

The complaint

Miss E complains that Santander Consumer (UK) Plc unfairly terminated a conditional sale agreement and that due to the amount she had paid, later repossessed the car without the required court order.

What happened

In May 2016 Miss E entered into a four-year conditional sale agreement for a used car. The total credit amount borrowed by Miss E under the agreement was £20,442.94 which was to be paid back via 48 monthly payments of £316.43 and one final payment in the 49th month of £5,254.30.

Unfortunately, Miss E struggled to make the repayments and in December 2017 Santander issued a default notice as the arrears had built up. Although Miss E was able to clear these arrears in January 2018 and so satisfy the default notice, she then missed the following monthly payments and a new default notice was issued. Miss E then paid around half the arrears that were outstanding in March 2018 but as there was still an amount outstanding Santander took the decision to terminate the agreement. It also took steps to start the process to repossess the car.

In May 2018 Miss E complained to Santander that it had unfairly terminated the agreement and said that it would need a court order to repossess the car as she had paid more than a third of the amount borrowed under the agreement.

Santander didn't uphold Miss E's complaint. It said that she hadn't kept to numerous payment arrangements during the life of the agreement and the account had fallen again into arrears in February 2018. It also disagreed she had paid one third of the contractual payments and said it was within its rights to now repossess the car.

Miss E complained to this service. An ombudsman fully reviewed Miss E's complaint and issued their final decision in July 2019. The ombudsman didn't uphold Miss E's complaint and said they were satisfied that Santander had acted fairly and in line with the agreement's terms and conditions when terminating the agreement. They also said that Miss E's last payment under the agreement had been in March 2018 and that the total she had paid amounted to £6,512.38. This amount they said was less than one third of the total amount payable under the agreement. The ombudsman said they disagreed with Miss E that Santander required a court order to repossess the car.

Following this service's decision, there were then delays in collecting the car from Miss E. Santander says it had difficulty making contact with Miss E and there were also further complications caused by the pandemic. Miss E had the car in her possession until September 2020 when it was finally repossessed by Santander.

Following the car being removed Miss E complained to Santander about its decision to terminate the agreement, its handling of the arrears and disputed that it was entitled to repossess the car without a court order. Santander didn't uphold Miss E's complaint. It said it had acted in line with the agreement's terms and conditions when terminating the

agreement. Santander also said that although Miss E had provided part of a statement showing she had paid £7,101.67 towards this account this figure didn't actually accurately reflect the payments she'd made to the agreement. It said Miss E had actually paid less than one third. Santander said there was, therefore, no requirement for it to apply for a court order to take the car back and that the repossession of the car had been valid.

In October 2020 Miss E made a second complaint to this service that Santander had unfairly terminated the agreement and that it had no right to repossess the car without a court order.

In November 2020 Santander was granted by the County Court a Delivery of Goods Order against Miss E for the car together with an order for £493 costs. Miss E queried whether this order had been obtained legitimately.

The car was eventually sold at auction and the price it fetched was credited to the outstanding balance on Miss E's account. The balance on Miss E's account now stands at £13,076.89.

Our investigator recommended that Miss E's complaint should be dismissed. She said that an ombudsman had already decided that the termination of the agreement had been fair and that as Miss E hadn't paid one third of the total amount payable under the agreement it was entitled to repossess the car without a court order. This meant that those issues had been dealt with by this service and couldn't now be revisited.

Our investigator said that although the court order had been issued after the car had been repossessed, the court had the power to provide retrospective orders. She also said that this service wasn't able to overturn or challenge a court order and that, in any event, the final decision by the ombudsman in July 2019, had found there was no requirement for a court order. The investigator said this service couldn't take Miss E's complaint any further.

Miss E disagreed with our investigator's view. She said she was going to challenge the court order as she believed the court hadn't been provided with the correct information about the amount she'd paid towards the car. Miss E said that a new payment agreement had been reached with Santander in January 2018 and that she had paid more than the statements from Santander had set out. Miss E said that it was important to listen to the calls she had with Santander after the car had been repossessed.

As Miss E disagreed with the view of our investigator the complaint was passed to me. I issued a provisional decision because I looked at some new things raised by Miss E which she hadn't raised with the investigator. My provisional view was along the following lines.

Miss E's complaint covered a period of around three years. I'd also seen that part of her complaint had already been considered by this service in July 2019 though she had raised potentially new evidence in respect of that as well as the subsequent events.

Events up to July 2019:

The rules governing our service and what we can and can't consider are set by the Financial Conduct Authority (FCA). These rules are known as the DISP rules. These rules also explain that if the ombudsman service believes that the particular circumstances of a complaint make it appropriate to do so, we may decline to consider its merits. This is known as a dismissal.

