

The complaint

Mr S complains Santander Consumer (UK) Plc (“Santander”) made mistakes when extending his conditional sale agreement as a result of payment holidays he’d taken during the COVID-19 pandemic.

What happened

I issued a provisional decision on Mr S’s complaint on 14 March 2024, a copy of which is appended to and forms a part of this final decision. I asked both parties to the complaint to let me have any submissions they wanted me to consider, by 28 March 2024. Mr S responded to say he didn’t have anything to add. Santander has failed to respond.

It’s not necessary to go into the background as I already did that in my provisional decision. However, very briefly, Mr S had two payment holidays on his Santander conditional sale agreement during the COVID-19 pandemic. He then extended the agreement on Santander’s suggestion, so he could repay the deferred payments at the end.

Unfortunately, Santander sent Mr S the wrong extension agreement to sign, which he failed to notice at the time. This meant the agreement was extended for 12 months instead of six, as had been agreed over the phone. Mr S complained when he realised what had happened. Santander offered Mr S £200 compensation but refused to make any retrospective amendments to the agreement, as Mr S had signed for a 12 month extension.

In my provisional decision I said I was minded to decide that Santander should not hold Mr S to the incorrect 12 month extension, as it had more responsibility for the mistake having been made, and it wouldn’t have been clear to Mr S that he was signing the wrong document in any case. I said I was minded however that Santander *could* charge interest on the extension, in line with the regulator’s COVID-19 specific guidance at the time, but only for the six months the extension should have been set up for.

Because the deadline for responses to my provisional decision has passed, the case has been returned to me to review once more.

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.

Because neither party to the case has put forward any new evidence or arguments for me to consider, I see no reason to depart from the findings I set out in my appended provisional decision. It follows that I will be upholding Mr S’s complaint for the reasons outlined in my provisional decision, and directing the bank to provide the same redress.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mr S’s complaint and direct Santander Consumer (UK) Plc to take the following actions:

- Amend Mr S's finance agreement to reflect the fact that a six month extension should have been put in place and not a 12 month one.

This should include the removal of any interest, fees or charges associated with the agreement having been extended for six months too long, but it does not need to include the removal of any interest that would have been charged had the agreement been extended for six months only, as originally agreed.

- Pay Mr S £200 compensation to reflect the non-financial impact on him of its errors, to the extent that it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 April 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've reached slightly different conclusions to our investigator and so I need to give all parties to the complaint a further opportunity to provide representations before I make my decision final.

I'll look at any more comments and evidence that I get by 28 March 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr S complains Santander Consumer (UK) Plc ("Santander") made mistakes when extending his conditional sale agreement as a result of payment holidays he'd taken during the COVID-19 pandemic.

What happened

It is unusual that this case has required a decision, as it seems both parties were broadly in agreement with the recommendations of our investigator. However, my understanding is that Santander has failed to implement the agreed settlement and has not been responding to the investigator. As a result, it has been necessary to issue this decision. For reasons which I'll explain later, having reviewed the case my findings differ slightly from those of our investigator.

Given the background is well-known to all parties I will not set everything out in detail, but in summary:

- Mr S entered a conditional sale agreement with Santander in April 2019 for a used car. The agreement was originally due to run until May 2024 with monthly repayments of £233.21.*
- During the COVID-19 pandemic, Mr S requested help from Santander as he was struggling financially due to being furloughed. Santander agreed an initial three-month payment holiday for May, June and July 2020. Mr S and Santander then made a further agreement that Mr S could pay 25% of his monthly repayments for December 2020, and January and February 2021. It appears both of these arrangements were maintained successfully.*
- In February 2021 Santander discussed with Mr S how to proceed with paying back the amounts he'd not paid due to these special arrangements. He wasn't able to pay it all back in one go and so he was given the option of refinancing his conditional sale agreement to make up the missed amounts over six or 12 months. It was agreed over the phone that Mr S would extend the agreement by six months.*
- The extension needed to be agreed in writing, but Santander accidentally sent Mr S the wrong extension agreement to sign – for 12 months instead of six months. The wrong agreement was signed, although there has been some dispute over who it was signed by, and the agreement was extended for 12 months as a result.*
- When Mr S realised the agreement had been extended longer than he expected, he complained. He considered the longer extension meant he would pay more interest than he would have done, had it only been for six months as agreed over the phone.*

- Santander accepted that there had been a mistake in sending the wrong extension agreement and offered Mr S £200 compensation, but they said Mr S had signed it and they could not retrospectively change the length of the extension now. Mr S was dissatisfied with this response and referred his complaint to the Financial Ombudsman Service.

