

complaint

Mr G complains that he was mis-sold car finance provided by Santander Consumer (UK) plc.

background

The background to this complaint is set out in my provisional decision, a copy of which is attached. I concluded that Mr G didn't have the right to voluntarily terminate the agreement and that it hadn't been misrepresented. I thought Santander should pay Mr G £75 for the trouble and upset it caused in wrongly registering the loan on the HPI database.

Mr G didn't agree with my provisional decision saying, in summary, that:

1. The agreement met the definition of a personal contract purchase ("PCP") agreement – and he detailed why he thought this was the case.
2. Santander referred to the agreement as a PCP in its correspondence; it referred to the car as "*our goods*"; and it registered its interest on the HPI database. So Santander misunderstood its own agreement.

Santander didn't respond to my provisional decision.

my findings

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

I've considered very carefully the arguments put forward by Mr G in response to my provisional decision. But this doesn't change my conclusion. The agreement Mr G signed doesn't contain a right to voluntarily terminate.

I do agree with him that Santander made mistakes in the way it referred to the agreement in its correspondence. It didn't have an interest in the car and it shouldn't have registered it as such on the HPI database. It should compensate Mr G for the trouble and upset its mistake caused. But I don't think this amounts to misrepresentation of the agreement.

my final decision

My decision is that Santander Consumer (UK) plc should pay Mr G £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 September 2017.

Elizabeth Dawes
ombudsman

copy of provisional decision

complaint

Mr G complains that he was mis-sold car finance provided by Santander Consumer (UK) plc.

background

Mr G bought a car in 2013. He says he thought he 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 he tried to do that in 2016, Santander said he couldn't. It says the finance is a personal loan and Mr G isn't entitled to voluntary termination.

Mr G says he thought the agreement was a personal contract purchase ("PCP") because it contains mileage limits and excess charges, so he should have the right to voluntarily terminate.

Our investigator didn't recommend that the complaint should be upheld. He thought Mr G should've been reasonably aware that he was agreeing to a fixed-sum loan and that Santander hadn't made an error, so didn't need to take any further action in response to Mr G's complaint.

Mr G didn't agree saying, in summary, that:

- The agreement was in the form of a PCP and he was told this was what it was. He didn't doubt this was the case and concerned himself with checking the payments he'd have to make, rather than the small print.
- Amongst all the paperwork he was given, there is only the agreement which makes reference to a fixed sum loan. Everything else shows a PCP arrangement.
- Santander refers to the agreement as a PCP in its response to his complaint – if it can get it wrong, it can't be clear.

Since asking for an ombudsman to consider his complaint, Mr G says he's tried to sell the car but can't because Santander has registered the loan on the HPI database.

my provisional findings

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

voluntary termination

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.

Mr G's finance agreement

Mr G says he should be allowed to VT here because his 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 Mr G's finance agreement. The agreement itself is headed "Fixed Sum Loan". Under it Santander provided the credit for Mr G 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 Mr G signed another linked agreement when he took this loan out, headed "Sales Agency Agreement" (SAA). Under the SSA Santander provides a GFV of £10,085.50 at the end of the loan term (enough to pay off the "balloon") if Mr G appoints Santander to sell the car on his behalf - and he hasn't driven it more than 6,500 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 Mr G has the right to VT this loan under legislation.

I have no doubt this is frustrating for Mr G. I appreciate he feels strongly that this finance was misrepresented. I can't be certain what was said when Mr G took the loan out so I've looked at the paperwork. I'm satisfied it's clear from the paperwork that this is a loan, not a hire purchase or conditional sale. Mr G says he can't be expected, as a lay person, to know about the implications of different sorts of finance and I've taken into consideration that he was presented with a fair amount of paperwork when he was buying the car.

But, I'm satisfied the documents Mr G saw say nothing about a right to VT. I think Mr G would probably have realised that if he'd read through the paperwork – especially if that right was important to him. So I can't fairly conclude that this finance was misrepresented.

registration on the HPI database

Mr G says when he tried to sell the car he couldn't because Santander had registered it on the HPI database. He asks why Santander can do that if it has no interest in the car. We asked Santander for comment but it simply said the car wasn't on the database – so presumably this means it's realised it shouldn't have been on there and has removed it.

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 was registered on the HPI database means the finance was misrepresented when Mr G took it out.

But I can see why Mr G is confused by the HPI marker and it's not entirely clear to me why Santander registered this loan, although I'm pleased it says it's not registered now. The registration

caused Mr G trouble and upset when he tried to sell the car for which he should be compensated. I conclude £75 to be fair and reasonable in the circumstances.

my provisional decision

My provisional decision is that Santander Consumer (UK) plc should pay Mr G £75.

Elizabeth Dawes
ombudsman