

The complaint

Mr M is unhappy with how Santander Consumer (UK) Plc trading as Santander Consumer Finance have treated him, following his disposal of a car supplied to him under a conditional sale agreement.

What happened

In May 2020, Mr M was supplied with a used car through a conditional sale agreement with Santander. He paid an advance payment of £1,000 and the agreement was for £38,000 over 49 months; with 48 monthly payments of £586.01 and a final payment of £16,946.45.

In November 2022, Mr M entered into a Sale or Return contract with a third party ('the dealership') to try and sell the car on his behalf and repay the finance with Santander. However, the dealership disposed of the car, kept all the sale proceeds, and subsequently shut down. Mr M has said the dealership had scammed him, and that the police have told him he was one of 40 victims of this scam.

Mr M initially continued to pay the monthly payments to Santander and says he stopped paying in August 2023 as he could no longer afford to do so, along with paying for a new car and increased home and energy payments. Santander defaulted the agreement and have started legal action to recover the outstanding balance on the agreement from him.

Mr M wasn't happy with this and complained to Santander. However, Santander referred to the terms of the agreement and said Mr M had breached these by disposing of the car. So, Mr M brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the terms of the agreement Mr M signed were clear in that he needed to keep the car in his possession and not sell it. So, while Mr M may have acted in good faith when he allowed the dealership to sell the car, he was in breach of the agreement. Given this, the investigator thought Santander had acted in line with the standards set out by the Financial Conduct Authority ('FCA') and taken proportionate action with regards to the debt.

Mr M didn't agree with the investigator. He said that Santander had acted quickly once he stopped paying the agreement, which he didn't think was proportionate or fair – they gave him no time to act and have threatened him with bad credit. He also thought that Santander were *"using all the small print in their terms to catch me out."* Mr S also listed the FCA Rules and Principles he thought Santander had breached.

Because Mr M didn't agree, this matter has been passed to me 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. Mr M 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.

The basic facts of this matter aren't disputed – the dealership sold the car after being instructed to do so by Mr M, and they kept the sale proceeds. While I haven't seen anything to show me Mr M was the victim of a scam, I don't doubt this was the case. And I've seen that, when Mr M reported this matter to Santander, it was referred to their fraud team.

I've also seen that Mr M raised a further complaint with Santander in August 2023, about the way they investigated his complaint. Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. And complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Santander investigated Mr M's complaint hasn't been considered as part of my decision.

I've seen a copy of the agreement Mr M signed on 20 May 2020. And, within the signature box, Santander clearly state *"the goods will not become your property until you have made all of the payments. You must not sell them before then."* The terms and conditions of this agreement also stated:

3.1 You will become the owner of the goods if you comply with the terms of this agreement and have paid the total amount payable under this agreement. Until then the goods will belong to us even though you have possession.

4.4 You will not let anyone obtain any rights (including liens) over the goods ... you will keep the goods in your possession and under your control and will not sell, transfer, mortgage, lend or give the goods to anyone.

7 OUR RIGHTS IF YOU BREAK ANY TERM OF THIS AGREEMENT

7.1 [If] you break any other term of this agreement and then fail to comply with the default notice that we are required by law to send you, we can either:

*7.1.1 treat the agreement as repudiated and terminate this agreement under clause 7.2 [and] recover the amounts set out in that clause; or
7.1.2 transfer ownership of the goods to you and recover the amounts set out in clause 7.3*

Clauses 7.2 and 7.3 both go on to explain how the amount payable under these clauses would be calculated.

While I've noted Mr M's comments about the small print being used against him, it's reasonable to expect Mr M to have read the agreement before he signed it, as he agreed to be legally bound by the terms. What's more, I don't think the clauses referred to above were printed in such a way, or so small, that it's not reasonable for them to be read. As such, I don't think Santander have done anything wrong by relying on these terms.