One of our investigators looked into the complaint. He noted that Santander accepted an error had been made in sending Mr S the wrong extension agreement to sign. He thought Mr S would reasonably have assumed the document he was asked to sign would have reflected the telephone conversation he'd had with Santander. He established that Mr S's credit file did not show any negative information as a result of the payment holidays or the agreement extension. He was unable to establish whether Mr S was being charged interest for the period of time his agreement had been extended by, because Santander did not fully answer his questions about this. However, he suspected that Mr S had been charged interest and noted that this was against Financial Conduct Authority ("FCA") guidance issued in November 2020.

Our investigator recommended Mr S's complaint should be upheld and that Santander should amend the extension so it was only for six months, and ensure no interest was charged in connection with the extension of the agreement.

As I've explained above, both parties signalled their acceptance of (or at least did not disagree with) our investigator's assessment, but as Santander failed to carry out the actions it had apparently agreed to, the case has been passed to me to decide.

What I've provisionally 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 split my provisional findings into sections with headings identifying the key questions which I think need to be answered to arrive at a fair and reasonable set of conclusions.

Should the extension agreement be taken to be six months or 12 months?

Santander accepts it mistakenly sent the wrong extension agreement to Mr S to sign, having agreed an extension of six months with him on the phone. Mr S says he doesn't remember signing this and he doesn't recognise the signature on it. He's referred to his phone having compatibility issues with the e-signature system.

On balance, I think it's likely Mr S did sign the extension agreement. Based on Santander's account notes, it appears to have been emailed to him at 15:41 on 4 February 2021. The e-signature which is purportedly Mr S's is timestamped 15:58 the same day, and Santander's notes record it received the document back from Mr S and then signed it itself at 16:44 the same day, which matches the timestamp for Santander's signature on the document. I think the evidence points to it being more likely than not that Mr S did sign the incorrect extension agreement.

Everyone seems to accept that what had been agreed over the phone was a six month extension. Both parties subsequently made a mistake: Santander sent the wrong extension agreement, and it seems likely Mr S signed it, not realising it was for 12 months. Santander has, in my view, more responsibility than Mr S for the problems this caused. Mr S would reasonably have expected, based on the conversation he'd had, to be sent a six month extension agreement. I think he would have had that expectation in mind when he reviewed the agreement, which did not say explicitly whether it was a six or 12 month extension – it

simply said that it was for 49 months overall. In light of this, I don't think Mr S would necessarily have realised that he'd been sent the wrong agreement to sign, and I don't think it is fair and reasonable of Santander to hold him to the new terms. An extension of six months should have been honoured by Santander.

Should Santander charge any interest on the extension?

It's worth mentioning here that it's not actually clear if any interest, over and above what Mr S would have paid had the agreement not been extended, will actually be charged. This is because Santander has failed to answer our investigator's questions about this, and the extension agreement confusingly refers both to having an interest rate of 0.0%, and an APR of 9.9%.

Our investigator considered the FCA's November 2020 "Motor finance agreements and coronavirus: Payment Deferral Guidance", quoting the following sections to support his view that Santander should not have charged any interest on the extension:

"3.7 In determining what is in customers' interests, a firm should not have regard to its own commercial interests, including the fact that the firm would, under this guidance, be expected to waive any interest in accordance with the 'Interest Waiver' section.

4.13 Where the customer, at the end of a payment deferral period (or, if the customer was given a series of payment deferrals in respect of consecutive payments, at the end of the cumulative payment deferral period), is provided with forbearance under the Tailored Support Guidance, any interest that would not have accrued over the payment deferral period but for the payment deferral(s) granted under this guidance should be waived as soon as reasonably practicable at the end of the period.

4.14 The effect of the interest waiver should be that a customer would not, in respect of the deferred amounts, be in a worse position, in terms of interest relating to the payment deferral period, than if they had paid those amounts in full in accordance with the agreement."

I have read the guidance in full, along with the Tailored Support Guidance¹ which is referred to in it, and having done so I've been unable to arrive at the same conclusions as our investigator on this point. I'll explain why.

The Tailored Support Guidance contained provisions about what should happen as a consumer was approaching the end of the longest permissible payment holiday² (my emphasis underlined):

3.2. The Payment Deferral guidance sets out that firms should take reasonable steps to contact their customers in good time before the end of a payment deferral period about resuming payments and to engage with them about their options when it expires. The firm should use an appropriate medium for doing so. This could include use of a digital or scripted process. However, the firm should take into account any preferences expressed by, or known needs of, the customer.

