

The complaint

Mr H complains about a conditional sale agreement he took out with Santander Consumer (UK) Plc, to get a used car.

What happened

At the start of 2020, Mr H and a third party, who I'll call 'A', discussed an arrangement where they could make extra income by hiring out a car they had access to. So, in early January 2020, Mr H says A started an application for a conditional sale agreement with Santander, through a dealer for a used car.

Mr H says A handled all the paperwork required for the application and he was taken to the dealer a few days later to sign the agreement. Santander says it initially didn't accept the signature provided by the dealer on the agreement. But, when Mr H went to the dealer to collect the car, his signature was captured again, which Santander accepted.

The first payment was made towards the agreement in March 2020. But, neither Mr H nor A made any subsequent payments to Santander, meaning the agreement quickly fell into arrears.

Around the same time, Mr H contacted Santander and told them A had fraudulently taken out the agreement in his name. Mr H also says he received a full copy of the agreement in the post from Santander and had noticed A had used false employment and income information during the application. Santander didn't agree. In a call with Mr H, they said he applied for the finance and had allowed A to use the car.

Santander continued to hold Mr H responsible for the repayments due under the agreement. So, Mr H complained to Santander to say they hadn't considered his personal circumstances. In response, Santander reiterated their view that Mr H had authorised the agreement. They said Mr H's personal details and driving licence were used in the application and that the dealer had provided a photograph of him beside the car, after the agreement had been signed.

Mr H didn't accept Santander's response and brought his complaint to us. One of our investigators looked into Mr H's case and concluded that Santander hadn't treated him fairly. She found that it was likely Mr H was aware of the agreement and he had worked with A during the application. But, she also said Santander didn't do enough to check Mr H could afford the loan repayments and could have repossessed the car soon after Mr H had got it.

The investigator concluded that Santander should allow Mr H to exit the agreement with nothing further to pay and for any remaining debt owed to be written off. The investigator also said Santander should remove any adverse information from Mr H's credit file.

Santander didn't agree and said they relied on the information given to them from an outside agency, to prove Mr H could afford the repayments. They also said there were reasons why they couldn't repossess the car sooner and that ending the agreement wasn't fair, in light of Mr H's arrangement with A.

The investigator didn't change her conclusions, so Mr H's case 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.

This case is about an application for a conditional sale agreement, which is a regulated financial product. As such, we are able to consider complaints about it.

The application

Mr H says that A handled all the paperwork during the loan application with Santander. He says he didn't know anything about the monthly repayment amount and that A took advantage of his circumstances at the time. So, I've considered Mr H's involvement and his awareness of what A had done.

I can see from what Mr H has told Santander and our investigator, that he had reached an arrangement with A, over what would happen with the loan and the car, before the application was started with the dealer. Additionally, Mr H says he signed the conditional sale agreement at the dealer's office and understood that A would then make the car available for hiring.

The first repayment under the agreement was made at the start of March 2020. Mr H's bank account statements show he received a payment from A for the same amount, shortly before the direct debit was paid to Santander. I think this demonstrates that Mr H was aware of the conditional sale agreement and the payments that were due. So, I'm persuaded Mr H had an understanding of the repayments and the agreement in place with Santander.

Overall, I'm persuaded Mr H was aware he would be the applicant for the conditional sale agreement. I think it's likely Mr H understood that he was entering the agreement for the car, so A could use it to generate income.

Mr H has told us about his personal circumstances at the time and says A took advantage of that. I acknowledge what Mr H has shown us about his personal circumstances to support what he says here. And I accept these last few years must have been very troubling and difficult for him. Especially as it seems A's actions since getting the car, haven't turned out as Mr H was expecting.

Having considered everything though, I don't think Mr H was coerced into the conditional sale agreement. On balance, I think Mr H authorised entering the agreement, so I don't think Santander treated Mr H unfairly when they concluded that he hasn't been the victim of fraud.

But, I can see Mr H was promised things by A, which didn't materialise. And I think this has left Mr H, with very serious concerns about the outstanding debt with Santander.

The termination of the agreement

Shortly after the first repayment was made in March 2020, Santander's contact records with Mr H show that he told them he felt he'd been the victim of fraud. I can see from the records Mr H has sent to us, that his arrangement with A had broken down at this point. In so far as A wasn't paying him any further money and was using the car for himself. Mr H says other than driving the car away from the dealer's office, he hasn't had possession of it since.

Santander say they terminated the conditional sale agreement in May 2021 and have since started the process of repossession. Santander have told us they haven't managed to locate the car, so it hasn't been sold to reduce the balance owed under the agreement.

I've looked at the terms and conditions of Mr H's agreement with Santander. Under section 4 - Care of the goods, point 4.4 says:

"You will not use or let anyone use the goods illegally. You will not let anyone obtain any rights (including liens) over the goods or let anyone take or threaten to take them to pay any debt that you owe. 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."

Mr H contacted Santander on 21 March 2020 and 29 April 2020 and described what had happened with the arrangement with A. It doesn't seem that Santander contacted Mr H directly to ask further questions, before they replied with a summary of their review.

Had Santander done so, I think it's likely they would have discovered the whereabouts of the car, in that A had possession of it, not Mr H. I also think it follows that the information on the whereabouts of the car is likely to have prompted Santander to consider the terms and conditions of the agreement with Mr H.

Other than the first repayment due under the agreement, no further repayments have been made by Mr H. This means the agreement was in arrears for more than a year before Santander terminated their contract with Mr H in May 2021. And Santander say they have yet to repossess the car from A.

