

The complaint

Mrs M is unhappy with what happened when she returned a car financed by a conditional sale agreement with Santander Consumer (UK) Plc trading as Santander Consumer Finance.

Mrs M says she thought she paid a larger deposit than was returned to her.

What happened

In July 2022 Mrs M acquired a used car from a dealer funded in part by a conditional sale agreement provided by Santander. The car cost £64,000. Mrs M sold her previous car to the dealer, who settled the associated finance agreement, and the new credit agreement records an 'advance payment' of £14,157.73.

Mrs M was unhappy with the car and it was returned to the dealer under a '14 day money back guarantee'. When the car was returned, the dealer explained Mrs M would only receive £7,428.43 back from the deposit. It said this was because £6,729.30 was a dealer deposit contribution and the funds weren't due to Mrs M.

Mrs M was unhappy with this. She explained when she had sold her previous car to the dealer at no point did it explain that part of the agreement was for a dealer deposit contribution. She complained to Santander and it issued a final response in October 2022.

In its final response, Santander explained £6,729.30 was a contribution towards the deposit from the car's manufacturer. It said this wouldn't be due back to Mrs M as this would put her in a better position than she would've been had she not taken out the finance.

Mrs M remained unhappy and referred the complaint to our service. Our investigator issued a view explaining she didn't think the complaint should be upheld. She said, in summary, that she was persuaded there was a dealer deposit contribution provided to Mrs M and she didn't think it was reasonable for Santander to pay this back. She said she had heard a phone call where Mrs M explained she knew a dealer contribution was being paid towards the agreement. And, while Mrs M said she didn't know how much this was, our investigator said it would've been reasonable to query this at the time.

Mrs M disagreed. She said, in summary, that the previous car that was sold to the dealer had issues with it, and the dealer explained because of this the manufacturer had agreed to give an increased amount for the purchase of this car. But Mrs M said she never would've agreed to sell the car for the lower amount if she knew the amount from the purchase price wouldn't be returned to her. She said it was never explained to her that the amount she agreed to sell the previous car for was, in effect, dependent on her keeping the newer car. And she said none of the paperwork from the time reflected this.

I sent Mrs M and Santander a provisional decision on 19 June 2023. My findings from this decision were as follows:

Mrs M complains about a conditional sale agreement. Entering into regulated consumer

credit agreements such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs M's complaint about Santander.

I should begin by explaining that Mrs M has made another complaint about the quality of the car that was sold to the dealer here. I'll not comment on that here - this decision will only address the specific circumstances around this credit agreement and the specific points Mrs M has raised in relation to it.

When thinking about what's fair and reasonable, I take into account relevant law, guidance and regulations. Section 56 of the Consumer Credit Act 1974 ('S56') is relevant to this complaint. This explains, under certain circumstances, that finance providers are liable for what a supplier or credit broker tells a consumer before an agreement is entered into. I'm satisfied S56 applies here, so Santander are responsible for what the dealer told Mrs M about the credit agreement before she entered into it.

Santander had a responsibility to make sure the communication around the finance agreement was not misleading. So, I'll consider if this was the case or not. And I'll consider if its explanation of what happened here is correct.

It's worth commenting here that Mrs M selling the car to the dealer isn't a regulated activity in itself, but given the circumstances directly affect the deposit amount on the regulated credit agreement Mrs M entered into, I'm satisfied I can consider what happened here as part of this complaint. But, to be clear, I'm only looking at Santander's responsibilities, not the dealer's.

I've considered the documents Mrs M would've seen at the time.

Looking at the credit agreement Mrs M signed, this says:

"Advance payment: £14,157.73"

I've seen a "USED INVOICE" that Mrs M signed at the time. This records:

"Net P/Ex Allowances 14157.73"

Looking at the "USED VEHICLE PURCHASE INVOICE" Mrs M signed at the time, this contains the details of Mrs M's previous car. It says:

"I have sold the vehicle for the price stated below"

"Purchase Price 56729.30"

"Invoice total 56729.30"

Less settlement 42571.57

Net 14157.73"

Having reviewed the above and the other documents from the time, I can see no mention nor explanation of a dealer contribution.

I have seen a screenshot of the dealer's system notes, which detail that the manufacturer made a contribution of £6,729.30. But, importantly, I haven't seen anything to suggest this was presented to Mrs M.

