

The complaint

Mr C complains that he was mis-sold a finance agreement with Santander Consumer (UK) Plc when acquiring a new car. He says that his signature was forged in respect of the mileage allowance, which was much lower than he'd required.

Mr C also says that Santander mishandled the final lump sum payment when the agreement reached its full term.

Mr C has been assisted in bringing his complaint by a relative but, for ease of reference, I am only going to refer to Mr C as the credit agreement is in his name.

What happened

In March 2016, Mr C attended a car dealership to discuss acquiring a new car. He says that he had a discussion with the salesperson about taking a personal contract purchase ("PCP") for a new car. He also says that he had a discussion about the required mileage with the salesperson.

Mr C entered into a four-year fixed sum loan PCP with Santander to finance the car. Under the agreement Mr C was to make 48 monthly payments of £219.45 and, in the 49th month, a payment of £9,125 if he wished to keep the car.

Mr C says that, around May 2019, when taking the car to be serviced, he learnt that the agreement had an annual mileage limit of 6,000. He says he thought the annual mileage limit had been set at 15,000. He contacted Santander and asked for copies of the signed agreement.

Mr C says that after receiving the paperwork he found there was a document headed "*Sales Agency Agreement*", which set out that the basic annual mileage for the agreement was 6,000. Although this document appeared to have been hand signed by Mr C, he says this signature was a forgery. He also said that he hadn't been aware that the credit agreement entered into was a fixed sum loan. Mr C complained to Santander that the agreement had been mis-sold to him.

Santander investigated Mr C's complaint and contacted the supplying dealership, who said the salesperson no longer worked there. It said Mr C would've had an opportunity of viewing all the paperwork before signing to say he agreed. The dealership denied the signature had been forged.

Santander didn't uphold Mr C's complaint. It said Mr C had had an opportunity to read through the agreement which clearly stated it was a fixed sum loan. And so, Mr C would have been aware of the type of agreement he was entering in to. Santander also said the difference with this type of agreement and a conditional sale PCP was that there was no right to voluntary terminate the agreement. It said it didn't accept Mr C's signature on the sales agency agreement had been forged.

Santander said that Mr C would have been provided with copies of the documentation as part of his welcome letter sent shortly after taking the agreement out. It said if Mr C had

been unhappy about the mileage or any of the other terms and conditions, he could have raised it then but hadn't.

Mr C disagreed with the view taken by Santander and complained to this service. During our investigation Mr C's agreement was coming to an end. Santander says it sent Mr C three letters informing him that he had three options as to what he could do with the car once the agreement had reached its end date. These were, keep it and pay the final lump sum payment, hand the car back or use it as part-exchange for another. A few days after each of these letters, Santander says it also sent Mr C a SMS message asking which of the options he would be taking.

One week before the lump sum was due in April 2020, Santander spoke to Mr C on the phone. Santander says it explained his options to him and that, in light of his complaint to this service, it offered to extend the period in which he needed to make a decision by 90 days. Santander says that Mr C said he didn't want to make any further commitments at this time. Santander also says it reminded Mr C that he needed to make contact before the due date of the lump sum and tell it what his intention was in regard to the car.

Mr C says that Santander provided him with confusing information about what his rights were when the agreement ended and told him that he had to pay the lump sum payment. He also says that, during the phone call in April 2020, Santander told him the lump sum wouldn't be taken from his account.

On the due date, the lump sum was debited from Mr C's bank account and he contacted Santander to complain. Arrangements were made for the money to be returned to Mr C. Mr C made a formal complaint to Santander and said that this money being taken from him had caused him financial difficulties and he'd incurred bank charges.

Santander didn't uphold his complaint. It said that during the phone call one week before the lump sum had fallen due it had been clear that this payment would be taken unless Mr C made contact. It said it hadn't agreed to suspend the lump sum payment date as Mr C hadn't taken up its 90-day extension offer.

Our investigator didn't recommend Mr C's complaint should be upheld in regard to the mis-selling of the credit agreement or forged signature in respect of the mileage limit. He said the appropriate documents had been provided to Mr C shortly after taking the agreement and, if they had been incorrect, he would have expected Mr C to raise the issues he had sooner.

Our investigator also said that, looking at the three signatures shown on the paperwork, he couldn't say there was enough of a difference to say that one was a forgery. He said he didn't know what had been discussed at the dealership but he thought the terms and conditions, including the annual mileage limit, were clear from the paperwork which would have been available to Mr C, both at the time he signed the agreement and shortly afterwards.

