

The complaint

Mr B has complained about the performance of a car he acquired under a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance (SCUK).

What happened

The circumstances of the complaint are well known to the parties. So I'm not going to go over everything again in detail. But, in summary, Mr B acquired a new electric car under a conditional sale agreement with SCUK in May 2022. The car cost around £63,300 and Mr B made a £7,000 advance payment. The agreement was to be paid back with monthly payments of around £870 followed by a final payment of around £26,000.

Mr B said he had no issues for the first few months, but after a remote software update completed by the manufacturer in October 2022 the estimated range shown on the console at full charge decreased from around 260 - 280 miles to around 180 - 190 miles. He says he took it back to the dealer, but it was unable to resolve things for him. He says he spoke to the manufacturer, but it directed him back to the dealer. He also contacted SCUK about rejecting the car.

SCUK referred to an independent report carried out in January 2023. I understand the mileage at this point was around 8,000. The expert said after the car was fully charged the estimated range was showing as 193 miles. And the following day, at full charge, it was showing as 197 miles. The expert said it was aware the manufacturer carried out software updates and that the issue only developed from the previous update.

The expert said the estimated range was some 80 miles less than the manufacturer's stipulation. It said there was no evidence the car would achieve a range of more than 197 miles. It said that in different weather conditions the range might go up, but it didn't consider it would go up to 280 miles. The expert said the charging point was acceptable and that the car seemed to be fault free. The expert concluded that the issue developed as a result of what appears to be the software update and that the car required further investigation by the manufacturer. It also said the selling agent has responsibility because the car appears to have an underlying issue which has developed since a software update.

The report was forwarded to the dealer, but it didn't accept it was responsible because the fault wasn't present at the point of supply. And it wasn't as a result of anything the dealer had done. SCUK obtained further comments from the independent expert who said, in summary, that they couldn't see an underlying issue with the car and that the issue wasn't present or developing at the point of supply.

SCUK said the issue wasn't down to the dealer, there'd been no fault found and the cause of the issue is down to the manufacturer software update, so Mr B would need to take it up with the manufacturer direct.

Mr B wasn't happy with this, and he contacted the manufacturer. The manufacturer said the relevant software update didn't cause the range to drop. It said the update was optional and

that there are many factors that can impact the range on this model. It said the independent report was very basic and simply indicated the range indicator when it was cold (which it says can impact the range). It said no actual energy consumption tests were carried out. It said the reference to a 280 mile expected range was wrong because this was the Worldwide Harmonised Light Vehicles Test Procedure (WLTP) test results for this model. The manufacturer said that when the software update was carried out any previously stored data would have been reset, and that it takes time to recalculate the average. The manufacturer said the car was within manufacturer's tolerance and that there was no defect.

Mr B disagreed with a lot of the manufacturer's points. He said the temperature had no impact on this case. He didn't have to consent to the software update – it was done automatically. He said the manufacturer hadn't proved or established anything. He says the drop in range happened directly after the software update. He said he was achieving 260 miles from a 100% charge, and it changed to 180 the day after the update. He said it had been months since the update and there was still no movement on the estimated range. He also said he fully understands how having different settings can impact the range once the car is moving, but that's not the issue. He referred his complaint to our service to consider.

One of our investigators looked into things but didn't think he'd seen enough to uphold the complaint. He looked into what was updated on the software update and didn't think it specifically affected the power management or battery efficiency. He said he noted the video Mr B had supplied of a new car of the same model having an estimated range of 263 miles but he didn't know how that car had been driven or what environment it was in. Our investigator referred to an article published showing results of a range test for this model under different conditions. He noted the achievable range can be impacted by colder temperatures. And he said the abrupt drop may have been caused by the values having been wiped on the car and that it would take some time to be more accurate.

Mr B didn't accept the recommendations. He said the case isn't about weather conditions or driving styles, it's about achieving an estimated range of 250 – 260 miles in the car for the first few months and then after the software update only achieving 180 – 190 miles.

As things couldn't be resolved the complaint was passed to me to decide.

I asked our investigator to ask Mr B some further questions. In summary, I wanted to know:

- The current mileage of the car.
- Whether Mr B could supply evidence of the current estimated range at 100% charge.
- Whether there was any supporting evidence the *actual* range Mr B covered on a full charge had changed over time, or whether his costs had gone up through more frequent charging (post software update).

Mr B responded to say, in summary:

- The car's mileage was 13,612.
- The range on the car when fully charged hadn't altered since the software update. And that for the first five months it gave him a range of around 260 miles, regardless of how he drove the car.
- There'd been an independent report saying the range had changed after the software update.
- His circumstances had changed and he'd sold the car for £52,000 which left him out of pocket.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr B and SCUK that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr B acquired the car under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr B entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

The car was new, so I'd have expected it to be in perfect working order and free from even minor defects when it was supplied to Mr B. I can fully appreciate why Mr B would have been concerned if the displayed estimated range suddenly dropped such a substantial amount after a software update. I do take on board Mr B's point that his complaint isn't about the way the car was driven, the weather and so on. But just knowing the displayed estimated range after the software update for his car was about 60 miles less than another new model doesn't give me sufficient grounds to uphold the complaint.

