

The complaint

Mr A complains about the hire agreement provided to him by Santander Consumer (UK) trading as Volvo Car Financial Services ("Santander"). It was to acquire a car in 2019 and Mr A says it was not explained properly to him, and that it wasn't affordable to him. He's also unhappy at the amount of money left owing after the agreement was ended early.

What happened

The timeline of events here is quite complicated, and this is partly due to the fact that some of the issues are with the dealership which were involved in setting up the agreement. I'm not able to look at these issues as I will explain further below.

Alongside this, Mr A is being represented by his brother who we will call Mr B, in bringing the complaint to our service. This has caused further confusion as they have alleged that the agreement Mr A took was in fact for Mr B to use the car, not Mr A. But again, as I will explain below, I can't consider most of their points about this in my decision here about how Santander have acted in this agreement. I will always refer to Mr A below, whether the information has come from him directly, or via his representative, Mr B.

The timeline of events is as follows. Mr A acquired a new car through a hire agreement with Santander in February 2019. He went to a car dealership with Mr B to support him, and he signed up to a 48 month contract hire agreement at around £395 per month.

Mr A began to have difficulties making payments when the Covid-19 pandemic struck in March 2020. He has told us that he lost his job in March 2020, before any FCA guidance was issued to companies about how to deal with consumers during the pandemic. Santander have told us that they tried to speak to Mr A in April 2020 but weren't able to get hold of him.

In May 2020, with guidance then in place from the FCA, Santander issued a three month payment deferral (payment holiday) on Mr A's account. This covered the three payments due in April, May, and June 2020 (April and May payments were already outstanding at this point).

In early July 2020, Santander contacted Mr A to say that payments would be resuming, and the payment deferral at that time couldn't be extended. They did say that further options could be considered, one of which was to return the vehicle and they would apply a 25% discount to the early termination fee, which would usually be a fee equating to 50% of the remaining rentals.

Mr A indicated in August 2020 that he wanted to give the car back, but he couldn't afford the early termination fee as he remained unemployed. The car was finally returned to Santander in November/December 2020, without an agreement to repay the early termination fee having been arranged.

Mr A complained in February 2021 to Santander, saying that the agreement had been mis sold, affordability hadn't been established correctly, financial circumstances had been

exploited and the use of a guarantor was unfair. Mr A also brought his complaint to our service in February 2021.

Santander responded to the concerns in several responses and did not uphold the complaints. They noted Mr A had already brought his complaint to our service and would await our response.

An investigator here investigated the complaint and issued their initial view in February 2022 saying that Santander had done nothing wrong. They explained that Santander could not be held responsible for anything said or done by the broker (dealership) as per the terms and conditions of the agreement, and they looked at how Santander had treated Mr A and were satisfied that they had treated him fairly in dealing with his financial difficulties and the termination.

Mr A responded and highlighted the fact that he had complained about the original affordability of the agreement, saying it was never properly checked. The investigator issued a second view in April 2022 looking specifically at the affordability, and said they were satisfied that there were no concerns with this, and not upholding this element of the complaint.

Mr A didn't agree with this and asked for an Ombudsman to make a final decision. Included with this request were details of the areas he disagreed with. These included that Mr A was coerced into being a guarantor and was never going to drive the car. He said that it had not been highlighted the agreement wasn't a PCP like their previous agreement, and this hadn't been highlighted until Mr B contacted Santander in 2020 to discuss the circumstances. He said that it hadn't been explained that Mr A was responsible for payments if Mr B didn't keep up with them, and that credit was unsuitable due to Mr A's lack of capacity for financial matters making him vulnerable.

Mr A also said Santander should have carried out more detailed checks to ensure the agreement was risk free and affordable for Mr A. Finally, he queried the affordability assessment, saying that it didn't give the correct weight to Mr A's circumstances.

I issued a provisional decision on 3 March 2023. I made the following provisional findings:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr A was supplied with a vehicle under a contract hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

There is one fundamental issue here which hasn't been fully explained up to this point, and which impacts on a lot of the concerns raised by Mr A. I will deal with this first, and then move on to answer the rest of the concerns raised.