Mr C disagreed with the view of our investigator and also asked that I look at his complaint about the way Santander had handled the ending of the agreement. He said it had provided confusing and conflicting advice about paying the lump sum and then had taken it from his account, having said that it wouldn't.

Mr C said he wouldn't have entered into a credit agreement that had a mileage limit of 6,000, as that didn't meet his needs.

As the parties were unable to reach an agreement the complaint was passed to me. I issued

a provisional decision along the following lines.

Where evidence is incomplete or contradictory then I must decide what I think is the most likely thing to have happened in light of the evidence and the wider circumstances.

Under section 56 of the Consumer Credit Act a finance company can be held responsible for representations made by the seller. So, that means Santander could be held responsible if the car dealership made representations about the credit agreement to Mr C that weren't correct.

Here, Mr C has complained that he was provided with a fixed sum PCP when he thought he was entering into a conditional sale PCP. The difference between these two types of agreement was that Mr C wouldn't have the right to voluntary terminate the agreement, though I hadn't seen that he had requested to do so. Nor had he said that this was a feature that was particularly important to him. Mr C also said that he was misled about the mileage allowance and wouldn't have taken an agreement that included a basic annual allowance of only 6,000 miles.

I didn't think it was disputed that there had been a discussion between Mr C and the salesperson at the dealership and that this, being face to face, meant that there wasn't a record of what had been said. Mr C said he was told the salesperson had lost their job shortly after he'd been provided with the credit agreement, but I hadn't seen any evidence about that so I couldn't comment on why the salesperson no longer worked there. There could have been any number of reasons the salesperson was no longer employed at the dealership.

In regard to the credit agreement being a fixed sum loan agreement, I'd seen that Mr C accepted that he'd signed this document at the dealership. I'd seen that it clearly stated what it was at the top. I thought that by signing it, Mr C had shown he was content to be bound by its terms and conditions. So, it was reasonable to have expected Mr C to be aware of the type of agreement he was signing and, if unhappy, to have asked questions. So, I didn't think I could reasonably say Mr C wouldn't have been aware that the agreement was a fixed sum loan agreement. The agreement also set out the monthly amounts and the lump sum payment due at the end of the agreement.

In regard to the annual mileage limit, I'd seen that Mr C disputed having signed the sales agency agreement at the dealership. It was this document, which had set out the annual mileage allowance as 6,000. And, while I appreciated Mr C said that a mileage limit of 6,000 wasn't discussed as, if it had been, he wouldn't have agreed to it, I was unclear whether a mileage limit of 15,000 was actually raised by Mr C as being what he'd required. Nor was I clear that the salesman had actually confirmed to Mr C that the credit agreement included a mileage limit of 15,000 per year.

I'd seen evidence that other agreements had been discussed with Mr C, but none had included different mileage allowances. And I thought that if various mileage allowances had been discussed then it was likely Mr C would have been told about differing monthly costs. That was because the higher the mileage limit, the bigger the impact on the car's value at the end of the agreement. This means the higher the overall mileage limit the higher the monthly costs under an agreement. I hadn't seen any evidence that would indicate that there had been a discussion about monthly payments for different mileage allowances.

Looking at the sales agency agreement, I couldn't say that the signature it bore was very different to the signatures on the other documents which Mr C agreed he had signed. So,

I couldn't say it was an obvious forgery. I was also aware that all the documentation signed by Mr C at the dealership had been sent to him shortly afterwards. This paperwork had included a full set of the terms and conditions and details of the mileage allowance. I hadn't seen that Mr C had raised any issues with Santander until a year later. I thought it was reasonable to have expected Mr C to have looked through the paperwork to ensure he was happy with the agreement.

I'd seen that Mr C had had credit agreements for cars in the past, so if the paperwork hadn't been received by him from Santander for any reason, then I would have thought it reasonable to have expected Mr C to have made enquiries with Santander and obtain a copy earlier than he had.

I didn't think there was sufficient evidence for me to find that Mr C had been misled by the salesperson about the mileage allowance. I thought it was more likely than not that either this wasn't discussed in detail, or that Mr C had misunderstood this term of the agreement.

Mr C said that Santander had provided unclear information about his options under the agreement as it was nearing its term. He says he was told trading in the car, which he had wanted to do wasn't allowed, nor could he hand it back. He says he was told he had to pay the final lump sum which had caused him considerable anxiety. Mr C says that Santander had later said its advice was wrong shortly before taking the lump sum from his bank account. He also said Santander had assured him it wouldn't take this final payment because of his complaint.

