

## **complaint**

Mr L complains that the terms of his fixed sum loan agreement financed by Santander Consumer (UK) Plc were misrepresented. He wants compensation.

## **background**

Mr L tells us he took out this loan in 2015, to finance a vehicle he was acquiring from a dealer I'll refer to as "T". He says he was told - and that he believed - he was entering into a similar type loan agreement to that which he'd used previously to finance vehicles. And that this would mean he'd be able to return the vehicle after making half the payments. But Mr L tells us he's now found that this option isn't available and that he's required to settle the whole loan. He feels that the terms of the fixed sum loan were misrepresented.

Santander told us Mr L had signed the PCP agreement whilst on T's premises. And that he'd been provided with all the required documentation which explained the terms of the loan.

Our adjudicator didn't recommend the complaint should be upheld. She said Mr L had signed to say he'd been provided with relevant documentation and that he'd understood the terms of the agreement. And she said the agreement was headed "*Fixed Sum Loan Agreement*". She thought it was for the consumer to review the agreement before signing. And she didn't think Santander had done anything wrong in rejecting Mr L's claim.

Mr L didn't agree with this outcome and insisted the agreement had been misrepresented. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final 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'm sorry Mr L has experienced some inconvenience and frustration in trying to terminate this agreement. I can understand his disappointment in learning that he'd taken out a loan of a different type to that which he'd intended.

Mr L's complaint relates to the alleged misrepresentation of his fixed sum loan agreement. Whilst he doesn't attribute blame to T - only to Santander - as I understand it the pre-agreement negotiations were conducted through T. He told the adjudicator that there was initial phone contact and then he visited T's premises to sign the agreement and collect the vehicle.

As Mr L's complaint is brought against Santander I'm required to decide if it's dealt with this fairly. I'm not deciding on the merits of any underlying claim which Mr L might have against T. Although I will consider this aspect in deciding if Santander has looked at his complaint properly.

Whilst I don't apply the law - directly - I do take it into account. Relevant legislation here includes section 75 of the Consumer Credit Act 1974. Briefly summarised this gives the consumer a "*like*" claim against the supplier of finance (Santander) as he would have against the credit broker of the agreement (T) if there's been a misrepresentation of the agreement by T. A misrepresentation is a false statement of fact which induces a consumer to enter an agreement and incur a loss as a result of the misrepresentation. I should also say that a misrepresentation doesn't have to be intentional. So even if T had inadvertently mistaken the nature of the agreement it was brokering - and given Mr L the wrong details - this could still be a misrepresentation.

Where the information we're given is incomplete or contradictory - as some of it is here - I'm required to resolve disputes of fact on the balance of probabilities. And in doing this I take into account documentary evidence as well as what the parties tell us.

As any recordings of the initial telephone conversations aren't available - they occurred more than four years ago - I've only got Mr L's recollection of events and the documentary evidence to go on. And similarly it's unreasonable to expect anyone can accurately recall precise details of the discussions at T's premises after this length of time.

I've no doubt that Mr L intended to enter the type of agreement which allowed him to return the vehicle early and I expect that this - amongst a number of options - was probably discussed. I can't say what was verbally agreed either prior to Mr L attending T's premises or at that time. I can only infer that T believed he'd agreed to take a fixed sum loan as that was the paperwork it produced for his signature. It seems to me the most probable explanation is that Mr L signed the agreement and accompanying documentation on the assumption that it was similar to previous agreements he'd had. And that he probably didn't read it through. If he had, I think he would - or reasonably ought to - have noticed it was headed *Fixed Sum Loan Agreement*. The same information was also stated in the pre-contract credit information document. And the "*Explanation Document*" commences with a question: "*Is a fixed sum loan agreement suitable for you?*"

I understand it can be tedious to read through a large amount of paperwork - particularly if one already thinks the contents are known. But not reading an agreement before signing is not a good reason for avoiding the obligations it contains. Given the documentation provided to Mr L and the fact that it repeated that it related to a fixed sum loan agreement, I don't think a misrepresentation occurred. So I don't think Santander was acting unfairly when it rejected Mr L's complaint.

I understand that Santander did eventually allow Mr L to terminate the agreement early but I assume that was a gesture of goodwill as the agreement was nearing its end. And I'm aware that more recently Mr L has indicated that a further issue has arisen over the way in which the agreement was terminated. He's told us that in December 2019 he noticed that his credit file showed the agreement as still being current. It seems one monthly payment wasn't collected and he says Santander indicated it wouldn't take steps to do so until this complaint was settled. Mr L confirms he's since paid the balance to avoid any risk of an adverse entry on his credit file.

I've only mentioned this latter detail out of courtesy to Mr L, as he brought it to our attention. It's only arisen recently and so couldn't have formed part of the original complaint. So I'm unable to make any formal findings in relation to this aspect. If Mr L wishes to take it further he'll need to make a new complaint to Santander.

I know my decision will come as a disappointment to Mr L but I'm not upholding this complaint.

**my final decision**

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 February 2020.

Stephen D Ross  
**ombudsman**