

Complaint

Mr M complains that Santander Consumer (UK) Plc (trading as “Santander” Consumer Finance) unfairly entered into a conditional sale agreement with him.

He’s said his affordability for the agreement was not properly considered at the time of sale and he couldn’t afford the payments.

Background

In August 2022, Santander provided Mr M with finance for a used car. The cash price of the vehicle was £35,178.00. Mr M didn’t pay a deposit and entered into a conditional sale agreement with Santander to cover the entire purchase amount.

The ‘Personal Contract Purchase’ (“PCP”) conditional sale agreement had interest, fees and total charges of £5,208.54 and a term of 49 months. This meant the total amount to be repaid of £40,386.54 was due to be repaid in 48 monthly instalments of £475.51 followed by an optional final payment of £17,562.06.

In August 2023, Mr M complained about Santander’s decision to provide him with the finance saying that the payments were never affordable for him. Santander said that the checks completed before the agreement was entered into confirmed that the finance was affordable and so it was reasonable to lend. So it didn’t uphold Mr M’s complaint. Mr M was dissatisfied at Santander’s response and referred his complaint to our service.

Mr M’s complaint was then considered by one of our investigators. He thought that Santander ought to have realised that the agreement was unaffordable for Mr M and so it shouldn’t have entered into it with him. So he thought that Mr M’s complaint should be upheld.

Santander disagreed with the investigator’s assessment and asked for an ombudsman’s decision.

My provisional decision of 26 February 2024

I issued a provisional decision – on 26 February 2024 - setting out why I was intending to uphold Mr M’s complaint.

In summary, I was intending to uphold Mr M’s complaint because I was satisfied that Santander shouldn’t have lent to him as reasonable and proportionate checks would more likely than not have shown that the monthly payments to this agreement were unaffordable for him.

Responses to my provisional decision

Santander did not respond to my provisional decision or provide anything further for me to consider.

Mr M responded to my provisional decision confirming that he accepted it and had nothing further to add.

My findings

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

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide this part of Mr M's complaint.

Having carefully considered everything, for much the same reasons as my provisional decision, I'm still upholding the complaint. I'll explain why this is the case in a little more detail.

Santander needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Santander needed to carry out proportionate checks to be able to understand whether Mr M could make the payments to his agreement in a sustainable manner before agreeing to lend to him. And if the checks Santander carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

I've kept this in mind when determining whether Santander acted fairly and reasonably when deciding to lend to Mr M.

Were the checks that Santander carried out before lending to Mr M reasonable and proportionate?

Santander has provided us with some screenshots. But in truth it hasn't really provided much in the way of detail about the checks it carried out before agreeing to lend to Mr M. That said, the information provided does suggest that it obtained some information from Mr M and carried out some checks. It appears as though Mr M provided details of his employment and his employer.

Santander's screenshots also suggest that it also carried out credit searches on Mr M which showed that he had some outstanding credit balances. However, these balances were relatively well maintained and it appears to have determined that when the payments required to service these commitments were deducted from his income, he would have enough to make the payments to this agreement.

On the other hand, Mr M says that he was never able to afford these payments given what he was earning at the time.

I've carefully thought about what Santander has said and provided. But simply obtaining information about a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

I'm concerned that Santander appears to have assumed an affordable monthly payment amount without obtaining the actual amount of Mr M's monthly income. Furthermore, it seems as though it concluded that Mr M could afford to make his payments because he wasn't in arrears in on any of his existing commitments. Mr M might not have had any adverse information recorded against him, but the checks do appear to show that he already had a significant amount of existing debt.

I'm also mindful that Mr M was committing to repayments of approaching £500 a month for just over four years. As this was the case, I would have expected Santander to have had a reasonable understanding of his income, credit commitments and regular living costs in order to determine that such payments were affordable for him.

As I can't see that Santander did take steps to ascertain Mr M's income and regular living costs, I'm satisfied that it didn't complete fair, reasonable and proportionate affordability checks before entering into this conditional sale agreement with him.

Would reasonable and proportionate checks have indicated to Santander that Mr M was unable to sustainably make the monthly repayments to his conditional sale agreement?

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Santander that it was unfair to enter into this agreement with Mr M.

Mr M has provided us with evidence of his financial circumstances at the time he applied for the conditional sale agreement. Of course, I accept different checks might show different things. And just because something shows up in the information Mr M has provided, it doesn't mean it would've shown up in any checks Santander might've carried out.

