

complaint

Mr T complains that a used car supplied by Santander Consumer (UK) plc (trading as Santander Consumer Finance) under a finance agreement is not as described.

background

Mr T acquired the car in July 2016. It cost nearly £17,000. And Mr T says he only agreed to this car because the salesman said it had 170 break horsepower (BHP) - and that's how it was described in the finance documents he saw on the day. He found out a few months later the BHP is only 140BHP. He wants Santander to take the car back and cancel the finance.

Santander accepts the car only has 140BHP and the finance agreement says it's 170. It checked with the dealer who says the car was advertised correctly as having 140BHP. Santander says Mr T wasn't told the car had 170BHP and the reference to 170BHP in the conditional sale agreement is simply a typographical error. It offered to pay Mr T £75 for any upset and trouble that mistake caused.

Our investigator says there's no evidence Mr T saw the advertisement. She's satisfied the car is described in the finance agreement Mr T signed as having 170BHP and she thinks it likely he relied on that. She recommends Santander should take the car back, cancel the finance and return any deposit with interest.

Santander says the V5 registration document and insurance documents would have said the car has 140BHP and it's disproportionate to allow Mr T to reject the car now.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander was obliged to supply a car here in accordance with its description – and any representations made in the course of discussions before Mr T agreed to the finance. There seems to be no dispute that this car has 140BHP and it was described as having 170BHP in the finance documents. I appreciate Santander says that's just a typographical error, the car was advertised at the correct BHP and Mr T wasn't told it had 170BHP.

But, Mr T says he didn't see the advertisement. He went into the dealership looking for a car and the salesman told him this one was powerful – saying he'd "have to be careful" as it "had 170 BHP". Mr T says he was impressed by that. And he relied on what the salesman said - which was supported by the description in the finance documents – when he decided to get this car.

I can't be certain what was said during the discussions Mr T had with the dealer. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr T is a young man and he's explained that he and his friends are keen on cars. He says he liked this one when he saw it but only decided to take it because he was told it had 170BHP. He discovered that wasn't the case when he went online to check the car's weight after discussing it with a friend a few months later.

Santander's contact notes show Mr T mentioned he'd found out about the BHP online, when he first raised this complaint. I don't think the average driver is likely to check a car's weight in the usual course of events – it suggests I think that the car's technical specification is something that was very important to Mr T. And it's consistent with what he says about the higher engine power being the reason he wanted this car. I find his evidence to be clear and credible on this point.

On balance overall, I think it is more likely than not the salesman did tell Mr T that this car had 170BHP. I accept the salesman may not have realised he'd made a mistake - but I'm satisfied Mr T was supplied with a car that's not as powerful as he was led to believe. The finance agreement (and other documents Mr T received at the relevant time) also say the car has 170BHP. So I don't think Mr T had any reason to question that at the time and I wouldn't expect him to check the V5, in this situation.

I consider it unlikely that Mr T would have seen any insurance documents before he agreed to take this car. And, whilst I accept the V5 and insurance documents refer to engine capacity, I don't think they usually state the BHP. So I'm not persuaded Mr T is likely to have realised the BHP was wrong here even if he had looked at those documents.

Taking everything into account, I think the BHP probably was the significant feature for Mr T when he decided on this specific car. I'm satisfied he's likely to have relied on what the salesman and the documents said at the time. And I'm not persuaded that Mr T is likely to have agreed to this car or the finance if he hadn't been told the BHP was 170.

When something like this happens we generally try and put the consumer back into the position they would otherwise have been. Our adjudicator recommends Santander should take the car back here and cancel the finance, and I don't disagree.

I appreciate Santander considers it is disproportionate to allow Mr T to reject the car now. But, I'm satisfied Mr T contacted the dealer and Santander very soon after he found out the true BHP – just a few months after he got the car. I think it was open to Santander to offer to take the car back at that stage. And, for the reasons I've explained above, I don't think it is fair that Mr T should have to keep this car in these particular circumstances.

So, I find Santander should take the car back at no cost to Mr T and cancel the finance with nothing further owed. Mr T didn't pay a deposit. And he seems to have maintained his monthly finance payments. I consider it fair that Mr T should pay for the use he's had of the car and he accepts that. So I am not going to ask Santander to refund any finance payments. I think it's reasonable that Santander should also remove any adverse information it may have recorded about the finance from Mr T's credit history, in these circumstances.

my final decision

My decision is I uphold this complaint. In full and final settlement I require Santander Consumer (UK) plc (trading as Santander Consumer Finance) to cancel the finance agreement, take this car back at no cost to Mr T and remove any adverse information about the finance from his credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 May 2017.

Claire Jackson
ombudsman