H also said that the battery is not holding its charge even when the car is not moved. He said that at one point he lost 13 miles range over a period of eight hours where the car was just standing.

I can see that the trading association dealing on behalf of the supplying dealership had written to Mr H on 10 June 2022. In this correspondence, they explained that the supplying dealership had inspected the car and they found no faults, so they said there wasn't a legal reason for the supplying dealership to accept the rejection of the car. In this correspondence they said that all cars are tested by third party organisations and not the manufacturer, all under the exact same circumstances and conditions, and that the results of these are used as a source of comparison between different cars. This correspondence said that, due to where Mr H lives, there are always going to be greater forces on the car travelling constantly up and down steep hills. They said that the advertised mileage ranges, as clearly stated in the disclaimer, are provided for comparative purposes only and may not reflect real life driving results, which will depend upon a number of factors including the accessories fitted (post registration), variations in weather, driving styles and car load. So, they concluded that the car was of satisfactory quality, fit for purpose, and as described when sold.

Mr H was not happy with this, so he complained to Santander. They arranged for an independent inspection to be carried out on the car. The independent inspection was completed on 10 May 2022. Santander said that the results of the inspection found no fault with the battery charging to its capacity of 250 miles. Santander also told our service that they didn't uphold the complaint as the car was not displaying any faults during the inspection.

I've taken all of the above into consideration. I should explain that car economy/battery range figures are obtained by following prescribed test procedures and are provided by

manufacturers as a comparison tool only. They are not necessarily setting out what the car will regularly achieve and do not constitute a guarantee. Also, I haven't seen anything to say that Mr H was guaranteed the 250 miles. As such, I'm not satisfied that if the car wasn't reaching the advertised range it was mis-sold.

I understand that Mr H expected to be achieving a mileage range of greater than 183 miles which is about 73% of the 250 miles he thought he would be able to achieve. But it is important to note that the full charge achieved can fluctuate and the range is impacted by lots of different factors, such as, for example, ambient temperature where it is driven and how many people are in the car. So, the fact that on three or even four occasions the car may have only reached 170 to 183 miles on a full charge isn't conclusive evidence that the car would've consistently achieved far below the advertised maximum range.

I've also got to consider whether there might be a fault with the car and whether that's what's causing the problems Mr H complains about. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr H entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case, those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr H's case the car was brand-new, with a cash price of around £32,568. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before significant problems occur, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

Mr H was of the belief that he should've been entitled to reject the car. And if that was not an option, he wanted a car with a longer range to be provided to him. The CRA sets out that Mr H has a short-term right to reject the car within the first 30 days, if the car is of unsatisfactory quality. But for me to conclude that Mr H could've exercised his right to reject the car, I would need to see that the car wasn't of satisfactory quality.

I have considered that Mr H thinks that there was a fault with the battery of the car but based on all of the above, and what I've been given, I can't say that most likely there was a fault present. Also, Santander arranged for an independent inspection of the car. This inspection found the car to be fault free. I know that Mr H has questioned the results of this inspection, but he has not provided any evidence to show that the car was faulty or any evidence to support the experience he was having with the car. From the contact notes provided by Santander, I can see that in May 2022 they told Mr H that if he is unhappy with the independent inspection report he would need to arrange his own inspection, but I can't see that he has done that either. So, I have considered that Mr H had the opportunity to arrange his own inspection of the car by someone he felt was more competent to do so.

I want to assure Mr H that I have carefully considered all his testimony and information that he has provided, but unfortunately what I've been given just isn't enough for me to say that, most likely, the car was faulty, especially when balanced against the independent inspection and dealership's comments after examining the car. Neither of those inspections found any faults with the car. And to be able to hold Santander liable, there would need to be some compelling evidence to show that, most likely, a fault with the battery or the charging system was present or developing at the point of supply. Also, I've considered that there are many

things that can affect the battery range and as I've not seen enough evidence to show that most likely the battery is not functioning correctly, I don't think it would be fair or reasonable for me to say that Mr H could've exercised his right to reject the car. So, while I sympathise with the situation Mr H finds himself in, I don't think Santander needs to take any further action in relation to this complaint.

My provisional decision

For the reasons given above I intend to not uphold this complaint.'

I asked both parties to provide me with any additional comments or information they would like me to consider by 18 August 2023.

Santander responded and said they have nothing further to add.

Mr H responded and provided additional information for me to consider, so I've considered his response and my comments are found below.

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.

After my provisional decision, Mr H reiterated some of the points he already made to our service, but I know that he feels strongly about his complaint, so for completeness I will address some of these again. He did provide a lot of points in response, and I've taken everything into consideration. If there's something I've not mentioned, I haven't ignored it. It's because I've focussed on aspects that are central to me reaching, what I think is, the right outcome. And once again, this reflects the informal nature of our service as a free alternative to the courts.

