

## **complaint**

Mrs M complains she was mis-sold car finance provided by Santander Consumer (UK) plc (trading as Volvo Car Credit).

Mrs M is represented by a family member, but I'll refer to all that's been said on her behalf as if Mrs M has said it – for ease of reading.

## **background**

The background to this complaint and my provisional findings are set out in my provisional decision dated 14 March 2017 – a copy of which is attached and forms part of my final decision.

In my provisional decision I explained what I'd decided about this complaint and intended to do – subject to any further submissions from the parties. I thank both parties for their responses. Mrs M is disappointed by the outcome I have proposed, but she has nothing further to add. And Santander accepts my provisional decision.

## **my findings**

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

Taking everything into account, I think my provisional findings represent a fair and reasonable outcome overall so I see no reason to depart from my provisional decision.

## **my final decision**

My decision is I uphold this complaint in part. In full and final settlement, I order Santander Consumer (UK) plc (trading as Volvo Car Credit) to

1. pay Mrs M £75 compensation for the upset and trouble she experienced because Santander registered this loan with HPI Limited; and
2. remove the loan from the HPI database.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 22 May 2017.

Claire Jackson  
**ombudsman**

## **copy provisional decision**

### **complaint**

Mrs M complains she was mis-sold car finance provided by Santander Consumer (UK) plc (trading as Volvo Car Credit).

Mrs M is represented by a family member, but I'll refer to all that's been said on her behalf as if Mrs M has said it – for ease of reading.

### **background**

Mrs M bought this car in 2014. She thought she could hand it back early and only be liable for half the price due using a process commonly known as voluntary termination (VT). But when she tried to that in 2016, Santander said she couldn't.

Santander says the finance here is a loan, so Mrs M owned the car from the outset and it has no interest in the vehicle. It considers that's clear from the loan agreement and associated documents Mrs M saw at the point of sale. And she's not entitled to voluntary termination.

Mrs M says she thought the agreement was a personal contract purchase (PCP), because it contains mileage limits and excess charges. And she's found out Santander registered the loan with HPI Limited, suggesting it still has some interest in the car, so she should have the right to VT.

Our adjudicator doesn't recommend the complaint should be upheld. She's satisfied the agreement is a loan and Mrs M isn't entitled to VT. She thinks Santander probably registered the loan on the HPI database to stop Mrs M from selling the car without its consent. And excess mileage charges would only apply if Mrs M didn't keep up her payments and Santander repossessed the car.

Mrs M says

- the loan looks like a PCP and the small print shouldn't change that;
- she doesn't have all of the documents Santander provided to this service and doesn't believe they were given to her at the time; and
- Santander has been slow to engage with this service and only produced information at the eleventh hour.

### **my provisional findings**

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

#### *voluntary termination*

I can see that Mrs M is very unhappy because Santander won't allow her to terminate this agreement in the way she wanted. The right to VT some types of finance is provided by sections 99 and 100 of the Consumer Credit Act 1974 (CCA), which say

#### *99. right to terminate hire purchase etc agreements*

*(1) At any time before the final payment by the debtor under a regulated hire-purchase or regulated conditional sale agreement falls due, the debtor shall be entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.*

#### *100. liability of debtor on termination of hire-purchase etc. agreement.*

*(1)Where a regulated hire-purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination.*

I'm satisfied these sections only apply to regulated hire purchase or conditional sale agreements – where the lender owns the goods until the finance is paid off. And those agreements usually contain a specific clause setting out the borrower's right to VT.

#### *Mrs M's finance agreement*

Mrs M says she should be allowed to VT here because her finance has all the characteristics of a PCP. The term PCP isn't defined under legislation in the same way as hire purchase and conditional sale are. Generally a PCP allows the borrower to make lower monthly payments by deferring a significant sum to be repaid in one lump sum (or "balloon" payment) at the end of the agreement. And the lender will agree a "guaranteed future value" (GFV) for the car provided mileage limits aren't exceeded.

I've considered Mrs M's finance agreement. The agreement itself is headed "Fixed Sum Loan". Under it Santander provided the credit for Mrs M to buy the car - but it doesn't retain ownership or any interest in the vehicle and there's no reference to voluntary termination. I'm satisfied the borrowing is in the form of a loan. This isn't a hire purchase or conditional sale agreement and sections 99 and 100 of the CCA don't apply.

