

## The complaint

Mr D complains that Hartwell Finance Limited (HFL) arranged a finance agreement for him which was not suitable. He is also unhappy that at the same time he was also mis-sold a GAP insurance product.

When I refer to what Mr D and HFL have said or did, it should also be taken to include things said or done on their behalf.

## What happened

In August 2022 Mr D acquired a used car from a dealership. HFL brokered the finance agreement for the car. The finance agreement that was brokered for Mr D was a fixed sum loan agreement with Santander Consumer Finance (Santander). The car was first registered in November 2020. At the time the car had travelled around 14,248 miles. Mr D says the agreement was misrepresented to him as a Personal Contract Purchase (PCP). The cash price of the car was £42,258. There was an advance payment of £5,427.44. The agreement was for 48 consecutive monthly payments each of £576.27 starting one month after the date of the agreement followed by one payment of £17,877.20 payable 49 months after the date of the agreement.

In summary, Mr D raised a complaint regarding the mis-sale of a motor finance agreement arranged/brokered by HFL and provided by Santander. Mr D said that when he acquired the car from the dealership in August 2022, HFL recommended a Personal Contract Purchase (PCP), as confirmed in the signed Demands and Needs document. The finance quote included PCP-style features such as a balloon payment, mileage limits, and excess mileage charges. However, the agreement was actually a personal loan, which does not provide Voluntary Termination (VT) rights or the option to return the car at the end of the term.

Mr D said that GAP insurance was also mis-sold, as it was unsuitable for a personal loan structure. HFL has since confirmed that Santander only offered a personal loan, yet the sales process and documentation led Mr D to believe he was entering a PCP agreement. This resulted in Mr D taking on a product that did not match his understanding, needs, or the recommendation provided.

Mr D said:

- The product sold was unsuitable for Mr D's stated preferences and misleadingly presented as a PCP;
- That he now faces a final payment of over £17,000 on a severely depreciated car;
- All paperwork from HFL represented a standard PCP and none indicated a personal loan or that Mr D owned the car from day one;
- The agreement was mis-sold or misrepresented;
- Redress for financial detriment is due;
- Clearer explanation or a different product should have been offered;
- Compensation is appropriate.

Mr D believes that certain Legislation and Rules have not been followed. He said that the Financial Conduct Authority (FCA) Principles for Businesses say that "firms must act with

integrity, exercise due skill, care, and diligence, and ensure communications are clear, fair, and not misleading". In addition, CONC (Consumer Credit Sourcebook) require firms to assess suitability and provide accurate pre-contract information.

In August 2025, HFL wrote to Mr D and said that they placed the finance proposal with Santander who were only prepared to accept it on the basis of a personal loan. Santander explained to them that the process of signing up to a finance agreement explains the terms of that agreement and, had the terms been unacceptable, Mr D did not need to agree with those terms and sign the agreement.

Mr D remained unhappy, so he referred his complaint to the Financial Ombudsman Service (Financial Ombudsman).

HFL also told our service that they have no control over the type of agreement Santander offers. The agreement terms were clearly set out at the time of signature, and if Mr D later preferred a different structure, HFL cannot be held responsible. If Mr D had indicated that mid-term termination rights were important, HFL would have sought an alternative lender. Based on the discussions, HFL understood that Mr D intended to keep the car for 48 months and own it at the end, so returning the car mid-term did not appear to be a priority.

HFL maintains it cannot be held accountable for decisions outside its control. They also note that Santander offered the product on highly competitive terms, which would not have been viable if the lender had to absorb depreciation on cars likely to be returned.

Our investigator was of the opinion that the complaint should not be upheld. The investigator did not think that HFL have done anything wrong.

Mr D disagreed with the investigator. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision 21 November 2025. In the provisional decision I said:

***"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.*

*Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.*

*In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr D acquired the car under a regulated consumer credit agreement, as such our service can look at these sorts of agreements.*

*I am very aware I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. However, I have focussed on those that are central to me, reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.*

Mr D is adamant that he was made to think that he was taking out a PCP agreement and says he has since found out that the agreement was not a PCP.

