

The complaint

Miss M complains that Santander Consumer (UK) Plc trading as Santander Consumer Finance ("Santander") is pursuing her for payment for a debt for which she says she isn't liable.

What happened

Miss M contacted our service in July 2023 wishing to complain about Santander. She said they had been asking her to pay a debt they say she owed, which was in relation to a finance agreement. Miss M says she didn't sign the agreement and never saw or owned the vehicle subject to the agreement.

Miss M mentioned that she attended a court hearing on 9 March 2018 where she says it was ordered that the claim brought against her by Santander would be struck out if no further order was presented to the Court by 8 March 2019. Miss M said no further order was brought but three years later, she was contacted by a third party I'll call "D" asking her to set up a payment plan to pay the debt. Miss M says she set up a monthly payment plan for £85 but didn't agree she should be paying this because of the Court order.

Santander replied to Miss M's complaint after we had made them aware of it. They said they'd been advised by D that the debt hadn't been extinguished and the balance remained owed by her. And they said D advised them that they could issue a new claim at any time for the debt based on the balance and could obtain a County Court Judgment.

Our investigator felt Santander's position was correct and so didn't recommend they take any action. Miss M didn't agree and so her complaint has been passed to me for a 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've looked at the Judgment for Delivery of Goods from 9 March 2018. This is the Judgment that Miss M has referred to as one of the reasons why Santander shouldn't be pursuing her for payment.

The Judgment ordered that a second defendant, who wasn't Miss M, had to return the goods to Santander forthwith. The goods here were the car subject to the finance agreement Santander says was entered into by Miss M. The Judgment also ordered that the second defendant pay Santander the sum of arrears outstanding under the finance agreement and pay costs.

The Judgement also set out the following: '*And It is ordered that the Claim against the First Defendant is adjourned Ggenerally (sic) with liberty to restore and the claim will be struck out without further order at 4pm on the 8th March 2019 if by then no application to reinstate has been made*'. The first defendant to the action brought before the court by Santander was Miss M.

My view is that this Judgment doesn't go as far as saying that Santander couldn't bring a new claim to court at any time in the future; it was just that they couldn't restore the Claim that had been brought in 2018. Nor does the Judgment say that any debt owed to Santander is no longer, or never was, one that Miss M owed.

So, I'm afraid I don't agree that the Judgment in and of itself is enough to say that Santander wasn't entitled to seek payment of the debt from Miss M, bearing in mind also that she was the named party on the finance agreement that underpins the debt Santander sought to reclaim.

The other reason why Miss M says Santander shouldn't be pursuing her for payment is that she never entered into the finance agreement and never saw the car financed by the agreement. However, that to my knowledge wasn't an argument brought before the court and I can't see good reason why Miss M didn't do this. I think it would be unreasonable for me to now consider that aspect of Miss M's complaint bearing this in mind and after such a long time has elapsed since the court heard the case. Miss M may wish to consider bringing this matter back before a court, however.

I gather that Santander has now sold the debt on to a third party. I see no reason why Santander wasn't permitted to do this. Miss M will now need to liaise with that third party in relation to this debt.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 11 October 2024.

Daniel Picken
Ombudsman