I can see that Mrs M signed another linked agreement when she took this loan out, headed "Sales Agency Agreement" (SAA). Under the SSA Santander provides a GFV of £11,265 at the end of the loan term (enough to pay off the "balloon") if Mrs M appoints Santander to sell the car on her behalf - and she hasn't driven it more than 6,000 miles a year. I think that's why some confusion may have arisen. But I'm not persuaded it means this finance comes within sections 99 and 100 of the CCA. So I can't reasonably find that Mrs M has the right to VT this loan under legislation.

I have no doubt this is frustrating for Mrs M. I appreciate she feels strongly that this finance was misrepresented. I can't be certain what was said when Mrs M took the loan out so I've looked at the documents. I note Mrs M told our adjudicator she doesn't think she received all of the documents Santander has now supplied, at the outset. But, I don't think there's any dispute that Mrs M saw and signed the loan agreement and the SSA - I note she provided copies of those when she first complained to this service.

I'm satisfied it's clear from those two agreements alone that this is a loan, not hire purchase or conditional sale. I realise Mrs M may well say she can't be expected, as a lay person, to know about the implications of different sorts of finance - and I've given some thought to what she says about "small print".

But, I'm satisfied the documents Mrs M saw say nothing about a right to VT. I think Mrs M would probably have realised that if she had read through the paperwork – especially if that right was important to her. I consider it reasonable for consumers to look at financial documents carefully before signing them. So I can't fairly conclude that this finance was misrepresented.

#### *registration on the HPI database*

Mrs M was unhappy when Santander said she didn't have the right to VT this loan. She searched the HPI database and was confused to find the loan is registered. She asks why Santander can do that if it has no interest in the car and she's not entitled to VT.

The results of the HPI search say this loan is registered against the car but *"the lender has no claim or interest in the vehicle but has registered a personal loan as part of the Government's Responsible*

*Lending Drive. If you are concerned because the vehicle has this type of finance you should seek clarification from the seller”.*

For the reasons I've explained above, I'm satisfied Santander hasn't got an interest in this car. I can't reasonably find the fact the loan is registered on the HPI database means the finance was misrepresented when Mrs M took it out. And I acknowledge the note on the database makes it clear that this is a loan not secured on the car.

But, I can see why Mrs M is confused by the HPI marker. It's not entirely clear to me why Santander registered this loan either. The wording suggests it did so as a responsible lender – by which I take it to mean the HPI marker's intended to let other lenders know about the borrowing. I find that surprising as, it seems to me, prospective lenders are more likely to get a better idea of an applicant's other debts from a credit file search - which shows all of someone's financial commitments not just one debt connected to a car.

Our adjudicator asked Santander to explain why the marker is there. It replied *“all vehicles that are registered on finance have the HPI marker recorded at first, this is because all agreements start off [internally] as a Conditional Sale in which we would register the vehicle with HPI however, some agreements (such as Mrs M's) get converted to a Personal Loan and therefore the HPI marker may not be removed”*. That seems to suggest the marker was applied and left on by mistake.

I have no doubt Mrs M has been confused by this marker in the circumstances. I think it's one of the main reasons she decided to pursue this complaint as far as she has – causing her additional upset and inconvenience she wouldn't have experienced otherwise. So I'm minded to find Santander should pay Mrs M £75 compensation to reflect that and remove the marker from the HPI database.

I understand Mrs M is disappointed that Santander didn't respond faster when she brought her complaint to this service. I think Santander replied to Mrs M's initial complaint within a reasonable time. Mrs M complained to this service in early December 2016 and Santander provided its file on 26 January 2017 - having first requested an extension in early January because of a mix-up in addresses. I don't think that's unreasonable in all of the circumstances. And I can't fairly order Santander to pay more compensation on those grounds.

### **my provisional decision**

For the reasons I've explained above, and subject to any further submissions I may receive from Mrs M or Santander by 28 March 2017, my provisional decision is I intend to uphold this complaint in part and require Santander Consumer (UK) plc (trading as Volvo Car Credit) to

- 1 pay Mrs M £75 compensation for the upset and trouble she experienced because Santander registered this loan with HPI Limited; and
- 2 remove the loan from the HPI database.

Claire Jackson  
**ombudsman**