

The complaint

Mr T complains about the mis representation of a finance agreement in relation to a vehicle that was supplied by Santander Consumer (UK) Plc (Santander).

Mr T has been represented on this complaint. But to keep things simple I'll only refer to Mr T in my decision.

What happened

In November 2022, Mr T acquired a used car through a conditional sale agreement with Santander.

In March 2023 Mr T complained to Santander that the terms of the finance agreement had changed due to a delay in the delivery of the vehicle.

Mr T said that in March 2022 he completed a finance application, paid a deposit of £100 and placed his order for a car. Mr T said he was told the car was expected to be delivered in July 2022.

Mr T said In November 2022 he was told the car was ready to be collected but that the finance deal he arranged was no longer available, and the new monthly repayment was increased by around £35 each month.

Mr T said that following a complaint to Santander the monthly repayments were reduced to £296.87, and an overall increase over the term of £1334.88. Mr T said he was originally quoted £296.06 in March 2022.

In April 2023 Santander issued their final response to Mr T's complaint which they didn't uphold. In it they said there was a 90-day expiry date on the proposal Mr T signed. So, all the information about the agreement was available to be reviewed prior to signing it so it was Mr T's responsibility to ensure he was aware of the terms. They said they found no evidence of mis selling.

Unhappy with their decision, Mr T brought his complaint to our service for investigation. He said the agreement had been mis sold to him and should be amended to honour the original proposal.

Having reviewed the information on file the investigator recommended that Mr T's complaint should not be upheld.

The investigator concluded that the proposal had an expiry, and Mr T willingly entered into the new agreement having had the opportunity to consider all the information.

Mr T didn't accept the investigator's recommendation. He said he felt he was lied to about the agreement and didn't sign it either. However, as the investigator's view remained unchanged Mr T asked that his complaint be referred to an ombudsman for a final 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr T complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr T's complaint about Santander.

Mr T complains that the agreement was mis sold to him because he wasn't aware the finance proposal that he was presented with in March 2022 had a 90 day expiry date. He said he believed the price of the car and finance details were secured following his initial application. Mr T said he wouldn't have placed the order had he been aware of an expiry for the finance proposal.

In effect Mr T is saying that the finance agreement was misrepresented to him. So, I've focussed my decision on whether Mr T was misled into taking the finance agreement.

Section 56 of the Consumer Credit Act 1974 explains that in certain situations finance providers are liable for what is said by a supplier before the consumer takes out a credit agreement. So, if the dealer incorrectly told Mr T the finance agreement had a particular rate of interest attached to it, it's taken as if Santander told Mr T the same. So, in the circumstances, although Mr T negotiated the details of the finance agreement with the dealership, I'm satisfied that this complaint should be against Santander.

To investigate whether there was a misrepresentation of the finance agreement at the point of supply, I've considered two things:

- whether there's been a false statement of fact; and
- if the false statement of fact would have induced Mr T to enter into the agreement

Based on the evidence I have from both parties; it seems unlikely that a false statement of fact was made, so I don't think the agreement was misrepresented to Mr T. I've explained in my decision why I don't think this was case.

My starting point is that Mr T said he completed a finance application in March 2022 for a car that was due to be delivered around four months later.

Mr T said he was told by the dealership that the deal was 'locked in'. He says it was this statement which led him to believe the agreement he'd entered into would be at a certain rate of interest.

In their final response Santander said the proposal that was given to Mr T was valid for 90 days, although they weren't able to confirm whether the terms of the expiry was discussed with him.

Mr T provided us with a copy of the sales agreement dated 23 March 2022. Santander also provided us with confirmation of the proposal dated 22 March 2022 which included the proposed monthly repayment of £296.06 and a final balloon payment of £7,893.

So, I'm satisfied that this was presented to Mr T in March 2022.

Santander also provided a copy of the finance agreement that Mr T entered into in November 2022. The details of that agreement differs from the original proposal in that the monthly repayments are slightly higher at £296.87 with a balloon payment of £8,856, which is also higher than what was initially proposed to Mr T in March 2022.

I'm also satisfied that the agreement Mr T ended up with, had a higher total amount payable than the initial proposal. However, I'm not persuaded that the agreement Mr T is currently in was mis represented to him.

I say this because the agreement is electronically signed by Mr T, which suggested he had an opportunity to review its details and reflect on whether he wanted to enter into it before signing it. In addition, in an email chain between Santander and Mr T in November 2022, before the agreement was entered into, Santander gave Mr T the opportunity to opt out prior to entering into the revised agreement.

I think Mr T is mainly unhappy because he wanted the original proposal to be honoured, and although I can understand Mr T's feeling about this, it doesn't mean the current agreement was mis sold to him. Because he made the informed choice to enter into it.

Mr T said when the car arrived in November 2022, the dealership told him there was 'bad news', that the finance proposal he initially agreed couldn't be honoured, and if he wanted the finance with them, they would have to accept it at a higher rate of interest. Although I acknowledge this was likely to have been disappointing for Mr T to hear, its further evidence that Mr T was informed of the new finance details. And the signed agreement is evidence that he accepted it despite having the option to go elsewhere.

When the car was ready for collection Mr T didn't have to go ahead with the new finance. For example, he could have shopped around for a better deal.

It's not unusual for finance proposals to have an expiry on them, to allow for changes in interest rates. And I don't consider the delay to a vehicle delivery to necessarily be the fault of the dealership. In Mr T's case Santander confirmed it was a delay by the manufacturer. I don't think it's reasonable for a dealership to hold their interest rates indefinitely. It's reasonable that finance proposals are reviewed to consider the current market and changes to interest rates.

Santander confirmed the rates had increased beyond their expectations, however, that they made attempts to reduce the repayments in the circumstances.

I acknowledge Mr T said he felt pressured into taking the agreement, perhaps that he'd waited a number of months for that specific car, and for a period of time believed he was getting a specific deal, however I've not seen any evidence, to support what Mr T has said. The offer from Santander in November 2022 for Mr T to opt out of accepting the revised agreement persuades me otherwise.

In their final response Santander confirmed they maintained the value of Mr T's part exchanged vehicle and was able to reduce the payments to as close to the original proposal as possible. In the circumstances I think Santander have acted fairly.

As I've concluded that the agreement wasn't mis represented to Mr T, I don't require Santander to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr T's complaint against Santander Consumer (UK) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 March 2024.

Benjamin John
Ombudsman