DISP 3.3.4A says; *The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that: ... (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.*

DISP 3.3.4B says; *Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include: ... (3) where the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant).*

Miss E said that this was a new complaint because of the events around and after the car had been repossessed by Santander in September 2020. However, I was afraid I disagreed that the whole of her complaint was new, and I set out why.

Miss E's original complaint to this service had concerned the decision by Santander to terminate the credit agreement and seek repossession of the car in March 2018. Miss E had disagreed that Santander could take the car back without a court order. I'd seen that this complaint had been fully considered by an ombudsman who had issued their final decision in July 2019. This decision set out the ombudsman's reasons for their findings which included that Miss E had not paid one third of the total payments under the agreement and that therefore no court order had been required. It was noted in the decision that the last payment made by Miss E towards this account was in March 2018.

Miss E said that in January 2018 Santander had agreed a new payment plan with her and so terminating the agreement in March 2018 had been unfair. However, I'd seen that the ombudsman who dealt with her original complaint had set out in their findings about what was more likely than not agreed during various calls between Miss E and Santander in December 2017 and January 2018. I hadn't seen any new evidence that would lead me to believe that the notes of the calls made by Santander and seen by the ombudsman were in any way inaccurate or had missing information. I was satisfied that the fairness of terminating the agreement had been fully reviewed by the ombudsman in July 2019.

I appreciated that Miss E felt strongly that she had paid more than one third under the agreement and she was relying on a statement that she said supported this. I'd looked at this statement to see if this was new evidence that hadn't been before the ombudsman in July 2019 when they had made their finding that she hadn't paid a third of the total payments due for the car.

Looking at this statement, I thought Miss E might have misunderstood how the total payment figure had been calculated. This statement showed Miss E had made payments in total equalling £7,101.67. But this payment figure had actually included direct debit payments that although had been taken then went unpaid and so were debited back to the outstanding balance. I didn't think this was an unusual way of recording direct debit payments that weren't then cleared by a bank, but I could appreciate how Miss E had been mistaken as to the amount she had paid. On the statement the unpaid direct debits were shown as a credit and then later as a debit, meaning Miss E hadn't actually paid and cleared £7,101.67 from the credit amount borrowed. From the figures on that statement, I could see Miss E had paid a total of £6,012.38 plus a £500 deposit which was the same amount as found by the ombudsman in their decision of July 2019.

I'd also seen that Miss E hadn't made any further payments for the car since March 2018 so the amount she had actually paid was unchanged since the ombudsman's decision in July 2019. The reason that the outstanding amount on Miss E's account had now reduced from £14,430.56 to £13,076.86 was because the car had been sold at auction and those proceeds had been credited back. The outstanding amount also included the costs awarded by the County Court when granting the Return of Goods Order. I was therefore satisfied that there wasn't any new evidence about the amount Miss E had paid for the car before the agreement was terminated.

I therefore thought that Miss E's complaint about Santander acting unfairly in terminating her agreement in March 2018 because it had agreed a new payment plan with her, and that it had had no right to seek repossession of the car without a court order was a duplicate of the complaint that had been decided in July 2019. I therefore intended to dismiss those matters.

Events after July 2019:

I'd seen the car had been finally repossessed from Miss E in September 2020 so there had been a considerable delay in Santander taking action to retrieve the car. I understood that some of this delay had been due to the pandemic. And I appreciated this might have led Miss E to hope there would be a different outcome to losing the car, but she knew the agreement had been terminated and that Santander had wanted to repossess the car. I also thought it was reasonable to say Miss E should have been aware the situation with the car was unchanged from March 2018. Her complaint to this service hadn't been upheld and she hadn't made any further payments. So, I didn't think I could reasonably say that Miss E had been given an expectation that she could keep the car. There had been no discussion with Santander after July 2019 about her making further payments or that it wouldn't seek to have the car returned to it.

When looking at the impact of the delay in repossessing the car on Miss E, I thought it was fair that I took into account that throughout that period Miss E had been able to make full use of the car.

I'd seen Miss E had been very upset when the car had been finally taken back and she had expressed unhappiness that she had paid for maintenance, repairs and an MOT in that time only to then have the car repossessed. But as the car was in her possession then I thought it was fair she should have been responsible for its upkeep as she was able to make full use of it. She also hadn't been making any payments to Santander for it. In these circumstances I wasn't intending to ask Santander to reimburse Miss E any of the costs she had incurred in maintaining and running the car.

Miss E had queried the court order and whether it had been obtained using incorrect information. I'd looked at the court papers and I couldn't see that any information had been inaccurate. I'd also seen that a copy of the statement that Miss E had been relying on to show she'd paid more than a third had been provided. As explained by our investigator, this service can't overturn a court order and Miss E would need to challenge this at court if she wished to do so.

Santander said it had obtained the court order as a "*belt and braces*" because of the delay in it being able to repossess the car. It said it had struggled to make any contact with Miss E. I thought that was a matter for Santander and as this is a court order, I wasn't able to comment on that further.