Frist, I thought about what would be considered a PCP agreement. The Financial Conduct Authority (FCA) in "Our work on motor finance", last updated 15/03/2018 (<https://www.fca.org.uk/news/news-stories/our-work-motor-finance>) states that

*"The majority of new car finance is now in the form of Personal Contract Purchase (PCPs), a form of Hire Purchase. The key feature of a PCP is that the value of the car at the end of the contract is assessed at the start of the agreement and deferred, resulting in lower monthly repayments.*

*PCPs provide the flexibility to own the car at the end of the agreement by paying the deferred value ('Guaranteed Future Value', GFV), or to enter into a new agreement (using any equity built up over the course of the existing agreement). The consumer also has the option to simply give the car back, but they will often incur any excess mileage and/or damage costs."*

In addition, the Finance and Leasing Association, describes PCP agreements as a form of hire purchase, it states:

*"a form of hire purchase agreement, which includes a voluntary "balloon" payment at the end. This final amount represents the future residual value of the car, based on the age of the vehicle at the end of the agreement and the forecast mileage.*

*Monthly repayments are generally lower under a PCP agreement than a comparable HP agreement because of this deferred amount. With this type of agreement, payment of the future value of the car is optional. It must be paid if you wish to own the car outright, but you could simply decide to hand the keys back and start another agreement for a different vehicle." (<https://www.financingyourcar.org.uk/jargon-buster>)*

As such, a fixed sum loan agreement is distinctly different to a hire purchase agreement, because ownership of the car passes to the consumer at the time the agreement is entered into instead of at the end, once all the payments due are made. Therefore, with a fixed sum loan a consumer does not have the option to return the car at the end of the agreement. However, some fixed sum loan agreements do include a buy back option.

I know that HFL provided documents from Santander which specify that Mr D was accepted for a "Fixed Sum Loan Personal Contract Purchase" making this fixed sum loan agreement to be defined as a form of PCP. And some of the fixed sum loan agreement features do seem similar to those that might be found in a PCP agreement. For example, there is a mileage allowance and what appears to be a guaranteed future value for the car. However, from looking at the actual fixed sum loan agreement Mr D signed it seems that this document does not form part of the credit agreement. As such, Mr D most likely had an entirely separate agreement. Moreover, the existence of that agreement does not make the fixed sum loan agreement in question, a PCP.

The main difference, and of significant relevance to this complaint, is that a fixed sum loan in question does not have a VT option. The Consumer Credit Act 1974 (CCA) sets out the rights consumers have to VT their agreements and the liability that is due on termination. Under section 99 of the CCA, a consumer has a right to VT a regulated credit agreement at any time before the final payment. Section 100 of the CCA stipulates liability of a debtor on termination of an agreement. It allows the consumer to hand the goods back to the finance provider during the term of the agreement, provided the consumer pays or has already paid

50% of the total amount payable. VT does not apply to fixed sum loans like the one in question, hence Mr D cannot hand back the car and limit his liability at any time before the final payment. Mr D was adamant that throughout his communications with HFL he was asking for a PCP agreement, as his two previous cars were acquired under a PCP agreement.

As such, to decide what is fair and reasonable in the circumstances of this complaint, I need to decide:

- Were the key features and obligations of the finance agreement made sufficiently clear to Mr D at the time he was entering into the finance agreement in question?
- And if they were not, then I need to consider if HFL, or their agents, acted unfairly or unreasonably in providing Mr D with the finance agreement in question?

When coming to my conclusions I have also considered if HFL has acted fairly taking into consideration certain rules, among them, PRIN 2.1 The Principles. Principle 7 from the FCA's Handbook that states: "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.", Principle 12 (Consumer Duty) which states that "A firm must act to deliver good outcomes for retail customers." As such, I kept in mind that HFL should have provided information to Mr D in a way that is clear, fair, and not misleading. They should have given him information at the right time, and presented it in a way he could understand, so that he can make well informed and good decisions to achieve his financial objectives. In addition, I considered the Consumer Credit Sourcebook (CONC), specifically CONC 4.2 which speaks to what pre-contract disclosure and adequate explanations should look like.

