

The complaint

Mr M has complained about Santander Consumer (UK) Plc's actions when he exchanged one financed vehicle for another.

What happened

In 2021, Mr M took out a finance agreement for a car. Then, in 2022, he decided to exchange this car for another. Mr M expected the dealership to settle the finance on the first agreement, when he took out the second. But, this didn't happen, meaning Mr M had two live agreements.

Santander told Mr M he'd still need to keep up his repayments under the first agreement, or his credit file could be affected. So, Mr M contacted the dealership, which responded to say it would arrange to settle the finance. However, this still didn't happen, and it appears the dealership is no longer trading. Santander is now pursuing him for the balance, and he's received a court summons.

Mr M complained to Santander, but it said it wasn't at fault, and that the dealership was responsible for making the settlement payment.

Mr M then brought his complaint to our service, and one of our investigators looked into what had happened. In particular, he took into account section 56 of the Consumer Credit Act 1974. This covers a finance provider's liability for 'antecedent negotiations' between a consumer and a credit broker or supplier. In this case, that would be Santander's liability for what the dealership said to Mr M before he entered into the second finance agreement.

Santander (through its legal representative) has said it doesn't consider that section 56 applies here. This is because section 56 covers the *entry* into finance agreements. In this case, Mr M was arranging the *exit* from an agreement, as he was arranging for its settlement.

Our investigator said that, although Mr M was arranging to end one agreement, he was also entering into a new one. Our investigator said that it was reasonable to say that a discussion about settling the finance on the first agreement, was part of the process of entering into the second one. He also referred to evidence provided by Mr M where the dealership referred to a 'swap over' – suggesting that Mr M was looking to exchange one car and its accompanying finance agreement, for another.

Santander's legal representative also said that Mr M was the only party liable to settle the finance. Our investigator said that Mr M shouldn't face detriment, because of something the dealership had said – and that Santander, as finance provider, was responsible for.

Accordingly, our investigator said he thought Santander needed to put things right. He recommended it should:

- write off the outstanding balance from the first finance agreement;

- amend Mr M's credit file, to remove any adverse information recorded in respect of the first finance agreement; and
- pay Mr M £300 for the distress and inconvenience caused.

Santander didn't agree. It said:

- the outstanding finance on the first car should be refunded to Mr M through the dealership's liquidators, not Santander;
- Santander wasn't party to the agreement made between the dealership and Mr M, and so cannot be held liable for funds due under that agreement, and which aren't included in the finance agreement it has with Mr M; and
- Santander cannot remove any negative markers placed on Mr M's credit file by another finance provider.

The complaint was then passed to me to look at afresh. I agreed with our investigator that Santander should put things right, but thought the redress should be slightly different. I explained why. I said as follows.

Taking into account section 56, I'm satisfied that it's reasonable to hold Santander accountable for antecedent negotiations between Mr M and the dealership. I accept that the finance related to settling the previous agreement, but the settlement of this finance is – in my view – inextricably linked to Mr M entering into the second agreement. I cannot see that he would have done so, if he hadn't been told the first agreement would be settled.

Accordingly, I'm satisfied that Santander should settle the previous agreement. It should also refund Mr M for any payments he's made towards the first agreement, after the date he entered into the second, with interest – as these also form part of the settlement the dealership agreed to pay.

It also follows, that Mr M shouldn't have negative markers on his credit file in respect of this. Santander has said it can't remove any negative markers placed on Mr M's credit file by another finance provider. This is true, but I'm unsure of the relevance of this here. It's my understanding that the first and second agreements were both made with Santander.

I can see this matter has caused Mr M significant upset, particularly as he's received a court summons. I think £400 compensation for the distress and inconvenience caused is appropriate here.

Neither Mr M nor Santander had any further comments in response to 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 set out my thoughts in my provisional decision. As neither party had anything to add, I see no reason to depart from my provisional findings. Accordingly, my final decision remains the

same.

Putting things right

To put things right, Santander should:

- refund Mr M any monthly repayments he made under the first finance agreement, after the date he entered into the second agreement, adding 8% simple interest a year, from the date of each repayment to the date of settlement;
- write off the outstanding balance from the first finance agreement;
- amend Mr M's credit file, to remove any adverse information recorded in respect of the first finance agreement; and
- pay Mr M £400 for the distress and inconvenience caused.

My final decision

It's my final decision to uphold this complaint. I require Santander Consumer (UK) Plc to take the actions set out above, in the section entitled 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 August 2023.

Elspeth Wood
Ombudsman