Mr H in his response to my provisional decision said that he has an immense amount of experience with electric cars and he told us about his background in the industry. In his opinion, the car had a faulty battery as it only ever charged to between 170 and 182 miles maximum. He told us that this has also been confirmed by another dealership which he said told him that the battery must be faulty. Mr H also explained that he has been operating electric cars since 2014 and that his previous electric cars had fulfilled the ranges indicated by the suppliers on every purchase, with two exceptions. He said that he only purchased the car in question because the specifications sheet displayed the range per charge as 250 miles and because he was informed by the salesman that he would achieve this range.

Mr H said that he has not experienced any problems with the terrain where he resides, because all his previous cars gained range from regeneration due to the downhill motion which always covered any additional power required to return uphill to his home. But the car in questions did not regenerate sufficiently during the period they drove it, and it was losing range miles whilst parked. Mr H reiterated that he felt that the report commissioned by Santander was completely flawed. He felt that the engineer did not carry out the correct testing of the car and that the car should've been monitored whilst not in use i.e. parked overnight. Mr H said that he complained to Santander about the engineer's report and tried to contact the engineer, but he was not given an opportunity to speak to the engineer.

I've taken all of the above again into consideration, and the specifications sheet may have displayed a range of 250 miles, but the car economy/battery range figures are obtained by following prescribed test procedures and are provided by manufacturers as a comparison tool only. A full charge achieved can fluctuate and the range is impacted by lots of different

factors, such as, for example, ambient temperature where it is driven and how many people are in the car. So, these figures do not set out what the car will regularly achieve and do not constitute a guarantee. And I haven't seen anything to be able to say that, most likely, Mr H was guaranteed 250 miles each time. So, I'm still not satisfied that the car was mis-sold because it wasn't reaching the advertised range.

I know that Mr H thinks the car battery was faulty, but based on what I've been given, I can't say that most likely there was a fault present. The supplying dealership, after examination of the car and Santander's independent inspection, didn't conclude on both occasions that there were any faults with the car or its battery. I know Mr H said that another dealer told him that there may be a fault with the battery, so I have considered his testimony around this and all other information that he has provided. But when considering all the circumstances of this complaint, on balance of probabilities, I've not seen enough to be able to say that most likely the car was faulty. Based on everything provided there is no compelling evidence to show that, most likely, a fault with the battery or the charging system was present or developing at the point of supply. As I mentioned previously, there are many things that can affect the battery range and I've not seen enough evidence to show that most likely the battery was not functioning as it should have.

Mr H is still unhappy about the results of the independent inspection commissioned by Santander, but he has not provided any evidence to show that the car was faulty or any evidence to support the experience he was having with the car. He has told us that he feels that he had done sufficient testing of the car to reach an adequate range which, he said, was indicated at the time of purchase. But I think, that the car reaching 170 to 183 miles' range on a full charge on only three or four occasions isn't conclusive evidence that it would've consistently achieved far below the advertised maximum range. And Santander explained to Mr H that if he is unhappy with the report, he could've arranged his own inspection. As such, Mr H had the opportunity to arrange his own inspection of the car by someone he felt was more competent to do so.

In addition, Mr H has mentioned that he has seen many owners complaining online about the range they are getting in these cars, and that a professional team of drivers testing it in another country could only reach a 180 mile range at any time during their testing. But, as I mentioned previously, the range is impacted by lots of different factors and at this service we consider each complaint on its own individual merits, so I don't consider it fair to draw negative inference from the experiences that others have had in what may be very different circumstances.

I know that Mr H is also unhappy as he thinks he should've been provided with a courtesy car. But as I can't say that most likely the car was mis-sold, or not of satisfactory quality, it would not be fair to say that Santander was responsible for providing a courtesy car to Mr H.

Mr H has also mentioned customer service issues he experienced with the supplying dealership post sale, but this decision is not about the post-sale actions of the company from which Mr H purchased the car. In this decision I'm only considering the question of whether Santander have treated Mr H fairly.

Mr H said that the engineer, who completed the independent inspection, initially reported the range at 150 miles, so he questions how later his office claimed this was a typing error and said the 150 should've said 250. Santander provided our service with a letter from the inspection company which explains this typo. The inspecting company said that upon a review of the report, they can see that one section of the report does state that with the battery 100% charged, mileage range was 150 miles. However, in the remaining of the report, in three other sections, it does relate the maximum output range as 250 miles. So, they said that there does appear to have been a typographical error with regards to the

mileage output in that initial section. As such, they offered their sincerest apologies for this. Taking everything into consideration, I think most likely this was just that - a typographical error, so I don't think it changes what I've said in this decision and in my provisional decision.

Once again reconsidering all, I don't think it would be fair or reasonable for me to say that Mr H could've exercised his right to reject the car. I sympathise with the situation Mr H finds himself in, but I don't think Santander needs to take any further action in relation to this complaint.

My final decision

For the reasons given above, and in my provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 September 2023.

Mike Kozbial
Ombudsman