On the one hand, Mr B says the estimated range dropped overnight after a software update. The independent report essentially agreed the estimated range had dropped after the update, and it said the selling agent had responsibility.

But on the other hand, there's an argument the car had no issues at the point of supply. The manufacturer said the relevant software update did not impact the range of the car. The update may have reset the stored values. There are certain external factors, such as the temperature, that could impact the estimated range of the car – even before it's been used when fully charged. And we've not seen whether the actual performance worsened after the software update.

If I were to decide there had been a breach of contract in this case that SCUK would be liable for, I'd likely first need to be satisfied SCUK, as the supplier of the goods under the conditional sale agreement, is also liable for any alleged problems caused by a software update that was carried out by the manufacturer. But seeing as though Mr B has now sold the car, I don't think I need to analyse that further. I'll explain why.

The independent report that was carried out simply looked at the estimated range on the console when the car was at 100% charge. And I think everyone accepts that the estimated range shown on the console was lower than another model in a showroom. Having considered everything, I think the estimated range showing on the console is one thing. But I wanted to know if there was evidence the actual performance of the car had been impacted. Because I wasn't persuaded that the estimated range shown on the console told the whole story. The problem I have is that the car has now been sold. I don't have any evidence the range Mr B was actually able to cover between charges was impacted by the software update. There's no option now to have any tests done such as the energy consumption tests the manufacturer referred to. I've also got no evidence Mr B lost out financially through having to charge the car more frequently after the software update.

Moreover, I'm now not able to see sufficient supporting evidence about what happened more recently to the displayed estimated range after the software update – even if I were only considering that point in isolation.

While I appreciate Mr B says nothing changed after the software update, and that things didn't go back to what they were like before, I've not got supporting evidence that enables me to reach firm conclusions. I've not seen enough to demonstrate the car wasn't performing as it should do, after the software update. Therefore, in all the circumstances, I've not seen enough to say there's a breach of contract and that, if it was liable, SCUK needs to do something to put things right for Mr B. While I can understand why he complained, I've not got the grounds to say that SCUK needs to reimburse Mr B for any losses he says he's incurred when he sold the car.

I can't see we received a response from SCUK. Mr B responded with further information. He's shown us an example of what his console showed prior to the software upgrade. This shows a range of 255 miles at full charge. He's shown screenshots from November 2022 and March 2023 with ranges at full charge between 176 and 194 miles. He's also shown the same model car was advertised in 2023 as having a 318-mile range. And he's shown us an article he made a comment on.

Mr B reiterated he achieved around 260 – 280 range on a full charge within the first few months. He asked why his range decreased by 80 miles.

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 want to thank Mr B for his response. I do understand where he's coming from. I note he's written in the article that he's asked the ombudsman (along with other parties) where his range has gone. But it's not my role to do that. I need to consider how SCUK, as a provider of financial services, has handled his complaint. I'm reliant on the evidence submitted by the parties to make a conclusion.

Mr B has highlighted a different advertised range of the car. The article is from 2023 so I'm not sure if it's the exact same model. And as pointed out earlier, this range is the WLTP test results carried out in very particular conditions. I think the WLTP figures have generally been used in order for customers to be able to compare models over the last few years. Mr B shouldn't have been misled about how many miles he could achieve in the car, but he was happy with the car to start with. His complaint centres around whether a software update has impacted the performance of it, rather than being misled through the advertised range. So that's what I've focussed on.

What I can see is that the range on the console at full charge changed from around 250 to around 190. And he says this was as a result of a software update. The independent expert thought this was likely too. SCUK on the other hand, has said there was no problem with the car at the point of supply which is what it's liable for. The manufacturer has said the update didn't impact the range. I've had to weigh the evidence up. I didn't make firm conclusions, but even if I were to find SCUK was liable for the issues off the back of a manufacturer software update, I've not been shown any evidence to demonstrate the actual range Mr B was achieving changed, or that he was losing out through having to charge the car more frequently after the update. I also don't know what's continued to happen to the estimated range on the car because Mr B sold it. I didn't consider there was a strong enough argument to say there'd been a breach of contract.

Moreover, it's important to bear in mind Mr B took the decision to sell the car. There might have been grounds to uphold the complaint if there was sufficient evidence. But it can't be inspected again. And even though Mr B has said he wants to reject it, that's no longer possible. I can't direct SCUK to take it back. The only thing left to decide is whether SCUK needs to reimburse Mr B anything he says he's lost out on. But, for the reasons given above, I don't find I have the grounds to do that.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 December 2023.

Simon Wingfield
Ombudsman