

The complaint

Mr W complains about the way Santander Consumer (UK) Plc (Santander) and their agent mis-sold him a fixed sum loan agreement in 2020. He is also unhappy about two conditional sale agreements he entered into with Santander in 2021.

What happened

In October 2020, Mr W, using a credit broker (who I'll call 'C1'), entered into a fixed sum loan agreement with Santander to acquire a car first registered in September 2019. I will refer to this car as 'Car1'. The cash price of Car1 was around £25,748. The total amount payable was approximately £31,033. Mr W made an advance payment of around £4,000. There were 48 monthly payments of around £327, followed by one payment of around £11,323.

Later, on 13 October 2021, Mr W used Car1 as a part-exchange to acquire another car at a different dealership. I will refer to the second car as 'Car2'. Mr W acquired Car2 by entering into a conditional sales agreement using a credit broker (who I'll call 'C2'). Car2 had a cash price of around £41,610. The total amount payable was approximately £44,711. Mr W made an advance payment of around £26,550 – this included the value given for part-exchanging Car1 and a deposit of £1,000. There were 60 monthly payments each around £303.

Mr W was unhappy with Car2 because it didn't have a 360 degree camera, so shortly after, on 5 November 2021, he went back to where he acquired Car2 and used Car2 as part-exchange to acquire a third car; which I will refer to as 'Car3'. Mr W acquired Car3 by entering into a conditional sales agreement, which was brokered by C2. Car3 had a cash price of around £42,000. The total amount payable was approximately £45,358. Mr W made an advance payment of around £25,690. There were 60 monthly payments each around £328.

Mr W is unhappy as he thinks that when he acquired Car1 he was entering into a conditional sales agreement and not a fixed sum loan agreement. So, he complained to Santander that the fixed sum loan agreement was mis-sold to him. He is also unhappy because when he was in the process of acquiring Car2, he said that the dealership told him that they would settle the outstanding amount of money owing on Car1. In addition, Mr W is unhappy that there is a £1,450 discrepancy between the part-exchange of Car2 against Car3.

In December 2021, Santander wrote to Mr W and didn't think that the fixed sum loan agreement on Car1 had been mis-sold to him. In this correspondence, in summary, they said that at the time of signature the pages setting out the terms relating to the agreement were attached. Mr W by signing the agreement was entering into a legally binding contract, so it was important that he understood the agreement he was entering into and its terms and conditions before signing. In this correspondence they also said that Mr W had been given a Pre-contract Credit Information document, and had received a verbal explanation relating to certain aspects of the agreement, including the features that may have an adverse effect on him. They said that a copy of the explanation document was also given to him at the time, and he signed a Finance Suitability Questionnaire (FSQ) which said (in red) that the agreement had been switched to a personal loan. They said that within the FSQ there is a

section called 'Personal Loan Agreement (Fixed Sum Loan); which provides a full explanation of this term.

Regarding the money discrepancy between the part exchange of Car2 against Car3, Santander have said that they are unable to uphold his complaint because the discrepancy was due to Car2 having an additional keeper – Mr W. Hence it has been devalued.

Mr W was unhappy with Santander's response, so he brought his complaint to this service.

Our investigator didn't think that the fixed sum loan agreement was mis-sold to Mr W. And she said that the £1,450 discrepancy between the part exchange of Car2 against Car3 was for depreciation of Car2.

Mr W disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties 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. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr W acquired Car1 under a fixed sum loan agreement, and Car2 and Car3 were acquired under conditional sale agreements. These are all regulated consumer credit agreements. Our service can look at these sorts of agreements.

Section 56 of the Consumer Credit Act 1974 has the effect of holding Santander responsible for any antecedent negotiations between Mr W and C1, who acted as Santander's agent when brokering the fixed sum loan agreement. And similarly, Santander are responsible for any antecedent negotiations between Mr W and C2. What this means is that anything C1 and/or C2 said or did when arranging the finance agreements, I can consider against Santander.

One of Mr W's complaint point is that when he was in the process of acquiring Car2, he said that the dealership told him that the outstanding amount of money owing on Car1's finance agreement would be settled. So, he doesn't think he should be responsible for paying the reminder, or a part of the remainder, of that fixed sum loan. But in this decision, I'm not going to address this issue as it is dealt with separately under a different complaint.

Fixed sum loan agreement on Car1

When Mr W acquired Car1, in summary, he said he was mis-sold the fixed sum loan agreement as he thought that he was entering into a conditional sales agreement.

To decide whether Mr W was mis-sold the fixed sum loan agreement in October 2020, I've considered what he told our service, as well as the paperwork that is available from that time. I can see that the FSQ was completed and the recommendation was for Mr W to acquire Car1 using a 48-month personal contract plan. The FSQ says that this agreement was recommended, as it matched his planned change cycle and/or desired monthly budget. But then it goes on to say that Mr W declined the recommendation and had chosen a personal loan. The document further explains that a personal loan agreement (fixed sum loan) is *'secured against you, the consumer rather than the vehicle. You can settle the agreement early by repaying the required amount back to the finance company. As a 'Fixed Sum Loan' you do not have any rights to terminate the agreement early by handing the vehicle back to the Finance Company (under a Voluntary Termination through the Consumer Credit Act 1974)'*. So, I think from this document most likely Mr W would've been aware that he was entering into a fixed sum loan; one that is secured against him and not the car.

