

complaint

Mr J complains that when he bought a car using finance from Santander Consumer (UK) plc, he was misled into believing that the agreement was hire purchase. However Santander now says it was actually a personal loan.

background

The issue arose when Mr J approached Santander about a voluntary termination of the finance agreement. Initially Santander seemed to agree that that was possible but then said it was not - as the agreement was a personal loan not hire purchase.

Our adjudicator did not recommend that the complaint was upheld. Mr J disagreed.

I considered the matter and made an initial provisional decision to uphold the complaint. However Santander disagreed with that. It argued that I could not hold it responsible under the terms of the Consumer Credit Act for a document Mr J had been asked to sign, which referred to hire purchase, when that document had been signed several days after the actual credit agreement (for a loan) had been signed.

I accepted Santander's argument and in July 2014 I issued a further provisional decision saying that on balance I did not feel I could reasonably conclude that Mr J was misled before he signed the credit agreement (or that Santander ever really thought the agreement was for hire purchase). In summary I said that because:

- the actual credit agreement signed by Mr J very clearly was for a loan (not hire purchase). I would have expected him to read that carefully and to notice the difference if he was expecting a hire purchase agreement;
- the records from Santander which I had seen only showed the agreement as an unsecured loan;
- I had listened to the call Mr J made when Santander initially appeared to accept the finance was hire purchase. However it appeared that the staff member did not look up all the relevant details, but simply accepted that the finance was hire purchase because that was what Mr J said - and then gave advice on that basis. When the records were checked properly the fact that the agreement was a loan became clear;

However Mr J was correct that Santander told him at one point that an HPI marker had been removed, and I noted that he also says he checked and found his vehicle on an HPI website. But, given the actual agreement, any such registration would have been a mistake especially when Santander has provided evidence it recorded the finance with a credit reference agency as an unsecured loan. However I could not see that the HPI issue caused Mr J any financial loss as any marker was removed promptly before he was ready to sell the car. He was however, put to some trouble over that, for which £75 compensation seemed fair and reasonable.

Subject to any representations from either party, I proposed to uphold the complaint only in respect of the issue over the HPI marker, and intended to order payment of £75 in compensation for that.

Santander responded to say it had nothing to add. Mr J wrote expressing disappointment and confusion regarding my proposed decision. In summary he questioned why my view

about the significance of the document referring to hire purchase had changed, why there had been an HPI marker and why the registration number of his vehicle had been on relevant papers if the credit was a loan. He also asked why Santander had initially accepted the agreement was hire purchase when he rang to enquire about terminating it. He argued that by putting an HPI marker on the vehicle Santander had confirmed it had been a hire purchase agreement.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so – and whilst I realise it will disappoint Mr J – I have come to the same overall conclusion as in my second provisional decision.

As I explained previously, while I can still see that the document referring to hire purchase would be confusing for Mr J, I felt (and still feel) that Santander has a valid argument that I could not hold it responsible for that under terms of the Consumer Credit Act, because it was signed after the actual credit agreement had been made. I cannot explain why there would also be an HPI marker and why Mr J's vehicle registration number was on some documents: but if the arrangement had been for hire purchase I cannot see why the actual agreement would say it was a loan. The agreement itself, which Mr J signed, provides more substantial evidence about the nature of the credit than the existence of an HPI marker or the references to the registration number. Santander had also registered the credit as a loan with a credit reference agency. I explained previously that it seemed that, when Mr J telephoned for information about termination, the staff member had simply accepted Mr J's statement that the agreement was hire purchase, rather than looking up the details.

On balance, I still do not feel that I can reasonably conclude that Mr J was misled before he signed the agreement (and I cannot hold Santander responsible if he was misled by the later document given to him by the dealer, which referred to hire purchase). Nor, on balance, do I consider that Santander had ever really thought the agreement was hire purchase.

My view on compensation regarding the HPI marker also remains the same.

my final decision

My final decision is that I uphold the complaint only in respect of the issue about the HPI marker. In full and final settlement I order Santander Consumer (UK) plc to pay Mr J £75 in respect of that.

Hilary Bainbridge
ombudsman