I'd seen that there were phone calls between Mr C and Santander. Unfortunately, due to the passage of time, copies of these calls could no longer be provided by Santander. I wasn't surprised copies of these calls couldn't now be produced as its usual practice to only keep calls for a limited period. I also wouldn't have expected Santander to keep calls relating to Mr C separately because he had complained as I didn't think that would have been reasonably practicable. However, Santander had provided me with the notes made from the calls it had with Mr C.

Looking at these notes, I could see that three letters with information leaflets had been sent to Mr C, between January and March 2020, setting out his options. After each of the letters a SMS message had been sent asking Mr C to confirm which option he would be selecting. The three options open to Mr C were to keep the car and pay the final lump sum payment, return the car with nothing further to pay (unless there were charges for excess mileage or for any damage found to the car that was beyond fair wear and tear), or use the car in part exchange for another. Looking at the information provided I couldn't say it wasn't clear.

I'd also seen that Mr C had explained to Santander in a later phone call that he had been trying to arrange a part-exchange for the car but had struggled, due to the impact of the pandemic. And there also appeared to have been a discussion about the car being handed back but Mr C being responsible for any excess mileage. I thought this indicated Mr C had been struggling to make up his mind about what he'd wanted to do and could have explained why he said he hadn't wanted to commit himself in April 2020 when his complaint about the mis-selling of the agreement was ongoing with this service. However, I thought Mr C had been provided with sufficient information as to his three options when the agreement ended.

I'd seen that one week before the lump sum had fallen due Santander had rang Mr C to ask him what his intention was in respect of the car. It had offered him a 90-day extension in which to make a decision, in light of the complaint he had with this service for the mis-

selling of the agreement. There was no note that Mr C had been informed that his only option was to make the payment and Santander recorded Mr C had declined the extension, as he hadn't wanted to commit himself. On the due date for the lump sum payment the £9,125 had been debited from Mr C's bank account.

I'd seen that when Santander had received Mr C's complaint about this money being taken, it had advised him about making an indemnity claim. I understood that the lump sum debit had been declined by Mr C's bank though I appreciated this may have led to bank charges having been applied. Santander explained that Mr C hadn't accepted the extension and that he had been told he needed to contact Santander before the due date to say what he was choosing to do. When he didn't the lump sum had fallen due.

I appreciated Mr C disputed what Santander said, but I hadn't seen any evidence that there had been an agreement to suspend the final lump sum payment. I thought it was more likely than not that Santander had been waiting to hear from Mr C, and that he was aware of the date the money was due to be debited from his account. I didn't think it had been unreasonable for Santander to have debited the final payment amount when it fallen due in these circumstances.

I appreciated this would be of disappointment to Mr C, but I didn't think Santander had acted unreasonably in not upholding his two complaints. I also appreciated there had been times Santander said it would call and hadn't when handling his complaints, which would have been frustrating. I'd seen that Santander had apologised for that. However, customer service, as such, wasn't in my remit as it isn't a regulated activity.

Looking at the evidence and for the reasons set out above, I didn't think there was sufficient evidence for me to reasonably conclude that the credit agreement had been mis-sold, or that Mr C's signature on the sales agency agreement had been forged. I also thought Santander had set out Mr C's options sufficiently for him to choose what he would like to do at the end of the agreement and had acted reasonably when it had debited the final payment.

So, for the reasons set out, I didn't intend to uphold Mr C's complaint.

Mr C has strongly disagreed with my provisional decision. He says that he attended the dealership with a member of his family and that the discussions with the salesperson had all been around a basic annual mileage limit of 15,000. He says that as the salesperson was working to his budget, they had misled him as to the mileage to make the agreement affordable for him. Mr C queried why Santander hadn't asked more questions about the salesperson leaving the dealership.

Mr C also says that I haven't fully considered the impact of having the final lump sum debited from his bank account as this caused him to become many thousands of pounds overdrawn. He says he had to request an indemnity to be arranged by his bank to have the funds credited back. Mr C says that Santander had issued a default notice for his account again having said that it wouldn't which shows how poorly it had handled his complaints.

Mr C says that he agrees Santander had provided clear information about his options in the three letters sent as the agreement was reaching its full term but had provided conflicting information before this. He says he sought clarification from it, but this wasn't forthcoming. Mr C says he finally arranged a part-exchange for the car.

Santander hasn't asked me to look again at any parts of my provisional decision.

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 have gone back carefully through my conclusions and the evidence but, although I appreciate this will be of significant disappointment to Mr C, I haven't changed my view.

Mr C says that the only basic annual mileage limit discussed with the salesperson was that it had to be 15,000. He says a 6,000 annual mileage limit was never raised with him. As this discussion was face to face I don't know what was said, however I have seen that there is the sales agency agreement which appears to have been signed by Mr C which clearly sets out the annual mileage limit is 6,000.