I know that Mr W questioned whether it was his signature on this document. It looks most likely that the signature was done electronically, so the signature's form maybe not be as exact as Mr W's actual signature. But that is not for me to decide, because only a court can decide whether Santander can enforce the fixed sum loan agreement against Mr W. My role is to decide what is fair and reasonable in the circumstances before me. So, I've thought carefully about all the wider circumstances. Mr W does appear to have thought he had entered into a finance agreement of some sort. So, whether he actually signed this document or not, he was expecting to be bound to an agreement where he would have to make payments for Car1. He also received the car and was making the monthly payments for it, so I don't think it would be fair and reasonable to say he shouldn't be responsible for the amount owed to Santander under the agreement, including the remainder of the settlement.

In addition, I've also considered that at the top of the actual finance agreement, which Mr W entered into, it says in bold capital letters **'FIXED SUM LOAN AGREEMENT'**. So, I think most likely Mr W would've known that he was entering into a fixed sum loan and not a conditional sales agreement. Also, Santander have said that they contacted C, who said that they have a robust sales process in place, whereby they inform their customers of the finance acceptance and on what basis it was arranged. And when Mr W signed the fixed sum loan agreement, I can see that he confirmed that he had received a verbal explanation of features of the agreement that may make the credit unsuitable for particular types of use, the payment details, including a reminder to consider the affordability of the payments, the total amount payable, the features that may have an adverse effect on him, the default consequences, and right of withdrawal information. By signing the fixed sum loan agreement, Mr W has also confirmed that he received a written copy of the explanation document. So overall, I think most likely any of the above mentioned points would've raised flags for Mr W, if he did actually think at the time that he was entering into a different agreement instead of entering into a fixed sum loan. And I think, most likely, had this been the case, he would've questioned it at the time.

Overall, taking all the circumstances of the complaint into account, I've not seen enough evidence to be able to say that most likely the fixed sum loan agreement was mis-sold to him.

Money discrepancy between the part exchange of Car2 against Car3

Mr W questioned why there is an approximate £1,450 discrepancy between the part exchange of Car2 against Car3. Santander said that the discrepancy/loss between the part-exchange of Car2 against Car3 is due to its depreciation, as the car has been devalued due to Car2 having an additional keeper. But Mr W is unhappy with this as he said that he

notified the dealership within 14 days that he needed a car with a 360 degree camera. So, he believes that a full price should've been refunded for Car2 when he acquired Car3.

I think Mr W is trying to say that The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR) entitled him to be allowed to return Car2 as it was a distance sale. From the information that has been submitted to our service I can't say that most likely this was a distance sale, among other things because Mr W visited the dealership when acquiring Car2. But either way, Car2 was acquired on credit, so the CCR would not apply in this case. CCR says that it doesn't apply to a contract, to the extent that it is for services of a 'banking, credit, insurance, personal pension, investment or payment nature'. Mr W acquired the Car2 through a conditional sale agreement, so the contract he would've been looking to end was a regulated credit agreement. And the CCR specifically sets out that the regulations don't apply to credit agreements. The Consumer Credit Act 1974 and the conditional sales agreement, gave Mr W the right to withdraw from the finance agreement within the first 14 days. But that doesn't mean he was able to withdraw from the car purchase itself. So, he didn't have an automatic right to hand Car2 back.

I've also considered if Mr W would've been allowed to reject the car because it didn't have the 360 degree camera. The Consumer Rights Act 2015 implies a term into the agreement that, among other things, the car must be as described and be of satisfactory quality. As the supplier and finance provider, Santander is responsible for the quality of the car they provided under the conditional sales agreement. But the model of the car (Car2) that Mr W acquired didn't come with the 360 degree camera installed, and ultimately, I haven't seen anything to show that Mr W was told that Car2 came with the 360 degree camera. So, I can't say Car2 wasn't as described.

I've also considered that Car2 would've most likely suffered some depreciation as the car had been devalued due to it having an additional keeper on its record. So, I can't say that it is unreasonable that it would've suffered some monetary depreciation. Also, I've taken into consideration that the dealership did give Mr W a significant discount of £7,000 on Car3 and Mr W did acquire Car3 with much higher specifications; all of which he signed for and agreed to at the time. So overall, I can't say he was treated unfairly, and I think the dealership was reasonable in trying to accommodate his circumstances.

Overall, I sympathise with Mr W but taking all the circumstances of the complaint into account, I don't think he has been treated unfairly.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 July 2022.

Mike Kozbial
Ombudsman