It's slightly difficult to unpick what happened here. But, from the paperwork and what

Santander, the dealer and Mrs M have told us, I'm satisfied I understand the situation.

Firstly, it's important to note that, based on what I've seen, I'm satisfied the manufacturer did contribute £6,729.30 when Mrs M sold her car. But the important thing is to consider what happened to these funds.

What it appears Santander are saying occurred was that the funds from the manufacturer were used as a deposit contribution. This is relatively common – what I would expect to see under these circumstances is that the funds would be paid from the manufacturer to the dealer. The dealer would then use these funds to add to the deposit – in other words these funds would be paid directly to Santander by the dealer. This would mean, here, that the deposit would be made up of £6,729.30 from the manufacturer/dealer and £7,428.43 from Mrs M.

In these circumstances, it would make sense that Mrs M would not be due these funds back if the car was returned and the finance cancelled. That's because, in simple terms, Mrs M never had the funds. So, she'd effectively be better off by cancelling the finance agreement, which wouldn't be reasonable. It's worth noting here, that if this was the case, I'd expect to see the paperwork from the time reflecting Mrs M selling her car to the dealer for £50,000.

But, having reviewed everything, I'm satisfied this isn't what happened. Based on the paperwork I've seen, it appears that the manufacturer paid funds to the dealer, who then used these funds to buy the car from Mrs M rather than giving them to Santander. The previous finance was then settled, and the remaining funds from the sale of the car paid to Santander and taken forward onto the new agreement as the deposit.

This is an important difference, as here Mrs M did have the funds from the manufacturer – these were paid to her when she sold the car. I'm basing this on the fact that the paperwork specifically says that the dealer bought Mrs M's car from her for £56,729.30 – not £50,000.

To be clear, this means the total funds for the deposit appear to have come from Mrs M.

I've listened to the call Santander provided. I accept Mrs M's representative does mention a dealer contribution, but this isn't enough to persuade me to change my opinion. That's because this call took place after the agreement was entered into. And they also specifically say that at no point was it ever explained what part of a deposit came from the dealer.

So, in summary, I'm satisfied here that there wasn't a dealer contribution to the deposit. I'm satisfied the manufacturer paid funds to the dealer, who then used the funds to buy Mrs M's car from her – but this is quite different. This means Santander's explanation of what happened isn't right here. And, whatever happened, I'm satisfied the situation wasn't made clear to Mrs M before she entered into the agreement.

When thinking about putting things right, I might consider that the total deposit should be paid to Mrs M. But, as part of a separate complaint she has already been compensated in a way I'm satisfied covers this difference. It isn't fair and reasonable for her to benefit twice from this situation. So Santander do not need to reimburse anything further here.

That being said, I think Mrs M has suffered some distress and inconvenience here. I don't think Santander's explanation of what happened was reasonable, and I don't think the situation was made clear to Mrs M at the time. I think being told Mrs M wasn't due funds back that she was reasonably expecting would've been upsetting for her. And I think Santander should pay her £100 to reflect this.

I gave both parties four weeks to come back with any further information or evidence for me

to consider.

Santander didn't respond.

Mrs M came back and made some further comments. She said, in summary, that the compensation wasn't enough and the overall situation should be taken into account with the two cars she acquired. Mrs M said it was fair for £14,157.73 to be returned to her, which was the right way of unwinding the agreement.

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've carefully thought about what Mrs M said in response to my provisional decision.

I should firstly say that I do understand her frustration and upset with the overall situation. But, I need to be clear that the only thing I'm considering in this decision is what happened in relation to this specific finance agreement and the points Mrs M raised about it.

I appreciate Mrs M believes she should get back £14,157.73 in relation to this complaint. But this would represent her being put back in a much better position than if nothing had gone wrong. I'm still satisfied the issue with the deposit has been put right as part of the redress under another decision.

This means, what I need to consider here is what would be fair to reflect the very specific issue of Mrs M being given incorrect information about the dealer deposit contribution. To be clear to Mrs M – this means I'm not looking at compensation for the overall situation, or went wrong with the cars etc.

Having thought about everything again, I still think £100 is reasonable to reflect what happened in the specific circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint.

I instruct Santander Consumer (UK) Plc trading as Santander Consumer Finance to pay Mrs M £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 August 2023.

John Bower
Ombudsman