3.3. This contact should inform customers of what will happen if they do not respond, including providing information about the next payment falling due after the payment deferral and how the deferred amounts will be treated. If the customer is able to resume full payments, the firm should deal with the customer under the Payment Deferral guidance

¹ *Consumer credit and Coronavirus: Tailored Support Guidance*, Financial Conduct Authority, January 2021

² Payment holidays were officially known as "payment deferrals" and this is the term which appears in the FCA's guidance.

related to Personal Loans in accordance with the section on 'customers able to resume payments' (or corresponding sections in the other Payment Deferral guidance) and applicable sections of this guidance.

The Tailored Support Guidance noted that where a consumer was still unable to resume full payments, they should be treated with forbearance. This is the scenario the guidance our investigator quoted was dealing with.

However, the corresponding section of the Payment Deferral guidance for motor finance, dealing with customers who were able to resume full payments, said the following:

“4.10 Where a customer can resume full repayments after a payment deferral, but is unable to pay the deferred amounts immediately and in full, the firm should allow them to repay the deferred amounts over the remaining term of the agreement or allow a longer period for repayment. The firm should consider what is most in the customer’s interests.

4.11 For example, where appropriate, the firm could lengthen the time during which the customer is allowed to make repayments by:

- the length of the payment deferrals given to the customer; or
- a period of time that enables the customer to keep the same contractual payments they had prior to the payment deferrals.

4.12 If the firm permits the customer to repay the deferred amounts over a longer term, it should give the customer adequate information that explains they could pay more over the lifetime of the agreement, compared to an alternative means of repaying these amounts, such as over the original remaining term. Firms should also bring to the attention of the customer in good time before an extension is granted, the need to consider wider implications of the extension – such as potential knock-on effects on insurance, warranties, breakdown cover or MOT. In considering longer repayment terms, firms should also consider the customer impact of depreciating asset values and communicate this to the customer.”

The guidance went on to say:

“4.16 At the end of the payment deferral period, if the customer can resume payments in full and irrespective of how the deferred amounts are to be repaid, firms do not need to waive the interest accrued as a result of the payment deferral(s).”

Santander’s notes record that, when it discussed with Mr S his options as he approached the end of his second payment holiday where he was making reduced payments, Mr S had said he could resume payments in full, but he couldn’t pay any more than that. So, it doesn’t look like paying off all of the missed payments in one go, or over the lifetime of the existing agreement, was a viable option for him at the time. Nor was he unable to make the full repayments and therefore be entitled to forbearance. I think it was reasonable in the circumstances for Santander to offer Mr S the extensions – and I think the guidance shows that it didn’t have to waive interest associated with these. Based on the way in which Mr S originally explained his complaint to Santander, I think he understood that extending the agreement would mean that he would pay more interest, and this was a central reason why he was unhappy that the agreement had been extended for longer than he’d thought had been agreed. He was aware that the longer it was extended for, the more interest he would pay.

In short, my analysis of the guidance is that Santander was entitled to charge interest associated with the refinancing/extending of the agreement, if it wanted to. As I’ve said

above, it's not clear if it has done so. If it has, it will need to ensure it has charged the amount of interest it would have charged for a six month extension, not a 12 month one.

Should Santander pay any additional compensation?

Our investigator noted that Santander had offered Mr S £200 compensation in respect of its failings. I can see Mr S rejected this offer as he considered it insulting, and it doesn't seem it was ever paid to Mr S.

Mr S has clearly been frustrated and annoyed by Santander's failure to put in place the extension which was originally agreed. There has been some inconvenience to him in having to try to sort the matter out over an extended period. Broadly, I think £200 compensation would be fair to reflect the impact of this on him, and so I am minded to direct Santander to pay this to him to the extent it hasn't already done so.

Putting things right

I'm currently minded to direct Santander to take the following actions to settle Mr S's complaint:

- *Amend his finance agreement to reflect the fact that a six month extension should have been put in place and not a 12 month one.*

This should include the removal of any interest, fees or charges associated with the agreement having been extended for six months too long, but it does not need to include the removal of any interest that would have been charged had the agreement been extended for six months only, as originally agreed.

- *Pay Mr S £200 compensation to reflect the non-financial impact on him of its errors, to the extent that it hasn't already done so.*

My provisional decision

For the reasons explained above, I'm minded to uphold Mr S's complaint and direct Santander Consumer (UK) Plc to take the actions outlined in the "putting things right" section of this provisional decision.

I now invite both parties to the complaint to let me have any further submissions they'd like me to consider, by 28 March 2024. I will then review the case again.

Will Culley
Ombudsman