Mr D said he was not aware he was entering into a fixed sum loan agreement because HFL recommended a PCP, as confirmed in the signed Demands and Needs document completed at the time. The finance quote included PCP-style features such as a balloon payment, mileage limits, and excess mileage charges.

HFL feel that the agreement terms were clearly set out at the time of signature and, had Mr D indicated that mid-term termination rights were important, HFL would have sought an alternative lender. They also said they understood that Mr D intended to keep the car for 48 months and own it at the end, so returning the car mid-term did not appear to be a priority.

First, I should explain that I do understand that Mr D, when he was entering into the agreement in question, ought to have read and understood the terms he was agreeing to. However, I do not think that this releases HFL's responsibilities and obligations, under the rules mentioned above, from providing him with adequate explanation of the agreement and its key features.

I'm aware the finance agreement he signed says fixed sum loan agreement at the top of the document, and not PCP. However, whether Mr D saw this or not, I do not think stating fixed sum loan on the top of the agreement was sufficient to say HFL did enough to draw to Mr D's attention the fundamental differences between this agreement and his previous ones, and also compared to what the Demands and Needs document recommended. This is because, I think most likely, throughout all communications Mr D had with HFL he was led to believe that they were brokering a PCP agreement for him. As such, he would have assumed this would have mostly the same features, terms, and obligations as his previous agreement. I think, most likely, Mr D understood a PCP agreement to mean that it would have rights to hand the car back at any time before the final payment provided if he pays or

has already paid 50% of the total amount payable. The fixed sum loan agreement looks very similar to what a PCP agreement, most likely, would have looked.

When Mr D was emailing HFL he was asking what deal they can give him on a PCP agreement. He wanted a PCP agreement because he wanted similar rights and obligations that he had on his previous finance agreement which he had on the car that he traded in for the one in question. In the emails to HFL, Mr D kept referring to his desire for a PCP. I think most likely, HFL knew that Mr D wanted a similar agreement to the one he had on his trade in car because he kept referring to a PCP agreement, and a PCP agreement was confirmed in the signed Demands and Needs document completed jointly at the time. As such, when they decided to broker a fixed sum loan agreement for him instead, I think it would have been reasonable for them to explain to him at that time that this was a different agreement to the one he was seeking and different from the one that was noted as suitable for him on the Demands and Needs document. They ought to have carefully drawn his attention to the differences between the two agreements and what this meant in terms of his rights. And I think, most likely, they have not done this.

I have also considered, based on some of the documentation Mr D was provided, that he was accepted for a "Fixed Sum Loan Personal Contract Purchase", making the fixed sum loan agreement HFL brokered for him to be defined as a form of PCP. As such it seems that, most likely, HFL was representing the agreement in question as a PCP agreement. However, as I explained earlier, the fixed sum loan agreement that Mr D entered into was not a PCP agreement. It had significantly different rights and obligations. Under a fixed sum loan agreement Mr D was the owner of the car, not the finance provider. The fixed sum loan agreement also did not include VT rights, which were of significant importance to MR D.

Overall HFL should have provided information to Mr D in a way that is clear, fair, and not misleading. They should have given him information at the right time, and presented it in a way he could understand, so that he can make well informed and good decisions to achieve his financial objectives. And I do not think they have done that in this situation.

As I'm satisfied HFL did not make clear the nature of the finance agreement Mr D entered into, I've thought about what he might have done differently had he been given correct information about the agreement. Considering how important the right to VT was for him, I do not think he would have entered into this agreement. As such, taking everything into consideration, I think a fair and reasonable resolution here is for HFL to take ownership of the car by settling Mr D's fixed sum loan agreement, so he can be released from it at no further cost to him. I also think HFL should refund the advance payment of £5,427.44. Also, they should add 8% simple interest per year to this amount, from the date of payment to the date of settlement. This is because Mr D would never have entered into the agreement if he had been given accurate information about its nature.

