

## The complaint

Miss L is unhappy that she was mis-sold a car that was supplied to her under a conditional sale agreement with Santander Consumer (UK) Plc; and that, after being told she was able to sell the car, there was still an outstanding balance.

## What happened

agreement with Santander. She paid an advance payment of £2,500 and the agreement was for £16,576 over 49 months; with 48 monthly payments of £215.32 and a final payment of £6,240.54. The agreement was electronically signed by Miss L on 9 December 2020.

In January 2023, Miss L contacted Santander about selling the car. Santander agreed to this and provided her with a settlement figure of £11,408.22. In February 2023, Miss L advised Santander that she'd now sold the car, but needed the sale proceeds for other purposes, asking if she could continue to make payments. Santander explained that this wasn't possible as Miss L no longer had possession of the car, and the agreement had been terminated. In March 2023, Miss L made two payments to Santander, totalling £5,000, but no further payments were made to settle the agreement.

In September 2023, Miss L complained to Santander that she didn't realise the car was being provided through a finance agreement, and she believed it was being provided through a disability scheme instead. She wasn't happy that the agreement was electronically signed, and, because of her cognitive issues, she says that she wasn't able to understand what she was agreeing to.

Santander asked Miss L to provide some evidence of her health conditions, so they could fully assess her complaint. However, she didn't initially provide this and, as a result, Santander didn't uphold her complaint.

In response, Miss L provided Santander with a doctor's letter, dated 25 September 2023, which said that Miss L had suffered from a medical condition since 2019, whose symptoms included "*brain fog, poor concentration, memory issues and poor coordination.*" However, this didn't change Santander's mind, so Miss L brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that electronically signing documents in these circumstances was both legal and commonly used where credit brokers have been involved (as was the case here). He said that, while Miss L had explained why she thought she was unable to understand the information she'd been provided with, there was no evidence that Miss L had ever made either the supplying dealership or Santander aware of this. So, he didn't think Santander had done anything wrong in providing the agreement.

The investigator also said that Santander made it clear how much Miss L needed to pay if she sold the car, and she didn't do this. As such, he also didn't think Santander had done anything wrong by not treating the agreement as settled, and by chasing Miss L for the outstanding amount.

Miss L didn't agree with the investigator's opinion and asked for an ombudsman to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss L was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've considered Miss L's comments about whether she was able to understand the agreement, and whether she understood she wasn't being provided with a car under a disability scheme. While these comments are noted, and the letter from her doctor explains her concentration and memory issues, her doctor hasn't said that she was incapable of understanding the agreement she entered into.

However, even if I were to read into the doctor's letter, and draw the conclusion that the concentration and memory issues would have made Miss L incapable of entering into a finance agreement (and, for clarity, I'm not saying that was the case); I'm also in agreement with the investigator that neither the dealership nor Santander were made aware of this – at no point has Miss L ever said she made them aware, and they continued regardless.

Notwithstanding this, for completeness, I've also considered what situation Miss L would've found herself in, had the car been financed through a disability scheme. With these types of scheme, the car would've been provided under a hire agreement. However, Miss L would still have been required to make an upfront payment and regular weekly or monthly hire payments, which are usually covered by disability benefits.

I haven't seen any evidence that Miss L was eligible for any disability payments, or what these payments were if Miss L was receiving them. As such, I'm not satisfied Miss L was eligible for a car under a disability scheme. But I have noted that Miss L paid an upfront payment, followed by regular monthly payments. And the Statement of Account I've seen shows this was affordable for Miss L. Therefore, I can't see Miss L has been disadvantaged by taking the car through the finance agreement with Santander, instead of through a scheme she may or may not have been eligible for.

Turning now to the sale of the car in 2023. The evidence is clear that Santander explained to Miss L she was able to sell the car under the agreement, but to do so she'd need to clear the outstanding finance from the sale proceeds. I haven't seen any evidence of the sale proceeds Miss L obtained; however, I'm satisfied it would result in one of two scenarios:

1. if the sale price was equal to, or more than, the settlement figure, Miss L would've known how much she needed to pay Santander to clear the agreement, and this may have left her with surplus funds; OR

2. if the sale price was less than the settlement figure, Miss L would've had the choice to either not sell the car, or sell it in the knowledge she'd still need to pay the full settlement amount to Santander.

As such, I don't consider it important for my decision to know how much Miss L sold the car for. What is important is that, whether Miss L did or didn't get enough to clear the amount outstanding with Santander, she chose to use some of the money for other purposes, and only pay Santander £5,000. Which left around £6,400 still outstanding.

While I appreciate why Miss L made the choice she did, by selling the car and not repaying the agreement with Santander she was in breach of the agreement. And I consider it reasonable that Santander didn't allow her to continue to make the monthly payments – these payments were backed by an asset (the car) that Miss L was no longer in possession of. What's more, I don't think they did anything wrong by pursuing her for the outstanding amount.

Again, for completeness, I've considered what would've happened if Miss L had been eligible for a disability scheme and had been provided with the car under such a scheme instead. As, in these circumstances, the car would've been provided under a hire agreement, Miss L wouldn't have been able to sell the car. So, she wouldn't have been able to use the money for the purposes she did and would've had to find this money by another means, for example, by way of a loan. As such, she would still have ended up owing the same amount she did upon selling the car, and only partly repaying Santander.

Therefore, given all the above, and while I appreciate this will come as a disappointment to Miss L; I'm satisfied that Santander have acted reasonably in the circumstances, and I won't be asking them to do anything more.

### **My final decision**

For the reasons explained, I don't uphold Miss L's complaint about Santander Consumer (UK) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 23 April 2024.

Andrew Burford  
**Ombudsman**