

complaint

Mr P is unhappy with a finance agreement he had with Santander Consumer (UK) Plc trading as Volvo Car Credit, used to acquire a car. He says he thought the agreement was a personal contract purchase (PCP). But when he tried to voluntarily terminate (VT) the agreement he was told he couldn't do this.

background

Mr P acquired a new car in May 2015, from a dealer I'll refer to as 'L', for a cash price of £28,294. There was some earlier dispute over the amount of the deposit Mr P paid towards the finance, but it appears this totalled £6,550 – with £5,800 coming from a car Mr P part exchanged and a £750 contribution by L. The remaining balance was financed with Santander.

The finance Mr P took was a fixed sum loan agreement over 37 months, with a final balloon payment at the end. He also signed a 'sales agency agreement'. The sales agency agreement said Mr P's car could be bought back by Santander at the end of the term for a guaranteed price of £13,500. It also set a mileage allowance of 10,000 miles a year, above which Mr P would be charged if he handed the car back to Santander.

Mr P says that in around December 2017 he started to look around for a new car as it was clear the one he had was worth less than the balloon payment due at the end of the term. Mr P says he spoke to L who told him to wait until around March 2018 to look into changing his car. Mr P said he began looking around this time, but L couldn't offer a good deal. So, his partner took out finance with another provider for a different car, which was delivered in April 2018.

Also in April 2018 Mr P says he contacted Santander to arrange to VT his agreement and give the car back. But at this point he was told this wasn't allowed under the terms of his agreement. He complained to Santander as he said he believed he had a PCP agreement which he thought should allow him to VT. Santander issued its final response letter in May 2018. It said Mr P did have a PCP agreement which was a "*Fixed Sum Loan (Personal Loan) Personal Contract Purchase agreement*". It said this type of agreement didn't allow the right to VT.

Santander said Mr P had signed for the agreement and received a verbal explanation of the details. It also said Mr P's initial application was converted by the underwriters to a different type of agreement to that which he applied for. But, it said L would've explained all the details of the new agreement to him. It said it wasn't upholding his complaint.

When Mr P found out he couldn't VT his agreement, he said he couldn't afford to keep paying for two cars, so he returned the new one. He said he incurred administration costs as well as extra insurance fees to do this.

In June 2018 the car financed by Santander was collected at the end of the term. At this point Mr P was charged £1,065.05. This consisted of £930.05 for excess mileage and £135 for damage to the alloy wheels. Mr P was unhappy with this as he believes if the VT would have gone ahead, he wouldn't have had to pay for the excess mileage. And he said L admitted it made a mistake with the mileage allowance on the agreement and this should've been set at 12,000 miles a year.

Mr P then brought his complaint to this service. Our investigator upheld Mr P's complaint. He said he thought the agreement had been misrepresented to Mr P as he didn't believe the agreement Mr P took was a PCP. He thought Santander should put things right by reimbursing Mr P £240 for the costs involved in returning the car he acquired in April and £75.34 for insurance costs he paid for this car. He also said Santander should pay Mr P £200 for distress and inconvenience caused.

Mr P responded and said he was unhappy with this. He believed he could've taken a newer car around seven months sooner than he did and so should be compensated for this. He thought he was due further costs back from his insurance premiums. And he said he paid more for excess mileage because he had the car for longer than he wanted.

Santander also disagreed with our investigator. It said Mr P did have a PCP agreement, but it was a "*personal loan PCP*" rather than a conditional sale PCP. It said the ability to VT was not a feature specific to all PCP agreements, only to certain PCP agreements.

Our investigator responded to Santander and said what it had told him didn't change his mind. He also responded to Mr P and explained he didn't think Mr P would've handed the car back earlier as this wasn't the action he tried to take at the time. And he said he thought the insurance costs he'd recommended were fair.

Mr P still disagreed and reiterated his previous points. Santander responded and also said it disagreed. It said it was Mr P's responsibility to ensure he read all the documents and understood what agreement he was taking. The case was then passed for an ombudsman's decision.

While awaiting to be allocated to an ombudsman, we asked L for some more information about the sale. It also said Mr P's agreement was a PCP. It said the type of agreement was clearly on the documents Mr P received. And it confirmed it had paid Mr P £894 as a gesture of goodwill towards the excess mileage charges.

