

## **The complaint**

Mrs G is unhappy that Santander Consumer (UK) Plc would not allow her to transfer a conditional sale agreement to another person.

## **What happened**

In April 2022, Mrs G was supplied with a used car through a conditional sale agreement with Santander. The agreement was for £5,140 over five years; with one monthly payment of £85.47 followed by 59 monthly repayments of £85.67. At the time, the car was more than eight years old, and had travelled 77,269 miles.

Mrs G said that the car was always intended for her son. She said he was unlikely to obtain finance in his own name due to his personal circumstances at the time. She said she made it clear to the supplying dealer that the car would be his. She said the dealer told her it would be more straightforward for her to enter into the agreement in her own name, rather than, for example, her acting as a guarantor.

She said the dealer advised her to register the car in her own name, and that she could change it at a later date to her son's name. She did this shortly after her son obtained the car. She said that in January 2023, Santander wrote to her advising her that they'd been made aware of the change of keeper by DVLA, and that she needed to settle the agreement in full if she had sold or transferred the car.

She's unhappy that Santander insist that she must settle the agreement in full. She said she's explained to them that she had not sold the car. She says the only thing that has transferred is the name and address on the V5 document. She said it was made clear to the dealer during the sales process that the car would be with her son and used by him, and that he lived 300 miles away from her. She said she's made that clear throughout and feels that the dealer, as Santander's agent, has deprived her of the opportunity to deal with the situation properly by pursuing other options, such as acting as a guarantor for her son.

She would like Santander to transfer the agreement into her son's name, at the same rate of interest. Or she'd like them to honour the original terms she'd made in good faith, with the car remaining with her son, and with no threats of repossession as long as the payments are made. She said Santander had agreed that the car can be registered at her home address, in her son's name.

She also confirmed that her son wishes to remain in the car, so termination of the agreement and returning the car is not an option they would consider.

Santander said that term 4.4 of the terms and conditions Mrs G had agreed to said that she would keep the goods in her possession and under her control and would not sell or transfer the goods to anyone. They said it was possible to transfer the registered keeper to her son, but only if he lived at the same address. And because this was not the case, they said the account needed to be settled.

They also said the dealer confirmed Mrs G's son had collected the car, but they said it denied it knew anything about her intention to change the registered keeper with DVLA.

Our investigator wrote to Santander and explained that she was likely to reach the view that the agreement was likely misrepresented to Mrs G and that she was likely to recommend the agreement be ended. She explained to Santander that this option didn't suit Mrs G, and asked them if they would consider either transferring the credit agreement to her son's name or allow the V5 to be changed to her son's name.

Santander said that they could not transfer the existing agreement to Mrs G's son, but they could consider a new finance agreement, that would be subject to a credit search. They also said the V5 document has to match the agreement holders name, so would not be willing to change the name on the V5, especially as they do not live at the same address.

Our investigator considered whether or not there had been a misrepresentation, and concluded there hadn't. She said that the dealer had said that the V5 could be transferred to Mrs G's son, but there was nothing to show the dealer informed Mrs G that a change of ownership would be in breach of the finance agreement.

So she was satisfied that there wasn't enough information to show that there had been a false statement of fact that induced Mrs G into taking out the agreement.

### **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.

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. Mrs G was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The information that Mrs G gave to the dealer was clear – in an email sent the day before her son was collecting the car she said: *"I forgot to say earlier, you know this finance is in my name but the car is for my son, please can you make receipts/documents out to him, v5 also. He will be the owner and keeper. He's sorted insurance also."*

So she made her intentions clear during the sales process.

But this information was given *after* she had signed and returned the conditional sale agreement and related paperwork to the dealer. This is relevant because section 56 of the Consumer Credit Act 1974 has the effect of making the dealer the agent of Santander during the "*antecedent negotiations*" leading up to Mrs G entering into the finance agreement.

This means that Santander are responsible only for information given by the dealer *before* the agreement was entered into.

Mrs G has supplied a copy of the email chain she had with the dealer. This shows she made the statement to the dealer about the car being for her son a few hours after she'd returned the signed conditional sale agreement and associated papers.

There's no evidence to suggest Mrs G's request was contradicted or challenged by the dealer. Indeed, the dealer acknowledged receipt of this email, and responded asking for insurance documentation. But that doesn't mean that Santander are responsible for what the dealer said or didn't say at that point. That's because the information was never passed onto them, and as I've said above, the statement was made by Mrs G after she signed the agreement, so the statement didn't form part of the antecedent negotiations.

I've gone on to consider whether or not the dealer made a false statement of fact. I can't see that they did. They confirmed that Mrs G could transfer the V5 to her son – that is true, and that is what she did.

Mrs G entered into the conditional sale agreement – this is a legally binding contract. She knowingly made that application, and signed the agreement, on the basis that her son wasn't likely to obtain credit. Under that contract Santander owned the car and allowed Mrs G to use it under the terms of the agreement. The car wouldn't belong to her until the agreement was fully settled. So it's normal, and reasonable, for businesses like Santander to include specific terms that protect their asset, the car.

In this case term 4.4 states *"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"*.

I'm satisfied that it is reasonable for Santander to rely on that term as they are the legal owner of the car.

I think it's worth pointing out that even if I was to uphold Mrs G's complaint, the remedy she is seeking is not available to her. I say this as if this was the case, I wouldn't direct Santander to change the title of the agreement to her son's name.

This agreement is between Mrs G and Santander and can't simply be transferred – it would require an application for a new agreement to be made by her son, and Santander would be required to conduct the necessary credit and affordability checks. So there is no guarantee that the credit would be granted. And Santander would not have to offer the same interest rate as the original agreement due to the changes in the economy and market since the agreement was entered into.

I'm satisfied that Santander has acted reasonably and in line with the terms of the agreement that Mrs G entered into. So I won't be asking them to anything more.

### **My final decision**

For the reasons given above, I'm not upholding Mrs G's complaint about Santander Consumer (UK) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 11 January 2024.

Gordon Ramsay  
**Ombudsman**