The agreement here is a contract hire agreement. In some car finance agreements, if a consumer complains that they have been misled by the broker (here the broker is the car dealership), the finance company can be held responsible for this. This relates to Section 56

of the Consumer Credit Act (CCA) 1974.

However, section 56 of the CCA doesn't apply to most concerns about contract hire agreements. Both Santander and the investigator here have referenced the fact that there is a clause in the terms and conditions which says that any supplier or broker involved in arranging the agreement has no authority to act for Santander, or to make any representation about the vehicle or the agreement on Santander's behalf. But it hasn't really been explained to Mr A that this is based in law, and the CCA.

What this means is that for Mr A's complaint, some of the points he is complaining about are about the car dealership, and some are about the finance company. I can only answer the concerns here that the finance company are responsible for, as this is a complaint to Santander. Mr A will need to consider whether he wishes to make a separate complaint to the broker, the car dealership, where he feels they've misled him or treated him unfairly, and we are happy to help him raise these concerns if he wants to do this. But because of the CCA, in this set of circumstances, Santander can't be held responsible for things the dealer may or may not have said or done.

This could include issues about the agreement being a contract hire agreement, when Mr A has told us he assumed it would be a hire purchase agreement. From Santander's involvement, I have no concerns here. The agreement paperwork itself is clear that it's a contract hire agreement and is signed by Mr A to accept it.

Mr A has said on several occasions that he was a guarantor and didn't understand he was responsible for the payments if his brother Mr B didn't make them. But the agreement applied for is just for Mr A, in his name. There is no guarantor arrangement, indeed Mr B isn't involved in the agreement himself in any way. Santander have received an application from Mr A, and have processed it as such.

Mr B has told us that he was involved in arranging the agreement and accompanied his brother Mr A to the dealership to help him. He's also represented his brother in bringing this complaint to us. They've told us that the credit was unsuitable for Mr A, as he has a lack of capacity for financial matters which makes him vulnerable.

I've considered this issue and Santander's involvement in it. Santander have received an application for credit from Mr A, and assessed it as such. Mr B has confirmed that he accompanied Mr A to the dealership to help arrange the finance, and Santander have liaised with Mr B as Mr A's representative, to deal with the problems in 2020.

Mr B has alleged that Mr A should never have been provided car finance as he doesn't drive, and only holds a provisional license which was supplied with the application. I've reached out to Santander, who have provided the ID that Mr A supplied with his application. This was a passport, not a driving license.

I've seen no evidence that Santander were made aware of any vulnerabilities, and I am satisfied that if they had been made aware that Mr A did not drive, and the car was potentially only going to be used by other family members, they would have declined the application. This would be application fraud, sometimes known as "fronting", and would be a clear breach of the terms and conditions amongst other things.

With regards to Santander, they have received an application for finance from Mr A, and assessed it as such. There's no indication that someone else might intend to drive the car, or that Mr A was financially vulnerable in any way. I'll go on to discuss the affordability now, as Mr A has said that Santander should have recognised the agreement wasn't affordable for him and should have carried out more checks.

Under the rules and guidance that Santander must operate under, they are responsible for carrying out proportionate checks about the affordability of the lending. We have more detail about how we handle complaints about irresponsible or unaffordable lending on our website, and I know the link to this has already been shared with Mr A.

What is considered proportionate depends on the specific circumstances, there are no fixed checks that need to be carried out. It's reasonable to expect that the greater the amount that's repayable, the more thorough the checks carried out should be. This recognises that larger amounts that need paying over longer periods of time present greater risks of a borrower being unable to make repayments.

In this case, I need to consider whether Santander carried out reasonable and proportionate checks to satisfy itself that Mr A would be able to make the payments, in order to show they made a fair lending decision. And if they didn't carry out proportionate checks, would those checks have shown Mr A might have a problem taking on the lending.

