

complaint

Mr L acquired a car in early summer 2014, by means of a 49 month fixed sum loan agreement with Santander Consumer (UK) Plc. He complains that this agreement was mis-sold to him, because it was described as a Personal Contract Purchase (PCP) agreement, and because it did not include provision for its Voluntary Termination (VT).

background

Mr L said:

- He had recently been exploring options for changing his car.
- At the time he was doing this, he believed that one option would be VT, because he had entered into a PCP agreement.
- He then inspected the paperwork for his agreement.
- He found that pre-application information described his agreement as a PCP – but, in the actual agreement, it was described as a fixed sum loan and did not include provision for VT.

Mr L tried to clarify matters by contacting the supplying dealership. It emailed him in early summer 2017, saying:

- It did not think he had been mis-sold his agreement.
- He was quoted and proposed to Santander for funding as a PCP.
- The associated documentation clearly stated that the agreement was a PCP.

Mr L then complained to Santander. It wrote to him, saying:

- It understood that Mr L thought the type of agreement he had was a conditional sale PCP, which was a secured loan linked to his car, with three options when the loan ended.
- But what Mr L signed was a fixed sum loan agreement, which similarly included the PCP options when the loan ended.
- It appreciated that the differences between these two types of agreement may not have been made clear to Mr L.
- It also understood Mr L was interested in VT, but this was not available with a fixed sum loan, because that type of agreement gave him immediate ownership of his car – he could only voluntarily surrender and not terminate.
- It understood as well that Mr L has been in discussion with the supplying dealership, and that the dealer was confused about the agreement.
- But the dealer had told Santander that Mr L was given the standard pre-contract documentation, which explained and outlined his agreement's terms and conditions, and stated the type of agreement he was being offered.
- Because Mr L signed to confirm that he had read and understood this documentation, Santander was unable to uphold his complaint.

Mr L then referred his complaint to us. The supplying dealership told us that it had not given any information about VT to Mr L, before he acquired his car. It added that it would not normally do so, unless a consumer specifically asked about VT.

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

Mr 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. And I note Santander acknowledges that the differences between a conditional sale PCP and a fixed sum loan PCP may not have been made clear to Mr L.

Mr L argues that his financial agreement was described to him as a PCP, when it should have been described as a fixed sum loan. He has provided as evidence a Sales Agency Agreement, signed by him (but not dated or signed by Santander), which is headed 'Personal Contract Purchase – Cars 48mth 35K'. He also draws attention to the dealer's acknowledgement that it was confused about his agreement.

Santander provided documentary evidence to us, including copies of Mr L's pre-contract documentation and his signed agreement. These documents both clearly state that what he signed is a fixed sum loan. In addition, statements made by the dealer suggest that it did not discuss VT with Mr L, and that he did not raise this subject, before he acquired his car.

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

VT is a valuable provision 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 his advance payment and all his regular monthly payments, Mr L would have reached the repayment half way point in late spring 2017.)

Mr L could have been mis-led if, before he acquired his car, he 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 Mr L would have been mis-led if, before he acquired his car, he had told the dealer that he might want to terminate his agreement early, or he had asked specifically about VT, and the dealer had mistakenly told him that his PCP included these provisions.

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

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

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 Mr L to accept or reject my decision before 22 December 2017.

Roy Mawford
ombudsman