

The complaint

Mr D complains about a fixed sum loan he took out to finance the purchase of a car.

What happened

In October 2018 Mr D bought a brand new car from a dealer I'll call S. He paid for the car in part using a fixed sum loan from Santander. The car cost £35,528 and Mr D put down a deposit of £9,360. Mr D therefore borrowed £27,168.

The loan was repayable over 48 months followed by one payment of £14,275 (also known in the agreement as the 'guaranteed price').

The agreement also included a 'sales agency agreement'. This allowed Mr D to appoint Santander as his agent to sell the car at the end of the agreement. In such event, the sales agency agreement permitted Santander to sell the car and deduct from the price realised:

- commission of either 10% of the net price realised after deduction of its costs of sale or the amount (if any) by which the net price realised exceeded the guaranteed price;
- its costs and expenses of sale, and;
- the guaranteed price.

If the price realised after expenses of sale was less than the guaranteed price/final payment, Santander would make good the deficiency. And if the car failed to sell within 90 days from the end of the agreement, Santander would pay Mr D an amount equal to the guaranteed price.

Towards the end of the agreement Mr D decided that he wanted to refinance the loan and arranged to enter into a hire purchase agreement with another lender, 'H'. However, Mr D said that when H discovered his finance agreement with Santander was a personal loan and not a hire purchase agreement, it told him it couldn't lend to him. Mr D thought this was because of the way Santander had recorded the loan with the credit reference agencies. He said he spoke with Santander and it told him it would sort things out with H.

H said it still wasn't prepared to lend to Mr D. Mr D said Santander offered to refinance the loan for another year but he was not happy with the interest he'd have to pay. Mr D said he eventually decided to pay the final payment on the loan.

Mr D complained to Santander in September 2022. He said he thought his agreement was personal contract purchase where the finance was secured against the car. He said the way the loan was being recorded with the credit reference agencies meant he couldn't refinance it with H.

In response to Mr D's complaint, Santander said that all of the information about the loan would have been provided by S and it was Mr D's responsibility to read this before he signed the agreement.

In May 2023 Santander provided some more context to its final response. It said the agreement had been recorded with the credit reference agencies as a 'balloon HP' because it was a combination of personal contract purchase and a personal loan. It said this is because, like a hire purchase agreement, Mr D could either pay the final payment and keep the car, return the car (via the sales agency agreement) or refinance the final payment with it at the end of the term.

Santander offered to pay Mr D £150 compensation for distress and inconvenience.

Our investigator thought Santander's offer was a fair resolution to the complaint. He didn't think there was enough evidence that Mr D had been unable to refinance his agreement with another lender because of something Santander had done wrong. And he said the type of agreement and its features appeared to have been explained to Mr D before he entered into it. He thought Santander hadn't been clear enough in some of its communications when Mr D was trying to resolve the issue with the other lender. But he thought Santander's offer of compensation of £150 was fair compensation for this.

Mr D did not agree with the investigator and asked an ombudsman to review his complaint. In summary, he still thinks Santander sold him a type of agreement that meant he was unable to refinance with another lender, doesn't think the type of loan he signed was properly explained to him before he entered into it and doesn't think Santander explained his options properly at the end of 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.

In deciding what is fair and reasonable in this complaint, I must consider any relevant law and regulator's rules and guidance. I find relevant law in this case to include Section 56 of the Consumer Credit Act 1974 ("section 56"). This had the effect of making S an agent of Santander during the "antecedent negotiations" leading up to Mr D entering into the loan agreement. This means Santander can be held responsible for the things S said or didn't say, and what it did or didn't do during the sales process.

It is I believe fair to say that most of Mr D's complaint now arises from what he said was a failure by S to explain the features of his loan to him before he entered into the agreement. Mr D said he thought his loan was a PCP agreement where the lender remained the owner of the car until the loan was paid off. He didn't think he was entering into an agreement where he obtained ownership of the car straight away – as was the case with a personal loan.

Mr D said he doesn't recall any specific comments by the salesperson, just that Mr D explained his overall goal was to have an arrangement where he paid a single monthly payment that would cover the entire running costs of the car and the salesperson recommended 'PCP'.

Santander said that S would have explained the features of the loan to Mr D and would have provided him with an 'explanation document' and pre-contract credit information document which set out the key details of it. Mr D said he never received them.

While Santander has provided copies of the documents, it has not evidenced that Mr D received all of them. And with memories fading over time, it's difficult to know for sure now what was or wasn't explained.

So, it is perhaps possible (although by no means clear) that some of the features of Mr D's agreement were not explained to him before he entered into the loan. I've thought about whether based on his comments, Mr D has lost out in any way as a result.

My starting point here is that it's clear Mr D required finance of some kind to assist his purchase/acquisition of the car. And from what he's said, it appears Mr D may have been open to a number of different options – he's given us a quote he received for a conditional sale agreement for example.

I have thought about Mr D's comments that he thought he was getting a PCP agreement where the car would have been 'secured'. PCP is a name typically given to a kind of arrangement (often hire purchase) where the lender buys the car from the supplier and then rents it to the consumer for a monthly payment. There is usually an optional final payment (sometimes referred to as a balloon payment) which the consumer can pay to buy the car outright. Or, the consumer may have the option to return the car at the end of the agreement with no further cost to them (provided the car is in good condition).