There is confusion here as discussed above around the relationship for this car, who was planning to drive it, and pay for it. For the purposes of this complaint, I am considering only Mr A's circumstances. The agreement is in his name, there is no guarantor relationship or similar, and no consideration has been given to the suggestion that his brother Mr B was in fact making the payments, as there is no evidence that this happened, and it wasn't the basis on which Mr A applied to Santander.

Santander have told us that at the point of sale, they would have carried out credit checks, however they can't access these checks any longer as they expired after three months. They say that the checks would have shown no outstanding defaults or other negative information that might have raised concerns about the ability of Mr A to repay the lending. They've also said Mr A had low monthly credit commitments. They accepted his application for finance therefore, as no issues were identified.

Mr A has provided his credit file, as well as other information and bank statements to give us a wider picture of his finances at the time. The credit file shows no recorded CCJs, defaults or other adverse information. So, this matches with what Santander have told us.

The credit file shows there was a personal loan for £83 per month, but no other finance in place at the time. However, Santander haven't been able to confirm details of Mr A's income at the time. For an agreement requiring 48 monthly payments of approaching £400 a month, I don't think this shows that proportionate checks were carried out. I'd have expected to see further checks carried out on Mr A's income and potentially on his outgoings.

Because I'm not satisfied that proportionate checks were carried out, I now need to decide what decision Santander would have made if they had carried out these proportionate checks. To help with this, I've looked at Mr A's bank statements from the period in question, when he signed up for this hire agreement.

His income was around £1443 a month, and committed expenses including the loan previously discussed total around £190 per month. There have been some discussions around rent payable, as Mr A lived with family. There are no regular payments which look like rent in the four months of bank statements provided, which ties in with Mr A telling us originally that he paid rent "informally" to his parents. Indeed, if I look at money coming in and out of his account to family members and friends, there are about as much in credits over the four months as there are in debits, so there is no indication that any formal rent was being paid to family.

Overall, based on bank statements from November 2018 to February 2019, the period when

the finance was taken out, there are no indications of any other committed expenditure. As such, I don't think any further evidence Santander had requested would have changed their opinion about lending to Mr A. His salary was steady, his committed expenditure was low, and he therefore had disposable income he could use for the car finance agreement.

Mr A has said that he was always in his overdraft and didn't have the capacity to make financial decisions. I can see that he was generally in his overdraft, but this wouldn't show on a credit search, and isn't necessarily an indication of him being in any financial difficulties. The overdraft use increased in November 2018 but was then broadly the same in the following three months.

Most of Mr A's spending seems to have been through retail purchases, cash point withdrawals and money going to friends and family. This is what we would call disposable income; there is no ongoing commitment to spend like this, and individuals can decide to spend their money how they choose. This spending wouldn't give me concern, and wouldn't suggest that Santander should have queried it, or had concerns about it, before financing the car hire agreement.

With the commitment to the car hire agreement, Mr A would be able to tailor his disposable income spending as needed to ensure his financial commitments, like the car hire agreement, can be met. Even when including the car hire agreement, Mr A's committed spending is under £600 a month, which is considerably less than half of his income. I've got no concerns about the affordability of this agreement when it was taken out, and I am satisfied that the lending decision by Santander was fair.

Alongside this, Mr A's brother has confirmed he was present for the meeting at the car dealership where the finance was accepted, and the paperwork completed. If Mr A didn't have the capacity to make financial decisions himself, this wouldn't mean he shouldn't be allowed to take out financial agreements or spend his money. I've seen no evidence about Mr A being unable to make financial decisions himself, but if there was a concern, I'd expect to see him supported. In this instance, his brother has explained that he was there to offer this support and to look after Mr A's interests.

As such, I don't think Santander could or should have done anymore here. If they had carried out further checks on Mr A's income and outgoings, there was nothing evident which would mean that they shouldn't have accepted his application. Mr A had the disposable income available to make the payments on the agreement, and he did so for over 12 months without problem. The decision to lend by Santander was fair.

