

The complaint

Mr P has complained that he is unhappy with the quality of a car he acquired in August 2022, using a hire purchase agreement with Santander Consumer (UK) Plc, trading as Santander Consumer Finance (“Santander”).

What happened

Mr P acquired a Volkswagen in August 2022, using a hire purchase agreement with Santander. The car cost £25,647, of which Mr P borrowed £22,237.90 over 60 months, with monthly repayments of £437.10. The car was just under seven and a half years old at the time and the mileage stated on the agreement was 44,451.

On the day Mr P acquired the car, a fault occurred with the clutch, and the repair was dealt with by the dealership. A few months later the car suffered an engine failure, and Mr P made a complaint to Santander about the quality of the car, and that complaint was subsequently brought to this service. An independent inspection of the car concluded that the engine fault wasn't present or developing at the point of supply, and Mr P's complaint was not upheld either by Santander or this service. Mr P then paid for the engine rebuild. As that complaint has already been considered by this service, I will not comment further on matters that were the subject of that complaint.

Following the repairs, Mr P had the car checked at another garage, where discrepancies in the recorded mileage were noticed. Mr P made a further complaint to Santander about this new issue in June 2023. Santander initially rejected the complaint as it said no evidence had been provided, but later considered the complaint and, in November 2023, Santander told Mr P it had partially upheld the complaint. It offered £500 by way of redress.

Mr P was unhappy with this, so brought his complaint to this service. Our investigator looked into it and thought it should be upheld. Santander didn't respond to our investigator's assessment, so the complaint has come to me for review.

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.

I've decided to uphold Mr P's complaint. I'll explain why.

Because Santander supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case, of course, the car was nearly seven and a half years old, with a stated mileage of 44,451 when Mr P acquired it. So I've kept that in mind.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

Santander sent in copies of the finance agreement, and its records of its contact with Mr P. Mr P provided copies of records from the garage, MOT records, and a copy of a report from the AA.

The evidence provided by both parties confirms the mileage discrepancies.

The printout from the garage shows the car's mileage at various points - the car had been seen by the garage on a number of occasions prior to Mr P acquiring it. The recorded mileage on 31 January and 24 March 2020 is 41,877. It is 33,026 on 16 July 2019, and 30,971 on 22 November 2018.

The mileage on the garage records for January and March 2020 is higher than the mileage shown on the MOT records for 16 February 2021 - 39,932. Earlier MOT records show mileages of 34,218 on 24 February 2020, 28,657 on 23 February 2019, and 22,928 on 20 February 2018.

Mr P also paid for an AA report to be compiled. This shows mileage recordings from various sources at different dates. On 16 February 2021, the Vehicle and Operator Services Agency (VOSA) recorded the mileage as 39,932, which matches the MOT figure on that date. However, five months later, on 20 July 2021 VOSA again recorded the mileage, this time as 22,781. I can't see anything to suggest that this was rectified or reported as a false recording.

I noted above that Mr P has previously brought a complaint to this service about this car. Whilst I cannot comment on the subject matter of that complaint I think it is relevant to note here that the independent inspection report, on that complaint, included a reference to a mileage discrepancy. It said that the failures the report was covering were recorded as occurring at 53,000 miles, but the odometer read 48,594 on the date of inspection (8 February 2023).

Santander's final response letter includes reference to these various records, and it does not seem to be in dispute that there are, indeed, discrepancies in the mileage. From all this, I'm satisfied that the car wasn't of satisfactory quality at the point of supply. I say this because the various discrepancies show that the mileage stated at the point of supply was most likely incorrect.

Santander offered Mr P redress of £500 redress due to the mileage discrepancy and the difference in the value of the car with higher mileage. Our investigator requested documentation showing the true mileage from the car at the point of supply, but it was confirmed that this can't be obtained due to the ECU being reset during the engine repairs.

Overall, I'm not satisfied that a payment of £500 is fair redress for what would be a reduced car valuation. It is not now possible to restore the true mileage on the car, as that can't be established, so an accurate valuation can't be made. So taking all this into account, I'm satisfied that it would be fair for Mr P to reject the car, and therefore I uphold this complaint.

Mr P has had use of the car, so I don't think it would be fair to require Santander to refund any monthly payments. But Mr P incurred a cost of £29.99 for the AA report to evidence the mileage discrepancies, and I think it's fair to require Santander to reimburse this.

It is not clear whether Santander paid Mr P the £500 it offered as redress. If it has been paid, Santander should not seek to reclaim it.

Putting things right

Santander should:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Mr P.
- Refund Mr P's deposit contribution of £3,409.10.
- Refund £29.99 being the cost of the AA report.
- Pay 8% simple yearly interest on all refunded amounts from the date Mr P paid them to the date of settlement.
- Remove any adverse information from Mr P's credit file (if any has been added) in relation to this agreement.

*If Santander considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I have decided to uphold Mr P's complaint and to require Santander Consumer (UK) Plc to compensate him as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 December 2024.

Jan Ferrari
Ombudsman