I have considered that Mr D had the benefit of using the car, so I do think he ought to pay fair usage cost for the time he had the car. Overall, I think the monthly repayments he has been paying for the car represent a fair price for usage. As such, I do not think it is reasonable to ask HFL refund any of the monthly repayments.

Mr D has had a stressful and worrying experience when dealing with this. He was led into taking out an agreement that was unsuitable for his needs, which caused him to worry about being out of pocket due to the negative equity in the car. Taking everything into account, I think HFL should pay Mr D £200 compensation for the distress and inconvenience caused.

GAP insurance

*Mr D is also unhappy that he was sold GAP insurance which, he said, was unsuitable for a personal loan structure. He said GAP insurance was tied to the underlying mis-sale of the finance agreement. As such, Mr D feels that if the underlying product was mis-sold, the GAP sale cannot be considered in isolation because he was sold cover on the basis that he was entering into a standard PCP. I've taken everything he has mentioned into account.*

*The GAP insurance Mr D purchased was designed for cash buyers and those with finance. The insurance is designed to pay out if the car is a total loss and there is a shortfall.*

*Overall considering everything, I do not think GAP insurance was unsuitable, and it would have covered him for the outstanding finance on a fixed purchase loan, or on any other type of financing he would have entered into. During the time Mr D had the car, he had the benefit of the insurance had something happened. I have not seen enough evidence to be able to say that, most likely, the terms and conditions of the policy were not clearly explained to Mr D. As such, overall, I do not think GAP cover was mis-sold to him. If Mr D did not pay for the GAP cover separately and it was included as part of the total price of the car under the fixed sum loan agreement, HFL can minus the cost of that cover from the deposit I've asked them to refund to Mr D.*

### **My provisional decision**

*For the reasons given above, I intend to uphold this complaint and direct Hartwell Finance Limited to:*

- *Take ownership of the car by settling Mr D's fixed sum loan agreement, so he can be released from it at no further cost to him;*
- *Refund the advance payment of £5,427.44 minus the cost of GAP insurance, if Mr D did not pay for it separately and rather it was included as part of the total price of the car under the fixed sum loan agreement;*
- *To the above refunded amount add 8% simple interest per year from the date of payment to the date of settlement;*
- *Pay Mr D £200 compensation for the distress and inconvenience caused.*

*If Hartwell Finance Limited considers tax should be deducted from the interest element of my award they should provide Mr D with a certificate, showing how much tax they have taken off so that he can reclaim that amount, if he is entitled to do so."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 5 December 2025.

Mr D and HFL did not accept my provisional 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.

Following my provisional decision Mr D said that, as he thought he was entering into a PCP agreement with a Guaranteed Future Value of around £17,000, he understood that his outstanding liability would reduce in line with a standard PCP structure. He did not realise that the finance was actually a fixed-sum loan, meaning the full balance of approximately £55,000 was recorded on his credit file as personal-loan debt. He said this had an impact on

him because since 2022, he made a few applications for credit, particularly at times when financial support would have been helpful. On all those occasions, he did not progress past the soft-search approval stage, where he was told he was not eligible due to his existing debt level. He said this caused him genuine hardship over the past three years, particularly during significant personal events. As such, he feels that an uplift to the distress and inconvenience compensation is appropriate.

I've reconsidered the above, but I've not seen enough evidence for me to conclude that the way the agreement was reflecting on Mr D's credit file was, most likely, the reason for Mr D directly incurring a loss. From the available evidence, I have not seen anything to suggest that the specific information recorded on his credit file was the direct reason he could not obtain credit. Therefore, I cannot say that, most likely, it is HFL's action that directly caused him a financial detriment. However, I have taken into consideration that Mr D has had a stressful and worrying experience, but I still think HFL's £200 compensation fairly reflects the distress and inconvenience caused.

After I issued my provisional decision HFL replied, and they said the nature of the agreement was totally transparent to Mr D, based on the information he was provided. They said that whilst they can confirm that a Fixed Term Loan does look similar on paper, it was there to give him more financial options. They went on to say that the alternative would have been to set a higher term, or even decline Mr D's application.

