

## **complaint**

Mrs L acquired a car in June 2014, by means of a 49 month fixed sum loan agreement with Santander Consumer (UK) Plc. She complains that this agreement was mis-sold to her, because it was described as a Personal Contract Purchase (PCP) agreement, and because it did not include provision for its Voluntary Termination (VT). She also complains that Santander provided poor customer service, when she raised her concerns with it.

## **background**

Mrs L said:

- It was her understanding that she had been sold a normal PCP
- In June 2017, she started to explore the option of VT, because she was at or near the point where she would have repaid over half the total amount payable under the agreement, and she contacted Santander – but it told her that VT was not possible
- She contacted the supplying dealership – it told her that it was confused by Santander's statement, and that her loan should definitely have been a PCP

Mrs L complained to Santander. It wrote to her, saying:

- It understood that Mrs L thought the type of agreement she had was a conditional sale PCP, which was a secured loan linked to her car, with three options when the loan ended
- But what Mrs L signed was a fixed sum loan agreement, which similarly included the PCP options when the loan ended
- The dealer would have given Mrs L the standard pre-contract documentation, which explained and outlined her agreement's terms and conditions, and stated the type of agreement she was being offered
- Because Mr L signed to confirm that she had read and understood this documentation, it was unable to uphold her complaint

Mrs L responded to Santander, saying that she had not been given copies of documents to take away, because the dealer's printer had been broken (and this was confirmed in an email from the dealer to her). Santander agreed to reconsider her complaint. Mrs L told us:

- She chased Santander three weeks later for an outcome – it said that it would reply within a week, but it did not do so
- She chased Santander again after a further two weeks – it said that it was still unable to uphold her complaint

Mrs L then referred her complaint to us.

Santander provided documentary evidence to us, including:

- Copies of Mrs L's signed fixed sum loan agreement and her pre-contract documentation
- A Sales Agency Agreement, dated and signed by it and Mrs L, which was headed 'Personal Contract Purchase – Cars 48mth 35K'

Our adjudicator did not think the complaint should be upheld. She noted that:

- The term PCP was not defined by legislation, but under such an agreement –
  - the borrower usually made lower regular monthly payments, and a much larger ('balloon') payment when the loan ended
  - the lender usually agreed a Guaranteed Future Value (GFV), at which it would be willing to acquire the car from the borrower when the loan ended, providing a mileage limit had not been exceeded
- The agreement Mrs L signed stated that it was regulated by the Consumer Credit Act 1974 – and the sections of this Act that provided the right to VT did not apply to fixed sum loans

Our adjudicator was satisfied that Mrs L had signed a PCP agreement – because it included a balloon payment, a mileage limit and a GFV. And, in the circumstances, our adjudicator was also satisfied that the agreement had not been mis-sold.

Our adjudicator noted as well:

- Santander had made a formal response to Mrs L's complaint within four weeks
- But, when Santander agreed to reconsider, Mrs L was not told until over a month later (and then only by her contacting it) that it was still unable to uphold her complaint

Our adjudicator said that Santander's customer service could have been better – but, in the circumstances, she did not think that financial compensation would be appropriate.

Mr L (on behalf of Mrs L) disagreed with our adjudicator. And so this complaint was referred for review by an ombudsman.

### **my findings**

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

Santander has a responsibility to ensure that what it and the supplying dealership provide to consumers at the point of sale is not mis-represented. It argues that Mrs L's pre-contract documentation and loan agreement both clearly state that what she signed is a fixed sum loan.

But Mr L (on behalf of Mrs L) argues that Mrs L's financial agreement was described to her as a PCP, when it should have been described as a fixed sum loan. And Mrs L says that she was not given copies of documents to take away, because the dealer's printer was broken.

Mrs L signed a copy of her agreement, even though she was not given copies of documents to take away. I cannot be certain, but it is reasonable to assume that Mrs L was still able to read the relevant documents before she signed. In which case, the non-availability of copies of documents to take away should not influence whether or not the agreement was mis-sold.

My understanding is that Mrs L thinks all 'normal' PCPs include VT, which is not correct. PCP is a marketing term – and I agree with our adjudicator that her agreement can be correctly described in this way. In legal terms, though, her agreement is a fixed sum loan – which is a correct description as well. And so her agreement is a fixed sum loan PCP (which does not include VT).

VT is a valuable right included in some (not all) financial agreements. But I would not expect a dealer to draw particular attention to its presence or absence, unless consumers tell the dealer that they might want to terminate their agreements early. Although, if specifically asked about VT, the dealer's response must be factually correct.

(When an agreement includes VT, this provision is normally only available after at least half of the amount repayable has actually been repaid. By making her advance payment and all her regular monthly payments, Mrs L would have reached the repayment half way point in late spring 2017.)

Mrs L could have been mis-led if, before she acquired his car, she knew that PCPs often included provisions for VT, and the dealer failed to clarify that the type of PCP being offered did not include these provisions. And Mrs L would have been mis-led if, before she acquired his car, she had told the dealer that she might want to terminate his agreement early, or she had asked specifically about VT, and the dealer had mistakenly told her that her PCP included these provisions.

But Mrs L would not have been mis-led if, before she acquired his car, she did not know that PCPs often included provisions for VT, and she was not told by the dealer that her PCP included these provisions. In this scenario, Mrs L would only have come to know that PCPs often include VT after she acquired her car.

I again cannot be certain, but it appears that Mrs L did not become interested in early termination of her agreement, and/or aware of VT, until after she acquired her car. And so, on balance, I find that she was not mis-sold his agreement.

Finally, regarding Santander's customer service, I agree that this could have been better. But I find that financial compensation for Mrs L would not be appropriate, for the same reasons as our adjudicator.

### **my final decision**

For the reasons explained above, my final decision is that I do not uphold this complaint.

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

Roy Mawford  
**ombudsman**