

The complaint

Mr S complains that Santander Consumer (UK) Plc trading as Santander Consumer Finance ("Santander") unfairly recorded a CIFAS marker in relation to his conditional sale agreement with it.

What happened

Mr S entered into a conditional sale agreement with Santander to fund the purchase of a car in 2012. In 2016 Mr S sold the car, before the agreement had ended.

Santander wrote to Mr S in December 2016 to make him aware that he wasn't allowed to sell the car under his agreement. It also spoke to him in January 2017. At that point Mr S accepted that he'd sold the car and said he would repay his outstanding borrowing in February 2017.

As it hadn't received the payment it'd expected, Santander issued a default notice to Mr S in March 2017. It required Mr S to repay the outstanding lending by 29 March 2017. That didn't happen, so on 3 April 2017 Santander terminated and defaulted the agreement. It also recorded an "asset conversion" CIFAS marker on the National Fraud Database.

In June 2017 Mr S contacted Santander. He said that he hadn't been aware he wasn't allowed to sell the car and again said he'd repay the outstanding lending. Mr S repaid the lending, in full, later in June 2017.

Mr S subsequently raised a complaint with Santander sometime later in 2018. He said he'd become aware of the information Santander had registered when he'd applied for a business support loan.

Ultimately Santander didn't think it had done anything wrong. It said Mr S had agreed to pay the outstanding lending, in full, following the unauthorised sale of the car. And, because he failed to do that in February 2017, the information it registered was accurate.

Mr S brought a complaint to this service. He said that Santander had unfairly applied a default as well as a CIFAS marker. He spoke about impact this had on him as well as his business.

Our investigator upheld the complaint, in part. They accepted that Mr S had broken his agreement with Santander by selling the car. They also accepted that in such circumstances the agreement allowed Santander to ask Mr S to repay the lending, and because he failed to do so following Santander's default notice, that default had been applied fairly.

However, they weren't satisfied that Santander had applied the CIFAS marker fairly, so they said it should be removed. They accepted that Mr S had experienced distress and inconvenience as a result of what had happened, so said that Santander ought to pay Mr S £150 compensation for that. Lastly, they said that Mr S's business is a separate legal entity and cannot be distressed, so they made no award for that point.

Santander didn't agree. It said Mr S ought to have been aware of his obligations under his agreement and that he'd accepted the car had been sold, which was in itself sufficient to justify the application of a CIFAS marker. It also said that Mr S was given time to rectify the matter and made several promises to pay, but didn't.

The case has been passed to me to make a decision on what should happen.

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.

Default marker

Mr S's complaint is about whether Santander has acted fairly in relation to his conditional sale agreement with it. That's a regulated agreement and one which this service has the power to consider a complaint about.

Santander has provided a copy of the agreement it had with Mr S. The agreement is clear that Mr S would only become the owner of the goods when he'd made all of the payments he was required to. It's also explicitly clear that Mr S must not sell the goods. The agreement says that Santander can end the agreement and require Mr S to repay the total amount payable if he broke the terms of it.

Mr S accepts that he sold the car in 2016. So, he broke his agreement with Santander. As a result, I'm satisfied that it was fair for Santander to choose to terminate the agreement and require Mr S to repay the remaining sums owing. I'm also satisfied that Santander gave Mr S fair opportunity to do so by writing to him in December 2016, speaking to him in January 2017 and ultimately issuing a default notice under which Mr S was required to repay the lending 29 March 2017.

I'm satisfied from the evidence provided that the letters Santander wrote to Mr S were correctly addressed and had been sent. Those letters, as well as the notes of the conversation Mr S had with Santander in January 2017, satisfy me that Mr S ought reasonably to have known that he'd broken the terms of the agreement and was required to repay the lending in full.

I note that following Santander's default notice it unsuccessfully tried to contact Mr S on a number of other occasions using various methods, but Mr S didn't make further contact until June 2017. Taking into account that Mr S failed to satisfy the requirements of Santander's default notice and it didn't hear from him for a number of subsequent months, I'm satisfied that the default marker Santander registered in relation to the account is representative of what happened, and has therefore been applied fairly.

CIFAS marker

The CIFAS marker Santander recorded on the National Fraud Database in relation to the matter was an "asset conversion" marker. That's intended to represent situations whereby goods which are still the subject of finance agreements have been disposed of or sold where the hirer or purchaser had not been innocent and acted with intent to deprive the owner of ownership of the goods.

In recording the marker, Santander isn't required to prove beyond reasonable doubt that Mr S is guilty of fraud or financial crime, but it has to show there's more than a mere suspicion. The relevant guidance says that to load a marker;

- There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.

Mr S says that he didn't know he wasn't allowed to sell the car. He's said that in selling it he came to an arrangement with someone known to him and was in receipt of payments in respect of the sale from that person.

It seems to me that whilst Mr S sold the car – and perhaps arguably deprived Santander the ability to recover its asset in doing so – I think he did so with the intention of repaying the lending under his agreement.

I say this because Mr S sold the car in 2016, and evidence I've been presented shows he broadly made the payments he was required to under the agreement until it was terminated in April 2017 – at which point it seems payments stopped being collected. I accept that Mr S's subsequent lack of contact and payments from that point were befitting of the default marker Santander recorded. However, he settled the outstanding lending in full a few months later.

Overall, I'm not persuaded that Santander had reasonable grounds to believe that Mr S had acted fraudulently, or committed a financial crime. Whilst I accept he ought reasonably to have known that he wasn't allowed to sell the goods, I think it's clear that his intention was ultimately to repay the lending under his agreement with Santander - particularly because he sold the car close to the end of the term with a relatively small proportion of the lending outstanding, and continued to make the monthly payments. In that respect, I'm not persuaded that Mr S acted with intent to unlawfully or unfairly deprive Santander. In other words, I don't think he acted fraudulently. So, I don't think the CIFAS marker it recorded is fair.

Lastly, and with reference to the impact the situation has had on Mr S – I broadly agree with what our investigator has said. Specifically, I agree that no award should be made for any impact on Mr S's business as it's a distinct legal entity which cannot suffer distress. And, Mr S is the eligible complainant in the circumstances, so I need only consider the impact on him.

I also agree that Mr S has been caused some unnecessary trouble and upset as a result of the CIFAS marker Santander recorded. Based on the evidence Mr S has provided – comments from a broker to say Mr S was declined credit as a result of the default and CIFAS markers – I find it unlikely the application of the CIFAS affected him to a much greater extent than the other adverse information Santander reasonably recorded. Nonetheless I accept its presence has caused him to worry. So, I also require Santander to pay Mr S £150 compensation for this.

My final decision

For the reasons explained above, I uphold this complaint and require Santander Consumer (UK) Plc trading as Santander Consumer Finance to remove the CIFAS marker it recorded in relation to Mr S's agreement and pay him £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 November 2022.

Stephen Trapp
Ombudsman