

Complaint

Mr S complains that he didn't receive a finance subsidy that he paid for when he entered into a conditional sale agreement with Santander Consumer (UK) Plc (trading as "Santander" Consumer Finance).

Background

In August 2020, Santander provided Mr S with finance for a used car. According to the conditional sale agreement itself, which Mr S electronically signed, the cash price of the vehicle was £25,995.00. Mr S paid a deposit of £10,000.00 and entered into a conditional sale agreement with Santander to cover the remaining £15,995.00.

The conditional sale agreement had no interest, fees or charges. This meant the total amount to be repaid of £15,995.00 (not including Mr S' deposit) was due to be repaid in a first monthly instalment of £333.19 followed by 47 monthly payments of £333.23.

In September 2022, Mr S complained to Santander saying that the motor dealer he purchased his vehicle from did not disclose that it would be receiving a commission from Santander for arranging his finance. Santander didn't uphold the complaint. It said that Mr S' motor dealer wasn't paid any commission and that Mr S benefitted from a dealer subsidy of £1,734.13 which reduced the total amount he paid for his car.

Mr S subsequently responded to show that he didn't benefit from a £1,734.13, that this was an additional amount that he actually paid to his motor dealer and so should have reduced the amount that he had to pay on the conditional sale agreement. Santander didn't agree stating that as £15,995.00 was the amount borrowed to complete the purchase of his vehicle and therefore this was the amount that he needed to repay. Mr S remained dissatisfied and referred his complaint to our service.

The complaint was then considered by one of our investigators. She eventually reached the conclusion that Santander hadn't done anything wrong or acted unfairly and therefore she didn't recommend that Mr S' complaint be upheld.

Mr S disagreed with the investigator's conclusions and asked for an ombudsman to consider his complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered matters, I'm not upholding Mr S' complaint. I'll explain why this is the case in a little more detail.

Where there is a dispute about what happened – such as here - I have to decide, on the balance of probabilities, what I consider is more likely than not to have happened in light of the available evidence and wider circumstances.

Before I get into the substance of Mr S' complaint, although Mr S no longer appears to be arguing this, I wish to make it clear that I'm satisfied that Santander did not pay a commission to the motor dealer that arranged Mr S' conditional sale agreement.

I now turn to Mr S' concerns regarding, what's been described as, the 'dealer subsidy' of £1,734.13.

The documentation that Mr S has provided does show that he paid his motor dealer £11,734.13, rather than just the £10,000.00 shown as a deposit on his conditional sale agreement. And when this documentation is considered in isolation, or even in combination with Santander telling Mr S, in response to his initial complaint, that he received a dealer subsidy which reduced how much he paid, I can understand why Mr S may feel that he has been overcharged.

However, Santander has since explained that it erroneously told Mr S that he benefitted from a dealer subsidy of £1,734.13 which reduced the total amount that he needed to pay. It has also provided some further detail from Mr S' motor dealer on the overall circumstances of the transaction.

As I understand it before applying for finance to complete his purchase Mr S informed his motor dealer that, for personal reasons, he couldn't accept a finance agreement that attracted interest. And he would only be able to go ahead with his transaction in circumstances where he obtained a finance agreement where he didn't have to pay interest.

Santander has confirmed the lowest interest rate it would have been prepared to accept a finance application at when Mr S purchased his vehicle was 5.9% APR. I have seen the operating document that was in place between Santander and the motor dealer at the time of Mr S' purchase and this does corroborate what Santander has said about this being the case.

A conditional sale agreement where £15,995.00 was lent, written at an APR of 5.9% and repaid over 48 months would have generated no commission for Mr S' motor dealer. But a conditional sale agreement written on these terms would have generated £1,734.13 in interest for Santander. I'm satisfied that this is the minimum amount of interest that Santander was prepared to accept, in order to lend £15,995.00 over 48 months.

Both Santander and the motor dealer have said that as a method of allowing Mr S to complete his purchase, it was proposed that £1,734.13 – representing the interest that would have satisfied Santander's minimum income requirements - would be paid upfront by the motor dealer (with the motor dealer saying that Mr S agreed he would pay this upfront). Mr S would then pay the amount that he was being lent £15,995.00 on an interest free basis over 48 months. It's my understanding that this method (although maybe not the precise structure used) is not too dissimilar from other financial products designed for those who for personal reasons cannot pay interest.

In any event, what's important here is that it has been argued that Mr S agreed to pay the £1,734.13 Santander would lose in interest, as a result of agreeing to the terms it did, upfront. And as this represented the interest that would have been paid and did not affect the purchase price of Mr S' vehicle, that is why the amount Mr S had to pay to Santander remained at £15,995.00 and did not reduce to £14,260.87.

On the other hand, Mr S says his motor dealer explicitly told him that the payment of £1,734.13 would reduce the total amount payable for the vehicle and this influenced his

decision to enter the finance agreement. So the dealer subsidy was misrepresented to him and the overall arrangement lacked clarity and transparency.

I've thought about what Mr S has said. I accept that the £1,734.13 is reflected on Mr S' finance agreement and while the £1,734.13 is included on Mr S' invoice, the payment is simply referred to as a finance subsidy without either reducing the price of the vehicle, or increasing the total amount paid.

I don't know why neither the conditional agreement nor the invoice didn't clearly set out the arrangement Santander has described. Looking at these documents now, I agree that they aren't as clear as they could be and when considered in isolation a number of years, after the sale, it isn't entirely clear what was agreed. So I can to some extent understand why Mr S may feel the documentation was unclear and why he's asked for a review of whether he was misled.