Finally, I've considered what happened in 2020, and whether Santander treated Mr A fairly. I was sorry to hear about his job loss, and the financial problems this caused. In these circumstances, Santander had a duty to treat Mr A with forbearance and due consideration. They also needed to ensure that they followed the FCA guidance issued during 2020 about dealing with car finance customers during the coronavirus pandemic.

Mr A informed Santander that he'd lost his job in March 2020 and stopped making his payments. Santander have said they tried to contact Mr A during April 2020 to discuss his circumstances and missed payment but were unable to get hold of him. Then in late April 2020 the guidance from the FCA regarding the coronavirus pandemic was issued, and I can see that in May 2020, Santander agreed and put in place a backdated three month payment deferral/holiday for Mr A, as per the guidance. This covered payments due in April, May, and June 2020.

When they contacted Mr A in July 2020 to talk about the payments restarting, they explained that at that time, the payment holiday couldn't be extended, but there were other options

available including returning the vehicle and having a 25% reduction in the termination fee payable.

The finance agreement includes in its terms and conditions details about what happens if a consumer ends the agreement early. It says that they can be charged the equivalent of 50% of the remaining rental payments as a termination fee. Offering to discount this by 25% brings the fee down to around 37.5% of the remaining payments.

In August 2020, Mr A has indicated that he wanted to go ahead with this but said he couldn't afford to make that payment as he was unemployed. Santander explained they did not need this payment to be paid in full and could look at setting up a payment plan with Mr A.

It then took until November 2020 for this process to be completed and for the car to be collected. I'm unclear why this was; it's possible Mr A was granted a further payment holiday after the FCA updated their guidance in July 2020 to allow for a further payment holiday/deferral. By the time the car was collected, Mr A hadn't made a total of nine monthly payments.

I have no concerns with how Santander have dealt with Mr A, and am satisfied that they have treated him fairly when he's got into financial difficulties. They have followed relevant guidelines, and shown forbearance and due consideration, as required.

The last thing I've considered is something not considered up to this point, and this is the fairness of the early termination charge. Just because Santander have discounted this charge, it doesn't automatically mean they've treated Mr A fairly or that the charge is fair.

I can see that they quoted Mr A a charge of £5,187.26, but the early termination amount showing on the statement of account several months later is in fact lower, £4,775.58. These figures equate to around 12 to 13 monthly payments. However, Mr A had use of the car for nine months during 2020 without making any monthly payments, and it is fair to consider this when judging whether he's been treated fairly.

I'm satisfied that in the circumstances of this complaint, this charge is fair and reasonable. Mr A would always have had to make up any deferred payments or missed payments on the agreement and he had use of the car for the nine months in 2020 without paying anything for that use at the time. I'm satisfied therefore that Santander treated him fairly and have done nothing wrong, and in these circumstances, the termination charge raised is fair.

Overall, whilst I have empathy with Mr A's circumstances and situation, I can't say that Santander have done anything wrong here. They accepted his application fairly based on the information he provided, and it was affordable to him at the time it was taken out. When things became difficult in 2020 when he lost his job, they dealt with him fairly in trying to help him deal with the agreement, and my provisional decision is that I won't be asking them to do any more.

I have covered all of the issues Mr A has raised which are about Santander. Mr A might decide there are still concerns about the dealership which brokered the agreement for him, and if he feels that, he should raise a separate complaint to that dealership directly. We can help him raise that complaint with them if that helps Mr A. If he would like us to help, he can let our investigator know by replying to this provisional decision and asking us to help.

If he does this and isn't happy with the dealership's decision on that complaint, he may be entitled to bring that complaint back to our service to be considered separately from this complaint.

My provisional decision

For the reasons explained above, I don't intend to uphold Mr A's complaint about Santander Consumer (UK) Plc trading as Volvo Car Financial Services.

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.

Neither party has responded to my provisional decision. As such, I see no reason to depart from my provisional findings and the reasons for them. For the reasons laid out in my provisional decision and repeated above, I am not upholding this complaint.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 April 2023.

Paul Cronin
Ombudsman