But in the absence of anything else from Santander showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr M's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr M's bank statements and the other information he's provided because I think that Santander ought to have obtained this before lending to him. Although I do think that it would have been prudent to obtain some kind of proof of income from Mr M bearing in mind the amount of the monthly payment. In any event, I've consulted this information because it is readily available at this stage and it contains what I now need to reconstruct the proportionate check Santander should have, but failed to carry out in August 2022.

Mr M's bank statements show that he was employed by the employer listed on his finance application. But Mr M was only earning around £2,100.00 a month at this stage. So it's clear that the monthly repayments for this agreement alone would take up just under 25% of his income. And then there were the other credit commitments that Santander's credit searches showed, which needed to be covered too. Indeed the information provided suggests that Mr M was already paying out close to his monthly income towards his existing credit commitments alone at this stage.

Santander may question why Mr M sought to purchase the vehicle he did given what the information he's provided showed. While I'm not unsympathetic to any argument that Santander may raise in relation to the wisdom of Mr M's actions, I have to keep in mind that

the regulations in place required Santander to take reasonable steps to ascertain Mr M's ability to make monthly payments of approaching £500 a month over four years.

Given what I've been provided with indicates Mr M never had the funds to do so, I'm satisfied that Mr M simply wasn't in a position to make the monthly payments to this agreement, let alone other reasonable associated running costs for the vehicle such as petrol, tax and insurance. In these circumstances, I'm satisfied that Mr M simply wasn't in a position to make the monthly payments to this agreement, without borrowing further or it having a significant adverse impact on his financial position.

So having carefully considered everything, I find that reasonable and proportionate checks would have alerted Santander to the fact that Mr M wasn't in a position to sustainably make the payments to this agreement. Therefore, I'm satisfied that Santander shouldn't have lent to him and that it ought to now put things right.

Fair compensation – what Santander needs to do to put things right for Mr M

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Santander putting Mr M in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr M did enter into the agreement and *was*, at least, given the car in question. He also had use of the vehicle for over two years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr M back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mr M to paying back the £35,178.00 he was originally lent. But I don't think that a refund of the interest fees and charges is appropriate here. Mr M is nowhere near being able to repay what was lent and even if he were to somehow make the remaining monthly payments scheduled – which he cannot – he'd be left with a further significant payment to make at the end in order to take ownership of the car.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr M bearing in mind he was provided with a conditional sale agreement, he shouldn't have been provided with.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended. After all the asset has some value and it would be reasonable for this to be used to reduce or clear what is owed. So to start with Santander should collect the

car from Mr M at no cost to him and as soon as possible. Santander should also terminate Mr M's conditional sale agreement.

Ordinarily speaking I would typically direct a business to return a borrower's deposit plus interest, together with any payments that were made, in circumstances where an agreement is ended in this way. The lender is then entitled to deduct an amount from any refund to reflect the fact that the vehicle will have depreciated and the borrower will have had the use of it for the period they had it.

I'm mindful that in this case, Mr M didn't pay a deposit but has kept up to date with his payments and Mr M has had use of the car for more than a year and a half. So I've considered what it would be fair and reasonable for Santander to keep to account for Mr M's usage. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr M's usage of the car and what sort of costs he might have incurred to stay mobile if he didn't have this car.

In thinking about this, I've thought about the investigator's conclusion that an amount £430 per month would fairly and reasonably account for Mr M's usage. It might be more reasonable to make an adjustment for what's been paid on a more traditional conditional sale agreement to take account of the interest charge.

However, in this case, Mr M had a PCP conditional sale agreement where he didn't pay a deposit. And, in these circumstances, the monthly payments on Mr M's PCP agreement are far more likely to reflect the monthly cost of renting the car Mr M purchased on finance here. So I'm satisfied that the payments Mr M has made on the agreement are a reasonable reflection of the costs he would have incurred to have stayed mobile in a vehicle of the type he's had, for the time he has had it.

Therefore, given all the circumstances and having weighed up everything, I'm satisfied that Santander shouldn't refund any payments to Mr M and that Mr M shouldn't have to make any further payments to Santander either.

As this is the case, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr M's case for Santander to put things right by:

- collecting the vehicle from Mr M at no cost to him. Mr M is encouraged to respond to and cooperate with Santander in order for this to be done;
- terminating Mr M's conditional sale agreement;
- removing any adverse information recorded on Mr M's credit file (should any be recorded) as a result of this agreement.

My final decision

For the reasons given above and in my provisional decision of 26 February 2024, I'm upholding Mr M's complaint. Santander Consumer (UK) Plc should put things right for Mr M in the way I've directed it to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2024.

Jeshen Narayanan
Ombudsman