Nonetheless, the documentation only provides one perspective of the story. My role here isn't to simply interpret and give a view on the documentation that was provided. Instead, it is to consider whether Mr S was misled in the way that he says he was.

In order to reach my conclusion, I have to consider the documentation provided in the overall context of everything that I've been told and decide whether I think that Mr S was treated fairly and reasonably in August 2020. In other words, the documentation simply forms one piece of evidence rather than representing all of the evidence I need to consider.

Having considered matters, for a number of reasons, I'm satisfied that while viewing the documentation in isolation leaves open the possibility that Mr S may have been misled in the way he says he was, this is not what more likely than happened in August 2020.

The first reason I say this is because having reviewed the numbers, I'm satisfied that £1,734.13 does represent the interest that Santander 'lost' out on as a result of writing a conditional sale agreement at 0%, rather than the lowest interest rate of 5.9% that was typically possible (and which met its minimum income requirements), under the operating agreement.

Furthermore, it's worth noting that while some lenders (typically those connected to vehicle manufacturers) may periodically offer finance at 0% in order to facilitate and increase the volume brand-new vehicle sales, it is incredibly rare for a customer to be able to obtain a finance agreement with no interest in order to purchase a used vehicle.

So the type of finance Mr S obtained was outside of the norm. And, in these circumstances, where a workaround was taking place to provide Mr S with a solution that met his requirements, which Santander did not routinely provide to customers, it is unsurprising that the credit agreement would not have been able to capture everything that had been agreed, in a way that compatibly reflected everything that Mr S wanted.

I know that Mr S has referred to the pandemic and that he thought that he was getting a good deal as a result. But Mr S purchased his car at a time when the price of used vehicles actually increased, due to the consequences of the pandemic significantly restricting supply of new vehicles. In these circumstances, I think it is unlikely – and less likely than not - that the motor dealer would have agreed to reduce the purchase price of Mr S' agreement by the amount of Santander's 'lost' interest of £1,734.13.

I'm also mindful that Mr S would have been in possession of all of the documentation that he has referred to, at the time he was sold his vehicle. Mr S will also have been aware that he paid £11,734.13 to his motor dealer, rather than the £10,000.00 that was shown on the

conditional sale agreement. So Mr S would have known that the amount Santander was asking him to repay was £15,995.00 (rather than £25,995.00 reduced by the £11,734.13 he paid to the motor dealer) and that it was not reduced by £1,734.13 to £14,260.87.

I think that if Mr S hadn't received a £1,734.13 reduction on his vehicle like, he says, he was led to believe he would, it is likely that Mr S would have contacted Santander, or his motor dealer, much closer to the time of the sale. After all he was being asked to pay a significantly higher amount than he says it was agreed, or he was led to believe, he'd pay. Mr S would have had everything that he needed to know this wasn't what was happening.

Indeed, I've noted that this is Mr S' third complaint (it is arguably his fourth given the additional points raised after he was told his motor dealer wasn't paid commission) to Santander about this agreement. And the first time he mentioned that he failed to get the price reduction was after Santander mentioned a dealer subsidy in its final response. Mr S' actions in only complaining about this matter in 2022 and even then only after he initially complained about commission, leads me to conclude that his version of events isn't what most likely happened here.

Finally, it would be remiss of me not to mention the phone call Mr S had with our investigator on 22 March 2024, prior to her issuing her findings on the complaint. On 22 March 2024, our investigator called Mr S to introduce herself and get an understanding of his complaint. During this phone call when our investigator asked Mr S whether his understanding, at the time he bought his vehicle, was that he'd pay that money (the £1,734.13) to the motor dealer and he would get a finance agreement at zero percent, Mr S said that this was correct.

The investigator then asked Mr S if, at any point, the motor dealer said that this amount was coming off the amount of the value of the finance. Mr S said no to this. When asked to confirm that the £1,734.13 was literally just to get the zero percent finance Mr S said yes and finally when asked whether this is what he got, Mr S confirmed that he did get that. So Mr S' comments during his initial phone call with the investigator contradict what he now says was his understanding of events when he purchased his vehicle.

I do appreciate that Mr S may have been called by our investigator at a time where he was not expecting this (although he did confirm that he was happy to discuss his complaint at that time when the investigator checked whether this was the case at the start of the call). But even allowing for this, it's difficult for me to place much weight on what Mr S' now says about having been misled into taking the finance agreement when this is so clearly and obviously contradicted by what he told our investigator on 22 March 2024. I'm afraid that Mr S' inconsistency on these matters mean that the weight I can place on his latest submissions is, at best, limited.

In reaching my conclusion, I've thought about what Mr S has said about the Consumer Rights Act 2015 ("CRA") and the Consumer Credit Act 1974 ("CCA"). I am required to take relevant law into account when reaching my determination. However, I'm satisfied that the available evidence indicates it is more likely than not that, at the time at least, Mr S knew he was paying his motor dealer £1,734.13 in order to obtain a conditional sale agreement with Santander that was written at 0% interest.

So I don't agree that Mr S was misled into reasonably believing that he would receive a £1,734.13 reduction on his finance agreement, or that he would pay £1,734.13 less than he did for his vehicle. As this is the case, there isn't anything in the CRA, the CCA or all the evidence I've been provided with, which satisfies me that Mr S was misled in the way that he says he was; or that it would be fair and reasonable in the circumstances of this case, to require Santander to reduce the amount that Mr S has to pay on his conditional sale agreement by £1,734.13.

As this is the case, I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr S. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2024.

Jeshen Narayanan
Ombudsman