Having considered everything, I don't think Santander have treated Mr H fairly here. While I acknowledge Santander considered if Mr H had authorised the agreement, I think they should have acted sooner to take the car back from him or A.

Santander have told us that concerns surrounding the global pandemic, made repossession very difficult from March 2020. While I agree that Santander, like many businesses, faced severe disruption at that time, I think they were still able to look to terminate Mr H's agreement. I think because of Mr H's personal circumstances, what he told Santander about the application process and that A had taken possession of the car, were exceptional enough for Santander to have taken action.

The affordability of the agreement

The relevant regulations and guidance for Santander to have followed are included in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC). Santander was entering a regulated credit agreement and it was required to take reasonable steps to be satisfied Mr H would be able to make repayments sustainably without having to resort to further finance.

Checks had to be proportionate to the specific circumstances of the loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of Mr H. For example, his financial history, any foreseeable changes in future circumstances, and any indications of vulnerability or financial difficulty. The amount, type, length of borrowing and cost of credit Mr H applied for would also be considered.

In light of this, I think the greater the potential risk to Mr H of not being able to repay the credit in a sustainable way, the more thorough a reasonable and proportionate check ought to have been carried out by Santander.

The conditional sale agreement meant Mr H borrowed around £20,000 from Santander to get the used car. This was repayable over four years and with interest added, Mr H was required to make monthly repayments of around £300.

To assess if Mr H could sustain the repayments, Santander say they asked Mr H about his annual income and his employment status. Their records show that Mr H told them his income was around £20,000 and that he was self-employed. Santander also say they verified Mr H's income and his credit file information using an outside agency. It was on this basis that Santander say they agreed to the borrowing for Mr H.

I think the borrowing is significant, when looking at what Mr H told Santander about his annual income. I cannot see that Santander asked Mr H any further questions, or to provide documents to prove his income.

Additionally, I cannot see that Santander looked into Mr H's regular expenditure, other than reviewing the borrowing showing on his credit file. I think given the loan amount and the information Santander had before they agreed to the borrowing, further documents and details were needed to support what they had been told.

Having considered everything, I don't think Santander completed reasonable or proportionate checks to show Mr H could sustain the repayments due under the agreement. I accept Santander used an outside agency to verify Mr H's income information. But in light of everything, I still think further detail, such as payslips or bank statements would have done more to support the fairness of their lending decision.

So, I've gone on to consider what further information any further checks by Santander would have revealed.

Mr H has provided us with a copy of his credit file and bank account statements for the accounts listed, to show what his income was from the time. Mr H has also sent us copies of his benefit entitlement and has told us about his personal circumstances in January 2020.

Having reviewed Mr H's documents, I can see that his total income when the loan was agreed was around £450 a month. I've said the monthly repayment to Santander under the conditional sale agreement was around £300. This means that Mr H was left with around £150 a month to cover his living expenses and the associated costs with running a car.

From looking at this information alone, I think Santander would have seen that the conditional sale agreement wasn't affordable to Mr H, had further checks been carried out. I can see from the loan account statements, that only one repayment was ever made. I think this shows that after the loan was put into place, Mr H couldn't sustain the repayments under the agreement.

In all the circumstances, I think that reasonable and proportionate checks would have demonstrated that Mr H would not have been able to make the repayments to the loan without borrowing further or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would have alerted Santander to the fact that Mr H was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Summary

Overall, having considered all the evidence, I'm persuaded Mr H was aware of the conditional sale agreement and had planned with A to hire the car out to others, to generate income. I think Mr H signed the loan agreement forms and took the car from the dealer.

However, I think Santander made an unfair decision to lend to Mr H and that they were told about A's actions within a few months of the agreement starting. On balance, I think Santander ought to have started repossession of the car, or to have engaged more about what had happened with Mr H in April 2020.

Santander say the car is still in A's possession. I've concluded that Santander should have acted to take the car back in April 2020. We don't know the exact value of the car, at that time, but it's likely the value has decreased. Should Santander collect the car from A, it's likely they will be able to sell it, to reduce the balance of Mr H's loan account.

However, I don't think it's fair that Mr H should be responsible for the loss of value. I say this because he hasn't driven the car, received payment from A and because Santander delayed the repossession.

So, I think it's fair for Santander to end their pursuit of Mr H, for the repayment of the outstanding balance owed under the agreement. I also think it's fair for Santander to allow Mr H to exit the conditional sale agreement with nothing further to pay.

I've concluded that Santander didn't treat Mr H fairly when they performed checks to see if he could afford the repayments due under the conditional sale agreement. So, I think it's fair for Santander to remove any adverse information about the agreement from the records held with credit reference agencies.

Mr H made one payment towards the conditional sale agreement, in March 2020. But, I can see from his bank account statements that A covered that payment by making a transfer for the same amount. So, I don't think Mr H has suffered a loss here and I think it would be unfair for Santander to have to refund that repayment.

Putting things right

Santander Consumer (UK) Plc should:

- Allow Mr H to exit the conditional sale agreement with nothing further to pay.
- End the pursuit of Mr H for the outstanding amount due under the conditional sale agreement.
- Remove any adverse information about the conditional sale agreement from the records held with credit reference agencies.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. Santander Consumer (UK) Plc needs to 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 H to accept or reject my decision before 12 July 2022.

Sam Wedderburn
Ombudsman