

## complaint

Mr B complains that a car that was supplied to him under a conditional sale agreement with Santander Consumer (UK) plc, trading as Santander Consumer Finance, wasn't of satisfactory quality. He also complains that the conditional sale agreement was mis-sold to him. He is being helped with his complaint by a Citizens Advice Bureau.

## background

A used car was supplied to Mr B in November 2015 under a conditional sale agreement with Santander. He says that he contacted Santander to say that he wasn't happy with the way that the agreement had been sold to him or the amount of interest that he would be paying and that he couldn't afford the repayments. He also told it and the dealership about a problem with the car's brakes. He had the car's brakes inspected later in November 2015 and they were found to be faulty. Mr B complained to Santander but wasn't satisfied with its responses so contacted a Citizens Advice Bureau. And he then complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She considered that there hadn't been a breach of contract about the car's brakes. And she noted that the dealership had offered to repair them. And she wasn't persuaded that the agreement had been mis-sold to Mr B.

Mr B's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. The representative has responded in detail and says, in summary, that:

- Santander hasn't provided any evidence of the searches it made and how they showed that Mr B could afford the repayments;
- Mr B is adamant that the only signature he gave was on an electronic pad and he wasn't shown and didn't accept the conditional sale agreement;
- he was sent an unsigned copy of the agreement and immediately contacted Santander;
- Santander said that Mr B would have to discuss his options with the dealership but the dealership hasn't responded to him and he has been told that it no longer exists;
- an application was made in February 2016 for the dealership to be struck off the Companies House register but the application was withdrawn in April 2016; and
- he hasn't driven the car since it was inspected and its current mileage is 32,313.

## my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Santander on 23 June 2016. In my provisional decision I said as follows:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.*

*Mr B went to the dealership in November 2015 to try to buy a car. It is clear from his evidence that he had a very limited budget. He says that he saw a car which wasn't marked with a price and that the dealer talked to him about the car. He says that he was asked to sign on a screen and paid a £500 deposit for the car. He says that he wasn't shown the agreement and didn't sign or accept it. He also says that the first*

*time he saw the agreement was when he received the unsigned copy of it that was sent to him. He immediately contacted Santander to say that he couldn't afford the monthly payments and that he didn't want to pay the interest that was set out on the agreement. Mr B shouldn't have signed on a screen unless he knew what he was signing and shouldn't have paid the deposit until he knew the full terms of the deal. But I consider it to be more likely than not that he didn't knowingly sign the conditional sale agreement and that the terms of the agreement weren't properly discussed with him.*

*Santander says that credit searches were undertaken prior to Mr B's application being accepted. It says that Mr B was above the credit score cut-off and had a low indebtedness. It also says that it was told that Mr B had been a manager at an identified well known retail company for three years and nine months so there was no reason not to accept his application. Under the agreement Mr B was being provided with £15,090 of credit and was being charged £6,376.80 for that credit. He was a student with no regular source of income. I consider it to be unlikely that he told the dealer that he had worked for the retail company as a manager for three years and nine months. A credit check may have shown an acceptable credit score and a low level of indebtedness. But Santander has provided no evidence to show that it properly assessed the affordability of the credit for Mr B. Any checks on the affordability would have identified that he was a student with no regular income, that his bank account was significantly overdrawn and that he didn't work as a retail manager. Had those checks been made I consider it to be very unlikely that Santander would've agreed to provide credit to Mr B in these circumstances.*

*Mr B contacted Santander immediately he received the unsigned credit agreement and he was told to contact the dealership. He has tried to contact the dealership with limited success. I haven't seen any evidence to show that the dealership has properly responded to his issues. And Mr B's representative has provided evidence to show that the dealership may have stopped trading.*

*So I find it to be more likely than not that the agreement was mis-sold to Mr B, that it was unaffordable for him and that Santander shouldn't have lent to him. And I find that it would be fair and reasonable for Santander to: collect the car from him and to cancel the agreement, refund his deposit and any payments that he has made under the agreement, with interest; remove any adverse information about the agreement that it has recorded on his credit file; and pay him £200 compensation for the trouble and upset that he has been caused. I also find it to be more likely than not that the car's brakes are faulty but – given my findings above – I make no separate award for that – other than that Santander should refund to Mr B the cost of the report (upon receipt of a copy of the invoice from him)."*

Subject to any further representations by Mr B or Santander, my provisional decision was that I was minded to uphold this complaint.

Santander accepted my provisional decision but Mr B representative's requested that Santander also refund the tax and insurance expenses that Mr B has incurred in connection with the car. Santander says that it: "... would not look to cover these costs as they are usual costs involved with running a vehicle and should be expected."

So I issued a second provisional decision on this complaint to Mr B and to Santander on 7 October 2016. In my second provisional decision I said as follows:

*“Whilst in many cases I would agree that insurance and tax costs are usual costs involved with running a vehicle and should be expected - I don't consider that to be fair and reasonable in Mr B's case. Immediately he received the unsigned agreement, Mr B realised that the proposed terms were unaffordable and he contacted Santander. The evidence available to me shows that he hasn't used the car since then. I consider that Mr B only incurred the tax and insurance costs as a result of the agreement being mis-sold to him. And had that not happened I consider it to be more likely than not that he wouldn't have had a car - so wouldn't have needed to tax or insure one. So I find that it would be fair and reasonable for Santander to also refund the unrecoverable part of those costs to him. Mr B will be required to use his reasonable efforts to obtain a refund of some of his tax from DVLA and some of his insurance costs from his insurer – and Santander should only be responsible for the costs that he is unable to recover. When responding to this provisional decision Mr B should provide evidence of the tax and insurance costs that he has incurred.”*

Mr B says that he didn't pay any tax on the car and provided a quote for an insurance policy. But there were discrepancies with the quote and Mr B hasn't been able to provide any evidence to show the amount that he paid to insure the car. In these circumstances, it wouldn't be fair or reasonable for me to require Santander Consumer Finance to reimburse Mr B for any tax and insurance costs. So I consider that the decision set out in my first provisional decision is fair and reasonable.

### **my decision**

For these reasons, my decision is that I uphold Mr B's complaint. In full and final settlement of it, I order Santander Consumer (UK) plc, trading as Santander Consumer Finance, to:

1. Collect the car from Mr B and cancel the conditional sale agreement – both at no cost to him.
2. Refund to Mr B the £500 deposit that he paid for the car and any other payments that he has made under the agreement.
3. Refund to Mr B the cost of the report (upon receipt of a copy of the invoice from him).
4. Pay interest on the amounts at 2 and 3 above at any annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any adverse information about the conditional sale agreement that it has recorded on Mr B's credit file.
6. Pay Mr B £200 compensation for the trouble and upset that he has been caused.

If Santander deducts tax from the interest element of my award, it should send Mr B a tax deduction certificate when making payment. He can then use that certificate to reclaim the tax if he's entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 December 2016.

Jarrold Hastings  
**ombudsman**