They said the differences between the agreements were clearly disclosed to Mr D at signing, and the important aspects of the agreement were brought to his attention. Furthermore, they reiterated that in certain parts of the documentation it was made clear to him that he was signing a fixed sum loan agreement and not PCP, and that the explanation documents had certain explanations such as: 'Is a fixed sum loan agreement suitable for you?'. They said that the document states that Mr D would not have the right to voluntarily terminate the car.

In summary, HFL said they had no evidence that Mr D relied on a right to VT in the past. Also, they understood that he kept the car for the full term and intended to do so again and that at the time of the sale they believed this product would give him the terms that he wanted. HFL also reiterated that they could not have predicted the resale values of the car. They feel that the right to VT have only become important to Mr D later on, when he learned of the loss in resale value of the car.

HFL also indicated that asking them to refund the advance deposit represents a significant improvement in the outcome for Mr D compared to a VT of the car agreement. As such, they feel the provisional decision is placing Mr D in a significantly better position. In addition, they also remarked that they should not be the ones responsible to meet the full cost of the losses experienced by Mr D because, had he the opportunity to VT, the majority of the losses would have been passed to finance company.

In my provisional decision I already explained that Mr D ought to have read and understood the terms he was agreeing to. However, this does not release HFL's responsibilities and obligations, under the rules mentioned in my provisional decision, from providing Mr D with adequate explanation of the agreement and its key features.

I agree, the finance agreement Mr D entered into did say fixed sum loan agreement in certain parts of the document, and not PCP. However, whether Mr D saw this or not, I do not think stating fixed sum loan in certain parts of the agreement was sufficient to say HFL did enough to draw to Mr D's attention the fundamental differences between this agreement and his previous ones and also compared to what the Demands and Needs document recommended. This is because, I think most likely, throughout all communications Mr D had with HFL he was led to believe that they were brokering a PCP agreement for him. As such,

again, it is not unreasonable Mr D would have assumed this would have mostly the same features, terms, and obligations as his previous agreement. In the emails to HFL, he kept referring to his desire for a PCP. I think most likely, HFL knew that Mr D wanted a similar agreement to the one he had on his trade in car because he kept referring to a PCP agreement, and a PCP agreement was confirmed in the signed Demands and Needs document completed jointly at the time. As such, when they decided to broker a fixed sum loan agreement for him instead, I think it would have been reasonable for them to explain to him at that time that this was a different agreement to the one he was seeking, and also different from the one that was noted as suitable for him on the Demands and Needs document. As previously explained I think, most likely, HFL was representing the agreement in question as a PCP agreement.

Overall, I still feel that HFL did not provide information to Mr D in a way that is clear, fair, and not misleading. And at the right time and presented it in a way Mr D could understand, so he could make well informed decisions to achieve the right financial objectives for his circumstance.

I understand that HFL feel that a refund of the advance deposit is not fair because, had Mr D merely wanted to VT, he would be in a different position. They said that, had Mr D exercised a right to VT, some of the losses would have been passed to the finance company. However, Mr D brought his complaint against HFL, and as such in this decision I am considering this complaint against them. Also, as I explained in my provisional decision, Mr D would never have entered into the agreement if he had been given accurate information about its nature. As such, I think it is only fair and reasonable that HFL should refund the advance payment to him.

Having reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, I see no reason to reach a different conclusion from the one I reached in my provisional decision.

### **My final decision**

For the reasons given above, and in my provisional decision, I direct Hartwell Finance Limited to:

- Take ownership of the car by settling Mr D's fixed sum loan agreement, so he can be released from it at no further cost to him;
- Refund the advance payment of £5,427.44 minus the cost of GAP insurance, if Mr D did not pay for it separately and rather it was included as part of the total price of the car under the fixed sum loan agreement;
- To the above refunded amount add 8% simple interest per year from the date of payment to the date of settlement;
- Pay Mr D £200 compensation for the distress and inconvenience caused.

If Hartwell Finance Limited considers tax should be deducted from the interest element of my award they should provide Mr D with a certificate, showing how much tax they have taken off so that he can reclaim that amount, if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 January 2026.

Mike Kozbial  
**Ombudsman**