

complaint

Mr D complains that a car he purchased on finance from Santander Consumer (UK) Plc was of unsatisfactory quality and misrepresented at the time of sale.

background

Mr D purchased the car under a conditional sale agreement in January 2012. He had some problems with the car after the purchase and the dealership conducted some repairs. The vehicle was returned to the dealer in September 2012 for its MOT - which it passed. By this point it had travelled around 13,000 miles.

Mr D was involved in an accident in the vehicle in September 2012. The insurer says that Mr D initially told it that this was because the accelerator pedal got stuck and then he clarified that it was because of a problem with the cruise control. Mr D says that the accident was ultimately caused because he was sold a vehicle which was of unsatisfactory quality.

Mr D also says that the history of the car was misrepresented, specifically - the number of past owners and the mileage.

Our adjudicator did not recommend this complaint be upheld. In summary, she said that although the car had some problems soon after purchase, these appeared to have been rectified at no cost to Mr D. She was not satisfied that there was a fault with the cruise control at the time of sale and noted that Santander could not be held liable for accidental damage or wear and tear faults which occurred after the time of sale.

The adjudicator did not find that the car was misrepresented. She noted that the mileage on the vehicle was slightly higher than the invoice, and that the car had one more owner than Mr D said he was told – however, she concluded that these matters would not likely have affected Mr D's decision to purchase the vehicle.

Mr D disagrees with the adjudicator's findings. In summary, he says that the car is of poor and unsafe quality, and that prior to the accident the dealership worked on the fuses in the engine management system which is connected to the cruise control.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I thank both parties for their submissions. Where evidence is unclear or matters are in dispute I make my findings on the balance of probabilities – which is to say, what I find most likely to have occurred based on the evidence available and the wider surrounding circumstances.

quality of the vehicle

I acknowledge that there were some issues with the car following the purchase. However, from the evidence available I am satisfied that the dealer resolved these at no additional cost to Mr D. I consider that the dealership acted fair and reasonably in carrying out the repairs, and (noting that the car passed an MOT afterwards) I am satisfied that the repairs were performed satisfactorily. Furthermore, I consider that some of these issues (such as part

worn tyres) are wear and tear issues which could not be considered inherent defects with the car.

I have considered Mr D's submission that the car has problems with the cruise control which caused an accident. He says this is linked to a wider problem with the engine management system.

I note that at the time just before the accident Mr D had already travelled around 13,000 miles in the car and had been using it for around nine months. I have also looked at the problems reported prior to the accident and the work which was done on the car by the dealership at this time. Although I note what Mr D says about the engine management system being linked to the cruise control I do not consider that he reported a problem with the accelerator being stuck, or that there was any work done to rectify a problem linked specifically to the cruise control. Furthermore, I have considered the expert report which was prepared shortly after the accident which states that the cruise control on the car was functioning normally.

After considering the evidence available, on balance, I am not satisfied that there was a defect with the car at the time of sale which caused Mr D to have an accident. Nor do I consider that there are outstanding defects with the car which the dealership is responsible for fixing. Because of this I cannot fairly conclude that Santander be required to take back the car, or pay Mr D compensation.

misrepresentation

To make a finding of misrepresentation I need to be satisfied that Mr D was told a false statement of fact which caused him to enter into a contract that he would not have entered otherwise.

I can see that Mr D had concerns about the mileage history of the vehicle after the purchase. After looking at the mileage record I am satisfied that the mileage on the vehicle is correct and that the only discrepancy is that the car was sold with around 450 more miles on the clock than stated on the order form at the time of sale. It appears that the mileage had increased while the car was with the dealer, which I expect is likely due to test drives and transporting the vehicle from the auction to the dealership. While I acknowledge that the order form should have been updated to reflect the new mileage I consider this discrepancy is not significant and I am satisfied that Mr D's primary concern was likely to be regarding a larger discrepancy than this.

Mr D says he was led to believe the car had one previous owner. However, it appears that the car had an additional owner under a different registration plate. I note that the information regarding the first registration under a different plate was available in the service log for the car yet it did not appear to be of primary concern to Mr D when he went back to the dealer – it was only highlighted by the dealer when Mr D was querying the mileage history.

I consider that in this case both the mileage discrepancy and the additional registration history of the car would have been reasonably discoverable at the time of sale. Furthermore, in any event, for the reasons outlined above I am not satisfied that they would have stopped Mr D from entering the contract to buy the car.

Overall and on balance, I am not persuaded that there is a breach of contract or misrepresentation by the dealer which Santander is liable for under section 75. Therefore, I cannot fairly conclude that it should pay Mr D compensation or take back the car and refund him.

I appreciate that Mr D feels strongly about this matter and is likely to be disappointed by my findings. I remind him that he does not have to accept my decision and may pursue his case by alternative means should he want to do so.

my final decision

My final decision is that I do not uphold this complaint.

Mark Lancod
ombudsman