The case was then passed to me for a decision. I sent Mr P and Santander a provisional decision on 28 August 2020. This explained I initially thought the complaint should be upheld. I've included my findings from this decision below:

This case is about a fixed sum loan agreement which is a regulated financial product. The agreement was sold by L on behalf of Santander. Section 56 of the Consumer Credit Act 1974 explains in certain circumstances a finance provider, Santander in this case, can be held responsible for representations made by a credit broker – which is what L was doing when it brokered the finance to Mr P. So, I can consider Mr P's complaint against Santander.

What I need to consider in this case is if the finance was misrepresented or misdescribed to Mr P. For a misrepresentation to have taken place I need to consider if Mr P was told a 'false statement of fact' that induced him into taking the finance when he otherwise would not have.

Mr P believes he's lost out as he says the agreement wasn't a PCP as he expected. Santander, and L, both say the agreement was a PCP. There is quite clearly some significant confusion here. So, I'll firstly consider if the agreement Mr P took was a PCP or not.

I've considered what the Financial Conduct Authority says about PCP agreements. In its work on motor finance, published on its website, it explains:

*"The majority of new car finance is now in the form of Personal Contract Purchase (PCPs), a **form of Hire Purchase**" (emphasis added by myself)*

"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, 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. Consumers may also be approached prior to the conclusion of their PCP agreement with the offer of entering into a new agreement, if equity has built up"

The Finance and Leasing Association (FLA), of which Santander is a member, on its website under "What finance options are available when buying from motor dealerships?" says:

*"Personal Contract Purchase (PCP) is a variation of a **Hire Purchase agreement**" (emphasis added by myself).*

It's worth mentioning here that Mr P says he thought he was getting a 'conditional sale' PCP. As above, both the FCA and FLA describe PCPs as a form of hire purchase. There are differences between conditional sale agreements and hire purchase agreements. But, modern conditional sale agreements are often set up to have very similar or the same 'exit options' as hire purchase agreements. I don't think I need to go into more detail here as this isn't in dispute. But, for the purposes of this specific decision, I'm satisfied I can take Mr P's opinion that he thought he was getting a conditional sale agreement to also mean a hire purchase agreement.

Santander have said that Mr P's agreement was in fact a PCP, but it was a "fixed sum loan PCP". It said various agreements could be PCPs, as long as the agreement had:

- An annual mileage restriction*
- A guaranteed/minimum future buy back value based on the mileage restriction*
- Three options when the agreement ends – to pay the balloon payment and keep the car, return the car and end the agreement or part exchange for another car under a new agreement*

I accept what Santander says here is quite similar to what the FCA explains about PCP agreements above – although I've noted that the FCA specifically says they are a form of hire purchase. So, I've gone on to consider the type of agreement Mr P had.

It's important to note that Mr P signed two agreements with Santander. The first was for a 'fixed sum loan'. The second was for a 'sales agency agreement'.

There are some key differences between a hire purchase agreement and a fixed sum loan agreement. For example, when a consumer takes a fixed sum loan for a car, the ownership of the car passes directly to them. Under a hire purchase agreement, the finance provider would initially own the car. Ownership would only be passed to the consumer if and when they paid the outstanding balance, including any balloon payment, in full.

This means unless a fixed sum loan has a 'buy back' option, which Mr P's didn't, a consumer doesn't have the option to return the car at the end of the agreement. But, Mr P did have a 'sales agency agreement' which he signed and which appears to have given him this option.

Looking at the sales agency agreement I can see there are some features, which on first glance, look similar to those of a hire purchase PCP. I say this as the agreement has a mileage allowance and what appears to be a guaranteed future value ("GFV") for the car – although this is described as "The guaranteed price". I've also noted the title of the agreement is "PCP Advantage FDC (SP)".

But, the key thing to note here is that the sales agency agreement doesn't form part of the credit agreement. It is a separate contract entirely that allowed Mr P to sell the car back to Santander if he chose to. So, I'm satisfied, because this is a separate contract, that the existence of this agreement does not make Mr P's fixed sum loan a PCP agreement.

Section 99 of the Consumer Credit Act 1974 sets out, in summary, that under a hire purchase agreement a consumer has the right to VT. This means under a hire purchase PCP a consumer can give their car back at any point during the agreement, before the final repayment, and have their liability capped at one half of the total due under the agreement. But, this doesn't apply to fixed sum loans. So, this means Mr P did not have the right to VT his fixed sum loan agreement.