Mr M has said he gave up possession of the car to the dealership in November 2022, and in doing so he breached the agreement. Santander's case notes show that Mr M removed his personalised numberplate from the car in November 2022, and Mr M asked them in December 2022 if the dealership had settled the finance yet.

In March 2023, a third party contacted Santander to advise them they'd purchased the car, but there was still finance outstanding on this; and in April 2022, the DVLA advised Santander of another change in numberplate on the car. The third party contacted Santander again in May 2023, asking if the finance had been removed and, in a conversation with Mr M in May 2023, he advised Santander of what had happened.

Based on the case notes I've seen, I'm satisfied that Santander were aware the car had been sold in April 2023, and the circumstances of the sale in May 2023. As such, under clause 7.1, Santander were entitled to default and terminate the agreement immediately and pursue Mr M for the full outstanding balance. However, it wasn't until early August 2023 that they did this.

I've seen the statement of account for this agreement, which shows that Mr M continued to make payments to Santander until September 2023, and the first payment missed was October 2023. Given this, I can't agree with Mr M's comments that Santander only terminated the agreement and started pursuing him for the full balance once he stopped making payments.

Mr M has stated the FCA rules he believes Santander failed to comply with when dealing with his matter. The rules he's raised as being breached are:

PRIN 2A.4 Consumer Duty: retail customer outcome on price and value

The Consumer Duty rules only apply to products and services sold from 31 July 2023 and don't apply to events that happened before that. As the agreement between Mr M and Santander came into effect in May 2020; this rule doesn't apply. As such, I won't comment any further on this point.

PRIN 2A.6.2 Consumer Duty: retail customer outcome on customer support

As above, this doesn't apply as Mr M entered into the agreement before 31 July 2023. So, I won't comment further on this point.

PRIN 2A.7.4 Protected characteristics and characteristics of vulnerability

This requires financial businesses to pay appropriate regard to the characteristics of their customers, including characteristics of vulnerability. Mr M has said he is "*very vulnerable and pressuring into a position where I can't keep on top of overheads.*" I'll deal with Santander's actions under PRIN 2A.7.4 alongside CONC 7.3.

Principle 6 (as referred to in CONC 2.2)

This requires financial businesses to pay due regard to the interests of its customers and treat them fairly. I'll deal with Santander's actions under Principle 6 alongside their actions under CONC 7.3, as I consider these to be intrinsically linked.

CONC.7.3 Treatment of customers in default or arrears

This requires financial businesses to treat customers fairly, in line with Principle 6 (above), and to treat those customers with forbearance and due consideration.

As I've said above, Mr M wasn't in arrears when the agreement was defaulted and terminated, and Santander only took these actions because Mr M sold the car through the dealership and didn't receive the sale proceeds with which to clear the balance he owed to Santander. And I haven't seen anything that shows me he made Santander aware he was struggling to make payments before the default and termination took place.

Mr M is also unhappy with being told that the default and any missed payments will have an adverse effect on his credit file. While, given the circumstances, I appreciate he doesn't want to be told this, as he was the victim of a scam, it doesn't alter the fact that he's been provided with factual information. And this was done in a very factual way. As such, I can't agree Santander's actions constitute threatening behaviour.

I have empathy with the situation Mr M has found himself in, and the reasons for this, but it doesn't alter the fact that he breached the agreement with Santander. And he was given between May and August 2023 to try and sort things out before Santander took the actions they were entitled to take when they found out the car had been sold without the finance being cleared. Given this, and while I appreciate that this will come as a disappointment to Mr M, for the reasons already stated I'm not satisfied that Santander acted unfairly in this matter, and I won't be asking them to do anything more.

However, Mr M has now made it clear that he is struggling financially. As such, I would expect Santander to treat his situation with forbearance and due consideration while any police action is ongoing, and until the sale proceeds are either legally recovered, or the agreement is repaid by other means.

My final decision

For the reasons explained, I don't uphold Mr M's complaint about Santander Consumer (UK) Plc trading as Santander Consumer Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2024.

Andrew Burford
Ombudsman