

complaint

Mr M complains that he was mis-sold a finance agreement with Santander Consumer (UK) Plc.

background

In December 2015 Mr M was supplied with a car and entered into a fixed sum loan PCP agreement.

Mr M thought he'd entered into a PCP agreement which contained rights to voluntarily terminate the agreement. However, he discovered that instead he'd entered into a fixed sum loan agreement which didn't offer the same termination rights as other PCP agreements and only allowed him to voluntarily surrender the agreement.

In its final response, Santander said that during discussions with the supplying dealer, Mr M was provided with pre-contractual information and was fully informed about the type of agreement he was entering into.

Mr M wasn't happy with Santander's response. He said he'd been led to believe that he was entering into a PCP agreement. He wants to voluntarily terminate the agreement.

Our investigator upheld the complaint. She said it was more likely than not that the agreement was presented to Mr M as a PCP and that he was expecting the agreement to contain a voluntary termination clause. Because of this, the investigator felt that the agreement had been mis-sold. She recommended that Santander cancel the agreement.

Santander didn't agree. It said it was clear from the finance documentation that the agreement was a fixed sum loan PCP. It said the agreement was sold as a PCP agreement because the customer had the same options at the end of the agreement but that it wasn't secured against the car. Santander said Mr M was fully informed at the point of sale and was given an opportunity to read the documents before he entered into the agreement.

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 the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M went to the dealership to acquire a car. He had previously had a PCP agreement from a different financial provider and was aware of the terms which PCP's generally included, specifically the option to voluntarily terminate.

Mr M says he initially had discussions with the dealership about a PCP agreement. Neither of the salesmen who spoke to Mr M works for the dealership any longer, so it hasn't been possible to obtain their version of events. Nor has the dealership been able to provide any contemporaneous notes of those discussions.

Following the discussions Mr M was provided with a sales agency agreement headed "PCP Advantage". This references the agreement being of a PCP nature but doesn't mention the words fixed sum loan.

Based on Mr M's account of the discussions he had with the salesmen and the documents which were provided to Mr M, I find it reasonable that Mr M thought the agreement he was entering into would be a PCP agreement with the right to voluntarily terminate.

Santander has said that it was clear from the agreement itself that this was a fixed sum loan PCP. However, given that Mr M signed a document which included terms which one would generally expect to find in a PCP, such as annual mileage and a purchase option price, I think it's reasonable that Mr M believed he was entering into a PCP agreement.

I've taken into account Santander's comments that Mr M had the opportunity to read the agreement before signing it. Mr M says that he was asked to sign the agreement electronically. I don't think this of itself would have prevented Mr M from reading the agreement, but because of the discussions which had already taken place, and taking into account the fact that the agreement contained terms which one would generally expect to find in a PCP, I'm satisfied that it's more likely than not that the agreement was presented to Mr M as a PCP.

I accept that the agreement is called a fixed sum loan agreement. However, there's nothing to suggest that this was what Mr M asked for when he visited the dealership, and there's nothing to suggest that the difference between a PCP and a fixed sum loan PCP was explained to him.

My view is supported by Mr M's comment that the dealership contacted him about upgrading the car and was itself initially under the impression that Mr M had voluntary termination rights.

Because the option to voluntarily terminate was a key factor for Mr M, I don't think he would have entered into the agreement if he had known it didn't include this option. Based on the information which had been given to Mr M at the point of supply, I'm satisfied he thought he was entering into a PCP agreement with a right to voluntarily terminate.

Taking all of the circumstances of the complaint into account, I'm of the view that the agreement was mis-sold to Mr M.

Mr M should be put back in the position he would have been in had he not entered into the agreement. He should be allowed to return the car with nothing further owing. I won't be asking Santander to refund any of Mr M's monthly payments because he's had use of the car.

my final decision

My final decision is that I uphold the complaint. Santander Consumer (UK) Plc should:

- Cancel the agreement with nothing further to pay
- Arrange for the car to be collected at no cost to Mr M.
- Refund the deposit of £1,239.50 paid by Mr M together with 8% simple interest from the date of payment to the date of settlement
- Remove any adverse information relating to the agreement from Mr M's credit file

- Pay £150 to Mr M for trouble and upset

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

Emma Davy
ombudsman