Thinking about all of this, Mr P's fixed sum loan agreement did not include a buy back option, a GFV, nor a mileage allowance. Neither did it provide him the option to VT the agreement. I'm satisfied the fixed sum loan Mr P took out does not meet the FCA's, FLA's nor Santander's own explanation of what a PCP is. So, thinking about everything, I'm satisfied the finance agreement Mr P took out was not a PCP agreement.

I'll now consider if the agreement was misrepresented or misdescribed to Mr P.

Mr P says he thought he was applying for a PCP agreement. And Santander have said Mr P's original application was changed to a fixed sum loan at the underwriting stage. I've asked it for some further information about this and evidence of what Mr P originally applied for, but it's only been able to say the change may have happened automatically. I've assumed, given what Mr P told us, that he originally applied for a hire purchase or conditional sale PCP. When this was changed, I would've expected the key differences between this and a fixed sum loan to be clearly pointed out and explained to Mr P.

But, thinking about this, I'm satisfied it's most likely this wasn't done. I say this as Santander, and L, both still now say that the agreement Mr P took was a PCP. As I've explained above, I don't think it was. I don't think it's likely that Mr P was told at the time that his agreement had been changed from a PCP to a different type of credit, and the key differences between them explained to him, when both Santander and L still believe the agreement was a PCP.

It follows that I'm satisfied it's most likely Mr P was told the agreement was a PCP when it wasn't. I'm also satisfied this was a 'false statement of fact'.

I've gone on to consider what documentation Mr P saw at the time and to see if this negates the incorrect information I think it's likely he was told. I've reviewed all of the documents provided by Santander.

I've considered the credit agreement Mr P signed. I accept this is titled "FIXED SUM LOAN AGREEMENT". And I also accept it doesn't explain in the terms and conditions the traditional features of a PCP agreement. But, I don't think this is enough to say Mr P would've understood that the agreement was fundamentally different to the PCP that I think it's likely he initially applied for. I say this as I haven't seen anything to suggest the differences between the product Mr P initially applied for and the one he ended up with were highlighted – neither in the credit agreement nor any of the other paperwork he saw at the time.

I've also considered that the sales agency agreement is titled "PCP" – but as I explained above, this isn't a PCP agreement. So, thinking about this, I'm satisfied the documents don't make it clear this agreement was different to the one he applied for and was not a PCP.

So, I'm satisfied Mr P was told a false statement of fact about the agreement. Thinking about what Mr P told us about wanting the option to hand the car back and considering his future actions towards the end of the term, I'm also satisfied that he wouldn't have entered into the agreement if it was made clear to him that it wasn't a PCP and that he wouldn't have the option to VT. I think it's most likely he instead would've taken a hire purchase PCP.

I don't know for sure if Mr P could've been approved for a hire purchase PCP agreement rather than a fixed sum loan with Santander - as it appears this was changed at the underwriting stage. If I assumed he couldn't, I may reach the conclusion he'd have gone elsewhere for the car and finance. If so, I may consider that the starting point for putting things right with the misrepresentation would be to treat the finance agreement as though it wasn't entered into. But, I need to consider what's fair and reasonable here. Mr P had use of the car for the term of the agreement. So, I don't think this would be a fair approach. And, ultimately, whether or not Mr P could've got a different type of finance with Santander doesn't affect what I think should happen to put things right – which I'll now explain.

When considering what Mr P lost out on here, I've considered that I haven't been presented with any evidence to suggest the fixed sum loan he got cost more or less than the equivalent PCP. So, I have assumed that if he was given a PCP agreement this would've had the same interest rate, monthly cost etc. as the finance he was given. I've also assumed that the GFV would've been set at the same amount as the value listed in the sales agency agreement. So, considering this, I think it's most likely Mr P would've still handed the car back at the end of the term rather than paying the balloon payment if he had a PCP – as Mr P explained he believed the car was worth less than this.

Mr P says he's lost out by not having the ability to VT the agreement. He says he would've done this around seven months before the end of the term if he had the ability to. But, I don't agree this is likely the case. When considering if Mr P has lost out here, I need to think about what he did – not what he might have done. It appears Mr P was under the impression he had a PCP agreement with the ability to VT until April 2018. Although he says he discussed changing his car earlier than this, he didn't actually attempt this until April 2018. So, I can't see this would've been any different if Mr P did have a PCP with the ability to VT.