Mr C says that this document is a forgery. As set out above, I think the signature is very similar to those that appear on the other documents and which Mr C agrees he signed. So, on the signature alone I can't reasonably say that a fraud has been committed by the salesperson.

I'm also aware that Mr C received copies of the documentation as part of his welcome pack shortly after acquiring the car. This appears to have been the established process when entering into a credit agreement for a car with Santander. And I think it's more likely than not that the salesperson would have also been aware of the sending of the paperwork directly to Mr C. So, I think it would have been clear any forgery should be quickly discovered. Mr C didn't raise any issues about the terms and conditions of the agreement for one year after he took out the agreement.

I appreciate Mr C says he was told the salesperson had been fired but I don't have any evidence of that. I think Santander acted reasonably in ascertaining they no longer worked at the dealership but as there are potential data protection/confidentiality issues I wouldn't expect it to have made detailed enquiries or for the dealership to have answered those if it had. I think it's fair that I acknowledge a person can leave their job for a number of reasons and so attach little weight to what Mr C had been told about the salesperson's departure.

I still don't think I have enough evidence to be able to reasonably say that this signature is a forgery and on the balance of probabilities, that is that it's more likely than not, I think Mr C signed that document. This means that Mr C should have been aware the annual mileage limit had been set at 6,000.

Mr C says that Santander provided him with conflicting advice about his options when the agreement ended. He accepts the letters sent out in January and March 2020 were clear about the three options available. Looking at the contact notes made by Santander, I can see that it had a discussion with Mr C about his complaint regarding the mileage allowance and contract type. Santander told Mr C, after its investigation, that it wouldn't be upholding his complaint. However, I can't see any reference to a discussion about the final lump sum payment. Santander did inform him that the agreement was a fixed sum loan PCP so it's possible that it would have been raised by Santander that Mr C didn't have the right to voluntary terminate the agreement and this was misunderstood by Mr C. But I accept that's speculation on my part and so it wouldn't be fair for me to say that is what has happened.

I can see from the notes that after the first letter setting out Mr C's options was sent out in January 2020, he made contact with Santander to advise that he had made a complaint to this service. There is no note that he raised a query about his options as the agreement was coming to an end. There followed a further two letters in identical terms but the next contact with Mr C was when Santander called him in April 2020 to ask what he was planning to do. I

appreciate Mr C says that he tried to make contact but wasn't able to get an answer from Santander, but even if there were missed calls, I think it had provided him with the correct information. I don't think it's likely Santander had misled him that his only option was to pay the final lump sum.

I appreciate Mr C's frustration that I haven't been able to listen to the April 2020 phone call. However, I have seen the notes taken from that call which set out Mr C was offered a 90-day extension in which he could decide what he wanted to do. Santander says Mr C declined this offer and at the end of the call he was reminded that the due date of the lump sum payment was close and he would need to make contact with it. I accept the contents of these notes is more likely than not what was said between Mr C and Santander.

As Mr C had declined the extension then I think Santander acted reasonably in seeking the direct debit for the lump sum when it fell due. Santander says that this payment was declined by the bank and I think that as it had caused Mr C's bank account to become heavily overdrawn that is likely to be correct. However, the request for the payment would mean that the amount would be deducted from the account before then being refused by the bank and later credited back. This would incur bank charges. I've seen that Santander also recommended Mr C make an indemnity claim so that the funds would reappear quickly.

I appreciate this debiting of the lump sum payment from Mr C's account would have caused him anxiety as it resulted in him being overdrawn. However, I can't reasonably say he wasn't aware of the date this payment was due and he had declined the extension.

Mr C has queried my comment about not having the remit to look at complaints about the service he'd received from Santander when it was handling his complaint. I apologise if this comment was unclear. This service can't look at how a complaint has been handled by a business, but it can look at any acts or omissions by a firm carrying out a regulated activity (such as providing credit agreements for instance). This means that I can look at whether Santander provided Mr C with misleading advice about the agreement but if it didn't return phone calls about his complaint then I may not be able to look at that alone. However, as set out above I think I have explored Mr C's contact with Santander.

Mr C has also raised the issuing of the default notice which I understand was withdrawn by Santander and that there is no adverse information showing on Mr C's credit file in respect of this account. As Santander has actioned this in a reasonably quick time and Mr C hasn't raised that this caused him any detriment then I don't think it's necessary for me to ask it to do anymore.

For the reason given above, and while I am sorry to cause Mr C disappointment, I'm not upholding his complaint.

My final decision

For the reasons given above I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 March 2022.

Jocelyn Griffith
Ombudsman