

## The complaint

Mr M complains that the finance agreement he had with Santander Consumer (UK) Plc trading as Santander Consumer Finance was mis-represented to him.

## What happened

Mr M had a Personal Contract Purchase (PCP) agreement for a car he purchased in 2014. In September 2016 he decided he wanted a newer car. He says he went back to the car dealer that had supplied the original car and agreement, and after agreeing on the model of car, signed a new agreement. Mr M says he believed he'd entered into a new PCP agreement, because it had a mileage limit, and included a final balloon payment.

In August 2019 he asked Santander for the options to end the agreement. He said they told him he couldn't voluntarily terminate the agreement because he'd entered into a fixed sum loan agreement. He says they told him he could sell it privately and settle the agreement by paying the early settlement figure.

In October 2019 he contacted a company that buys cars direct from the owner. Mr M says they offered him £9,500. He says he then found out he couldn't sell the car because Santander had placed a finance marker against the car. The marker indicated to potential purchasers that there was outstanding finance owed to Santander and they had an interest in the car.

Mr M said he should have been allowed to voluntarily terminate the agreement. He wanted to settle this way, and wanted a refund of all the monthly payments he'd paid since asking to terminate the agreement.

He says he entered into the agreement because he expected it to be a "*usual*" PCP agreement. He says he wouldn't have entered into the agreement if he'd been told the differences between the types of agreement.

Santander didn't uphold his complaint. They confirmed he'd signed a "*Fixed Sum Loan PCP*" agreement in September 2016. They said it was his responsibility to read and understand the terms of the agreement. They said he couldn't voluntarily terminate the agreement but he could sell the car privately. They also said they'd sent him a settlement figure so that he could sell the vehicle himself.

Our investigator upheld the complaint. He felt that Mr M had been misled, or had misunderstood, the agreement. He felt that Mr M thought he was entering into a normal PCP agreement, and wasn't told he was entering into a fixed sum loan agreement. He said the agreement entered into with Santander gave Mr M "*immediate ownership of the car*". But he found that Santander had recorded a financial interest against the car, preventing Mr M from selling the car privately.

He felt that Mr M would've sold the car in October 2019, and Santander should put him back in the position he would've been had he sold the car at the time. He also said Santander

should return all the monthly payments Mr M had made since that time, as he'd not been using the car.

Santander disagreed. They said Mr M had all of the options available in a *conditional sale PCP*, but not the option to voluntarily terminate the agreement. They said again that he had the option to voluntarily surrender.

They explained they'd registered a financial interest to protect them from potential fraud. And they said they remove the marker when requested to do so by the customer.

Our investigator responded, saying that Santander didn't tell Mr M about the finance marker. He said they could've made him aware of this, including in their final response to his complaint.

Santander acknowledged they could've made Mr M aware of this in their final response letter. But they said he could still sell the vehicle, and could voluntarily surrender. Our investigator pointed out that Santander's final response letter sent in August 2019 confirmed Mr M was told he had the right to sell the vehicle privately. Between then and October 2019 no Santander representative made Mr M aware of the HPI marker, and no one offered to remove it. On this basis, he felt it was unreasonable to expect Mr M to be aware of the options Santander suggested retrospectively.

In September 2020 Santander told our investigator they felt his suggested outcome was not proportionate to the mistake they made. It accepted that there was confusion in the telephone conversations they had with Mr M, but insisted they had to register their financial interest to mitigate the risk of fraud.

They also repeated their view that Mr M had signed the agreement, and this was clearly a fixed sum loan agreement, and in signing the agreement he'd confirmed he'd received an explanation of the key aspects of the agreement. They said they felt a larger compensation amount was more proportionate than Mr M returning the vehicle to them.

Separate to this complaint, in October 2020 Santander wrote to Mr M advising him his Personal Contract Purchase (PCP) agreement was coming to an end in January 2021. It advised him of the three options available to him in relation to the final balloon payment. These were:

- Retain the vehicle, by making a payment of £7,250
- Return the vehicle
- Renew the vehicle, by part exchange and making the final payment

Mr M told our investigator this further reinforced his view that he was never told he had a fixed sum loan agreement.

Our investigator told Mr M about Santander's willingness to offer a monetary settlement rather than take the car back. Mr M said he could offer £5,000 to settle the agreement. Our investigator asked Santander to consider the offer, as a reduction on the settlement figure of £7,500 it had set out in its earlier letter to Mr M.

When they failed to respond by the deadline he'd set, Mr M asked for the case to go to an ombudsman. Santander agreed, and the case has come to me for decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I'm upholding this complaint for broadly the same reasons as our investigator.

Mr M said he thought he'd entered into a PCP agreement. The paperwork confirms that he entered into two agreements: a Fixed Sum Loan Agreement; and a Sales Agency Agreement. Both agreements were sold by the dealership on behalf of Santander. One of the effects of Section 56 of the Consumer Credit Act 1974 is that any representations made by the credit broker (in this case the dealership) are made in their capacity as agent of the finance provider (Santander). This means Santander can be held responsible for the actions of the dealership when it brokered the finance agreements for Mr M.

The Loan agreement he signed was for 48 monthly payments of just under £300, followed by one payment of £7,250. The Sales Agency Agreement contains a mileage limit. Both documents are silent on the ownership of the car.

The first issue I have to consider is whether or not the key features of the finance agreements were made sufficiently clear to Mr M.

Before I consider that, I think it'd be helpful to set out my understanding of a PCP agreement. I've relied on the descriptions provided by the Financial Conduct Authority (FCA), and the Finance and Leasing Association (FLA), the trade body of which Santander are a member.