That being said, I do think he's lost out by not having the ability to VT when he tried to. Mr P says he ordered a new car on finance before he found out he couldn't VT his agreement. He then had some costs to return the newer car as he didn't want to pay for both agreements. I have thought about the fact that the new car and agreement were in Mr P's partner's name, rather than his own. But, from what he said I think it's most likely this was be used by Mr P as well as his partner. I'm satisfied it was intended to be used as a family car and as a direct

replacement for the car under this agreement. So, I think it's fair he's reimbursed for the costs incurred acquiring and returning this car. Mr P provided an invoice for £240 from a document fee that he paid, which I think he should be refunded.

Mr P also says he had to insure the newer car when he had it. I think it's reasonable Mr P is reimbursed any costs here as he wouldn't have had to cover two cars if nothing went wrong. Mr P provided details of payments made towards his insurance, which are broken down by the relevant car's registration number. Our investigator said Mr P should be reimbursed a total of £75.34. This is made up of the insurance costs for the newer car Mr P acquired.

Mr P said he was also charged an additional £41.43 by his insurer for temporary additional car cover and a change of car administration fee. But these charges aren't set out in the invoice Mr P provided. The document shows a charge for insuring his old car and doesn't break this cost down any further. Mr P was always going to have to insure one of the cars and I haven't seen enough to make me think Mr P paid more here than he would have otherwise.

So, I agree with our investigator that Mr P should be reimbursed for the costs listed for the replacement car on the insurance invoice – a total of £75.34. But I'm happy to reconsider this if Mr P can provide further evidence.

Mr P says there was an issue with L recording the wrong mileage allowance – in this case presumably on the 'sales agency agreement'. He said he should've been allowed 12,000 miles a year rather than 10,000. But, it appears L has compensated Mr P for this with a payment of £894. So I don't think I need to make a finding about what happened here.

That being said, Mr P says he still lost out as he didn't believe he would've had to pay for any excess mileage charges if he had been able to VT the agreement. Looking at the amount L compensated Mr P and what he was charged for excess mileage this leaves a total of around £36 that Mr P paid.

If Mr P had been given a hire purchase PCP, whether or not he would be liable for any excess mileage charge would depend on the specific wording of the contract. Santander hasn't shown Mr P would've been responsible for this charge under a different agreement. Thinking about everything that's happened, I think it's fair that Mr P should be reimbursed this cost.

Our investigator said he thought Santander should pay Mr P £200 to reflect any distress and inconvenience caused. But, he didn't explain what this was for. I've considered what happened here and I think it must have been very stressful for Mr P to discover he had a different type of agreement than he thought and to discover he couldn't VT the agreement. I've considered that Mr P spent time and effort finding and acquiring a new car. He then took time to arrange delivery, only to have to shortly return it which I'm sure must have been stressful and disappointing. And, I've taken on board that Mr P pointed out he could've been driving a newer car for the final few months of the agreement rather than his older one.

I've also considered that it appears Santander have recorded negative information on Mr P's credit file in relation to the excess mileage and damage charges. Mr P says he didn't pay this as he was in dispute with Santander. Had everything gone as it should, I'm satisfied Mr P wouldn't have delayed paying this. So, I think Santander should remove any negative information from Mr P's credit file.

Thinking about all of this, I don't think £200 is enough to reflect what happened here. I think Santander should pay Mr P £300 for the distress and inconvenience it caused him.

I gave Mr P and Santander one month to respond with any further comments or evidence for me to consider before I made my final decision.

Mr P got in touch and said he was prepared to accept my provisional decision. Santander didn't initially respond. Due to the current situation, I gave Santander a further month to provide anything it wished for me to consider. But, it still didn't get in touch.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having thought about everything carefully again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and which I've set out above.

my final decision

My final decision is that I uphold this complaint. I instruct Santander Consumer (UK) plc trading as Volvo Car Credit to do the following:

- Reimburse Mr P £240 for the costs from the new car from 05 April 2018*
- Reimburse Mr P £47.34 for insurance costs from 25 April 2018*
- Reimburse Mr P £28 for insurance costs from 03 May 2018*
- Reimburse Mr P £36.05 for the excess mileage charge*
- Remove any negative information from Mr P's credit file from April 2018 in relation to this agreement and/or the associated charges
- Pay Mr P £300 for the distress and inconvenience caused

These costs should have 8% simple interest added from the time of payment to the time of reimbursement. HM Revenue & Customs require Santander to take off tax from this interest. Santander must give Mr P a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 December 2020.

John Bower
ombudsman