Mr D's agreement with Santander meant it was lending him the money to buy the car outright from S from the start. However, it did share some of the key features of PCP type arrangements. For example, it appears the agreement had lower monthly payments with one much larger payment at the end. And the sales agency agreement meant that if Mr D wanted to return the car just before the final/balloon payment was due he could do so by appointing Santander as his agent to sell it. And under that same agreement, if the price realised on the sale of the car was less than the guaranteed price (which was the same sum as the final/balloon payment) and Mr D had kept the car in good condition, Santander would make up the difference between the price realised and the final payment. If on the other hand the price realised was more than the guaranteed price, this may have resulted in a sum becoming payable to Mr D (subject to the deduction of Santander's costs and commission).

Thinking about this, it appears Mr D's loan agreement was not that dissimilar from a PCP type arrangement. There are features of PCP that the loan didn't have such as the ability to terminate the agreement early and pay 50% of the repayments (usually known as voluntary termination) but there's no indication that Mr D wanted to do this so I don't think he's lost out as a result.

Mr D hasn't said he made it clear to S that he didn't want any type of agreement where the car was not secured. So overall, it appears that the agreement Mr D ended up with was broadly in keeping with what he was open to taking out.

Mr D has said he couldn't refinance the final payment on the agreement or part exchange the car elsewhere because of the way it was recorded on his credit file. Mr D hasn't evidenced why H made the decision to decline his application when it did, or that any other establishment refused to part exchange the car based on what was recorded on his credit file. As an aside on the latter of those issues, it seems unusual to me that another dealer would have based a decision not to part exchange the car on what was on Mr D's credit file when it's likely he could have evidenced he was the owner of the car. But as I say, I've not seen enough evidence of this in any event.

So, it's not clear enough that the way the loan was recorded on Mr D's credit file was the reason a refinancing deal was eventually declined by H or the reason Mr D could not part exchange the car elsewhere.

Mr D's loan was recorded as 'Balloon HP' on the credit file he has provided. I do agree this wasn't perhaps the most accurate description of the agreement given it was not HP but a fixed sum loan. But as I've said, I've not seen enough that this was the reason H decided not

to proceed with the loan. And he's settled the agreement now, so it's very unlikely he'll be disadvantaged by it going forward.

Mr D has said that when he visited a dealership in May 2022 to discuss his options he was told he could not return the car to be sold and receive the net price realised on the sale. And also, that any trade in value would be based on the guaranteed price in the loan agreement. Mr D said the price he was offered was much lower than other valuations he got for the car and the dealer was in fact selling the same model for £7,000 more than the valuation he was given.

Santander was not liable to Mr D for things said or done by the dealer after the loan agreement had been entered into, unless for example it was information it had asked that dealer to relay to Mr D. And in this case it seems most likely it was the dealer, not Santander that would have been setting the part exchange value. A part exchange did not involve invoking the terms of the sales agency agreement, and Mr D was of course the owner of the car. So, it seems unlikely to me that Santander would have exerted any influence over the price the dealer offered.

Looking also again at the sales agency agreement, while Mr D could decide to appoint Santander as his agent to sell the car at any point not later than 30 days before the option date (the option date being 11 November 2022) Santander would not endeavour to sell the car until the option date at the very earliest. So, if Santander did tell the dealer that it wouldn't sell the car on his behalf yet in May 2022, that doesn't appear to have been contrary to the sales agency agreement.

Mr D said his options were not properly explained to him at the end of the agreement. I can see he was sent a letter in September 2022, a couple of months before the end of the agreement, setting out three options available to him. Those options included keep the car and pay the final payment, return the car, or part exchange at another dealer and pay the final payment by the option date.

This communication does appear to have been intended for Santander's hire purchase customers and did not elaborate, for example, on the full details of the sales agency agreement and what might happen if upon the sale of the car Santander realised a price in excess of the guaranteed price. However, I don't think Santander misrepresented the end of agreement options to Mr D in this letter or any subsequent communications I've had sight of. Mr D was after all able to return the car to Santander under the sales agency agreement so that part of the communication wasn't wrong. It appears the focus of Mr D's conversations with Santander after this was the way the agreement had been recorded on his credit file and it doesn't appear clarity was ever sought on just how the sales agency agreement would work should Mr D have invoked it. It is not disputed that Mr D was left with a copy of the loan agreement, so he'd have been reasonably aware of the existence of the sales agency agreement and its terms.

Overall, the evidence does not persuade me that Mr D was disadvantaged in the way he's said he was by the kind of agreement he took out, or that Santander has treated him unfairly.

I do find Santander could have given Mr D better information in some of its communications, the end of agreement options letter being one example. I find the sum of £150 already on offer to be fair compensation for any distress and inconvenience Mr D has been caused by Santander. If Santander has not paid this to Mr D yet, it should do so.

My final decision

For the reasons I have explained above, I require Santander Consumer (UK) Plc to pay Mr D £150 for distress and inconvenience if it has not already done this. I do not require it do anything else in respect of Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 October 2023.

Michael Ball
Ombudsman