The FCA describes PCP as a form of hire-purchase which combines lower monthly repayments with a final balloon payment. The FLA describes PCP as a variation of a Hire Purchase agreement. Both say the key difference between a normal HP agreement and a PCP agreement is that the value of the car at the end of the contract is calculated at the start of the agreement and this value is deferred. The future value is based on a number of factors including how old the car will be at the end of the agreement and how many miles it is expected to have covered.

The FLA also describe a PCP agreement as giving consumers the flexibility to decide whether they would like to own the car outright at the end of the agreement by paying the deferred value, or returning the car to the lender and entering into a new car finance agreement.

I agree with the FCA and the FLA – a PCP agreement is a Hire Purchase agreement. So I can see why Mr M was surprised to find out he didn't have the type of agreement he expected. He'd asked the dealer for a PCP agreement, he was given an agreement that looked like a PCP, supported by paperwork that said it was a PCP.

Santander say he should have read the agreement. They say if he'd done so, he'd have seen there was no mention of the right to voluntary terminate.

I don't think it's fair or reasonable to expect a consumer to notice the right to terminate the agreement early was missing from the agreement. Hire purchase agreements are regulated under the Consumer Credit Act 1974. Section 99 of the Act gives consumers the right to terminate a hire purchase agreement at any time before the final payment is due. This was a key difference in the agreement he entered into, and the one he thought he'd entered into. And this should have been brought to his attention.

The right to terminate gives the consumer the right to give the car back at any point before the final payment, with liability capped at one half of the total cost of the agreement. This is because under this type of agreement, ownership of the car remains with the lender, in this

case Santander. Under a fixed sum loan agreement, the loan is used to purchase the car so the consumer owns the car, and voluntary termination doesn't apply to this type of loan.

I'm aware that the agreement he signed is clearly titled "*Fixed Sum Loan Agreement*". But all other documentation, including the correspondence sent to him in October 2020 about the agreement coming to an end, is described by Santander as PCP.

So I'm satisfied the nature of the agreement and its key features weren't made clear to Mr M.

And this means that Mr M entered into the agreement without knowing all the information he need to make an informed decision.

He was upgrading his car and expected another PCP agreement. He got the important things he was looking for, the term, the monthly payments, the final value (although not described as a balloon payment), and the annual mileage. And he's explained how he negotiated a significantly higher annual mileage allowance than originally offered by the dealer. So I'm satisfied he knew how a PCP agreement worked.

I've considered if he'd have walked away from the deal if he'd known he didn't have the right to terminate the agreement early. He's told me that he works in the entertainment industry, and whilst at the time of the agreement he was working in the United Kingdom, he was always aware that an opportunity to work abroad was a possibility. He says that's why the opportunity to voluntarily terminate was attractive to him.

I find his testimony persuasive, and he's provided travel receipts to show that he did in fact start working abroad.

I've explained why I think a PCP agreement is a hire purchase agreement, so it follows that I'd expect Mr M's agreement should have all the features of a hire purchase agreement. That includes the right to terminate the agreement.

Mr M says he lost out because he wanted to voluntarily terminate the agreement. I agree, he was sold an agreement that was described as a PCP agreement and should have all the features of this type of agreement. But the actual agreement he entered into was a Fixed Sum Loan Agreement. I think that because of the nature of his employment, it's more likely than not that he wouldn't have entered into this agreement if he'd known it didn't give him the right to voluntarily terminate.

So I'm satisfied that he entered into the agreement without knowing the features of the agreement – as lender and brokers are required to provide under the rules set by the FCA, the industry regulator.

I think Santander should now accept Mr M's request to voluntarily terminate the car. It should treat that acceptance as if it happened in October 2019, when Mr M first attempted to end the agreement. It should redress Mr M as I've set out below.

For completeness I'll also address the other issues covered by our investigator – although they don't affect the outcome or the redress I'm proposing.

### *The Finance Marker*

Santander described their reasons for placing a finance marker. I'm not convinced it was reasonable for them to do this. I note it was marked as a personal loan not Hire Purchase, so the marker wasn't technically wrong. But I agree with our investigator – they should have

told him about it, and removed it when they knew he wanted to end the agreement. If they'd done so it's likely that he would've been able to sell his car at the time.

He did what we'd expect consumers to do during a dispute, and continued to make the contractual payments. He did this despite ill health and losing his job. Although I understand he took the payment holiday offered during the pandemic.

### **Putting things right**

Mr M first asked Santander about how he could end the agreement in August 2019. And in October 2019 he attempted to sell the vehicle. So I think it's reasonable to assume he'd have returned the vehicle and terminated the agreement at that time.

He's told us he's not used the car since making complaint as he was out of the country for much of the time. And then he was out of work. But he still had to have the car put through an MOT test, and he continued to insure the car, as he was still the registered keeper.

As I said above, he continued to make payments after bringing the complaint to us. So I think it's fair and reasonable for those payments to be returned to him because they wouldn't be due if Santander had allowed him to terminate the agreement.

To put things right, Santander should:

- Take the car back at no cost to Mr M and end the finance agreement confirming he has nothing more to pay
- Mr M should be awarded £250 for the trouble and upset caused, especially having to make payments causing undue financial strain
- I'm persuaded Mr M hasn't been using the car (he's told me that he's registered the car as off the road (SORN)). Santander should return all monthly repayments made since November 2019 minus any outstanding settlement balance
- On production of receipts by Mr M, refund the cost of the MOT, and the insurance premium he paid.

The refunds due for the premiums paid, the cost of the MOT, and the insurance will be subject to 8% simple interest per year from the date of payment to the date of settlement.

### **My final decision**

For the reasons given above, I'm upholding this complaint. Santander Consumer (UK) Plc trading as Santander Consumer Finance should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 April 2021.

Gordon Ramsay  
**Ombudsman**