

complaint

Mr W complains that Santander Consumer (UK) Plc (“Santander”) didn’t treat him fairly and sympathetically when he couldn’t maintain payments under his conditional sale agreement because of his own and his daughter’s illnesses, and it wrongly terminated his conditional sale agreement.

background

In March 2016, Mr W entered into a conditional sale agreement with Santander for a minivan under which he was to make monthly payments over the next five years. He used the minivan for the purposes of his taxi business and also as personal transport for his family.

In June 2017, Mr W’s daughter was diagnosed with a serious illness for which she was hospitalised. This meant Mr W was working fewer hours as he was caring for his daughter and transporting her to and from hospital. Mr W couldn’t maintain regular payments. He did manage to make his payments although they were sometimes a bit late.

Santander tried to contact Mr W during 2017 to try to agree some kind of arrangement. But Mr W said he couldn’t do this. He complained Santander was harassing him. He said he would pay as and when he could.

By July 2018, Mr W’s own health had deteriorated, and he collapsed and was admitted to hospital. He was signed off work for four weeks and underwent tests. On Thursday 13 September 2018, Santander again contacted Mr W. It offered him two options – either to terminate the agreement voluntarily and hand back the minivan, or come to a payment arrangement.

Mr W wasn’t happy with either option. He said he was receiving universal credit and would pay what he could at the end of the month. He said his daughter was still seriously ill, and his own condition was still being investigated. In response to Santander’s request he said he would send it medical evidence.

On Monday 17 September 2018 Santander terminated the conditional sale agreement. It said this was because he hadn’t sent in the medical evidence, although this was only requested two working days previously. Mr W complained about this. He said he needed the minivan to take his daughter to and from hospital, and he had started his taxi work again.

Santander didn’t accept his complaint. It felt the termination was correct as Mr W hadn’t supplied income and expenditure information, or medical evidence, when asked. So Mr W sold the minivan and his taxi licence and used the cash to settle the conditional sale agreement. He complained to us that:

- Santander didn’t support him properly during the financial difficulties he had following his and his daughter’s illnesses;
- some information he received from Santander was conflicting;
- he didn’t think Santander understood he was entitled to cancel the conditional sale agreement as he had paid it more than 50% of the total payable under the agreement;
- he was willing to reach a payment plan, but Santander wouldn’t engage;

- he had to sell the minivan and his taxi licence to avoid being left with a shortfall after a forced sale by Santander. He now had no transport and no livelihood. He was still having to pay off what he owed for the insurance of the minivan; and
- he had settled the agreement by paying the settlement figure Santander had asked for - £13,800.30. But he had received a statement showing £1,211 still outstanding, and a default for this had been marked on his credit file, which was stopping him from getting finance for a replacement taxi. He wanted this removed, and compensation for the way he had been treated.

Our adjudicator recommended that this complaint should be upheld. She didn't think Santander had done enough to support Mr W when he was suffering financially and dealing with the stress of his daughter's illness and then his own illness. Santander had never issued Mr W with a default notice before it terminated the conditional sale agreement, which meant the termination was invalid.

Santander had acknowledged that it had treated Mr W unfairly, and had offered compensation of £1,000. The adjudicator recommended that Santander should:

- pay Mr W £1,000 to compensate him for the trouble and upset it had caused him;
- waive all outstanding arrears; and
- remove the default from his credit file.

Mr W responded to say, in summary, that he thought the compensation should be higher. He said that as a result of Santander's actions he had lost his livelihood and his business which had put him into financial hardship. He still owed debts to family and others, and had to rely on others to transport his ill daughter to hospital.

my findings

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

Mr W's daughter's illness was diagnosed in June 2017 and it seems his financial problems began then. Santander did try to engage with Mr W at that time and attempted to get him to set up a payment arrangement, but Mr W didn't feel he could deal with Santander. It's clear that by September 2018 his finances were in a critical state.

Santander did offer either to accept a voluntary termination or to come to payment arrangement. But Mr W wanted to try to continue. Santander then terminated the agreement, which it has acknowledged was wrong because it hadn't previously sent him a default notice.

Mr W decided to sell the minivan and his taxi licence so he could pay off Santander and get a better price than a forced sale by Santander was likely to achieve. He says Santander should compensate him for the consequences of selling the minivan and his taxi licence – loss of livelihood, business and family debts that he still owed, inability to get finance to replace his taxi because of the default on his credit file, and difficulty in transporting his daughter to and from hospital.

I've considered carefully what Mr W has said. However given Mr W's financial and other problems in September 2018 I can't be sure that he would have been able to continue with his taxi business even if Santander hadn't terminated the agreement. And many of his debts had already arisen by then. Mr W might well still have to have sold the minivan.

I don't think Santander acted correctly in registering a default on Mr W's credit file in respect of the £1,211. This wasn't a debt – it was a rebate of finance charges Mr W was entitled to, and which Santander had agreed, when he settled his conditional sale agreement early.

However given the problems Mr W had with his agreement during 2017 and 2018, I can't say the registration of this default was the sole reason he couldn't get finance for a replacement taxi.

All in all, I can't fairly hold Santander responsible for all the debts and difficulties Mr W now has, or for the fact he needs to transport his daughter to and from hospital.

Santander has acknowledged that it was wrong to issue the termination notice, and that it treated Mr W unfairly. It's right that it should compensate him for the distress and inconvenience this caused Mr W. Like the adjudicator, I think Santander should now pay Mr W compensation of £1,000 and take the other actions set out more fully below.

my final decision

My decision is that I uphold this complaint, and order Santander Consumer (UK) Plc to:

- pay Mr W £1,000 to compensate him for distress and inconvenience it has caused him;
- waive all outstanding arrears, if any, still remaining on his account; and
- remove the default in respect of the £1,211 if this is still showing on Mr W's credit file as from the date this was put on his file by Santander.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 November 2019.

Lennox Towers
ombudsman