Miss E had been anxious that I listen to a number of calls she had with Santander after the car was repossessed. But I hadn't done so, as I wasn't persuaded their contents

would change my view as to any appropriate settlement for Miss E should I find that Santander had acted unfairly or unreasonably during those calls. This service had already said that Santander hadn't acted unfairly in terminating the agreement and that it was entitled to seek repossession of the car and I wasn't going behind that.

I appreciated Miss E had found the actual repossession of the car distressing as she said it had been unexpected. I'd also seen that following the repossession there had been numerous calls between Miss E and agents of Santander. I appreciated these calls may have caused frustration and/or upset to Miss E. They may also have possibly raised her expectations that something could have been sorted out when this wasn't actually the case. However, in light of how long Miss E had use of the car, I didn't think it would be appropriate to award her compensation. The delay in repossessing the car and the upset this had caused Miss E, was, I thought, more than offset by her being able to continue to use the car throughout this period.

So, although I appreciate this would be of disappointment to Miss E, I was intending to dismiss parts of this complaint and not uphold the other parts.

Miss E strongly disagrees with my provisional decision. She says it is important that I look at the emails and listen to the calls that were between her and Santander. She says Santander agreed it shouldn't have collected the car. She also says she paid more for the car. Miss E says Santander didn't have the right to obtain the court order after it had collected the car.

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 appreciate that Miss E is disappointed at my provisional view and feels strongly that Santander has acted incorrectly in repossessing the car in that way that it did, but although I appreciate this will be of disappointment to her, I disagree.

I haven't seen any evidence that Miss E has paid more for the car than as set out above. So, I am still satisfied there isn't any new evidence that the ombudsman who had decided her first complaint in July 2019 wasn't aware of when reaching their conclusions.

Miss E has raised the importance of the phone calls between herself and Santander, but I'm not persuaded I need to listen to those calls. That's because I think the formal statements that have been provided set out the amount that has been paid accurately. And even if something contradictory had been said on the phone to Miss E, I wouldn't give a phone conversation more weight than the documentation that has been provided.

So, I'm still satisfied that Miss E's complaint that Santander unfairly terminated the conditional sale agreement in March 2018 is a duplicate of her earlier complaint to this service. And I am dismissing this part of her complaint in line with DISP 3.3.4A and 4B for the reasons set out above.

I am also dismissing Miss E's complaint that Santander wasn't entitled to repossess the car without a court order. This is a duplicate of her earlier complaint to this service which was fully considered in July 2019 by an ombudsman.

I am dismissing Miss E's complaint that Santander had obtained a return of goods order unlawfully. As set out above, I've seen no evidence that the information provided to the court was inaccurate. This service has no power to overturn a court decision and Miss E will need

to challenge this at court if she wishes to do so.

I appreciate Miss E's feels that that Santander provided her with conflicting advice and/or misled her about getting the car returned after it had been repossessed. But as set out above, even if this was the case, when looking at any potential redress, I would be taking into account the length of time she had use of the car before it was collected by Santander. I still don't think compensation here is merited regardless of what Santander may have said to Miss E on the phone. I don't think it's necessary for me to listen to these calls, as they aren't going to change my mind about this. And as set out above, I'm not reconsidering whether Santander had the right to terminate the agreement and repossess the car because that has already been considered by another ombudsman in July 2019. As Miss E had the car for an extended period but made no payments for it and was able to make full use of it, I wouldn't ask Santander for any other redress. So, I haven't changed my view.

Miss E hasn't asked me to look specifically at her complaint about the costs she'd incurred maintaining and repairing the car before it was collected. Reviewing my provisional decision, I haven't changed my mind. I still think it's fair that Miss E cover those costs as she had the car in her possession and was using it. I'm not upholding this part of her complaint.

My final decision

For the reasons given above and while I appreciate this will be of disappointment to her, I am dismissing parts of Miss E's complaint and not upholding other parts.

I'm dismissing the following parts of Miss E's complaint:

- That Santander unfairly terminated the conditional sale agreement in March 2018 as this is a duplicate of her earlier complaint to this service dealt with in July 2019.
- That Santander wasn't entitled to repossess the car without a court order as this is a duplicate of her earlier complaint to this service dealt with in July 2019 and no new evidence as to the amount she had paid for the car has been provided.
- That Santander obtained a return of goods order unlawfully.

I'm not upholding the following parts of Miss E's complaint:

- That Santander provided conflicting advice and/or misled her about getting the car returned after it had been repossessed. I'm satisfied that no redress is due when taking into account the amount of use Miss E was able to make of the car before it was collected from her
- That she should be reimbursed any costs incurred maintaining and repairing the car before it was repossessed. I think those costs were properly incurred and paid by her as part of having use of the car for the period that she did.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 5 July 2022.

Jocelyn Griffith
Ombudsman