

The complaint

Mr L complains that Santander UK Plc approved two loans for him in 2021 irresponsibly.

What happened

Mr L took two loans from Santander. He was an existing current and savings account customer at the time. Loan 1 was in June 2021, for £2,500 to be repaid over 48 months at £79.37 each month. In October 2021 Mr L took Loan 2 which was for £1,000 over 36 months and due to cost £38.42 each month. Both remain outstanding and were transferred to Santander's Collections department in February 2024.

There's a lot of detail associated with this complaint and so I am brief in my summary here. Mr L complained to Santander in July 2023 and received its final response letter in September 2023. He was not content with the outcome and referred his complaint to the Financial Ombudsman Service.

One of our investigators looked at the details, asked Mr L for copy bank statements for all his accounts and came to a conclusion that Santander had lent irresponsibly. She also concluded that the modest gambling visible in Mr L's financial affairs was not one that was causing him financial difficulty. The complaint was upheld by our investigator.

Santander responded with detailed transactional spreadsheets to demonstrate additional income crediting Mr L's main account. It said that Mr L's income and outgoings left him with enough to cover the relatively modest repayments. It had checked his credit commitments at the time.

The complaint was passed to me and I reviewed the complaint completely. On 2 May 2024 I issued a provisional decision to answer Santander's points and to explain my reasoning which differs to that of our investigator. Each party has had time to respond.

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.

Duplicate of the 2 May 2024 provisional decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about unaffordable/irresponsible lending – including all the relevant rules, guidance, and good industry practice – on our website.

The rules and regulations in place required Santander to carry out a reasonable and proportionate assessment of Mr L's ability to make the repayments under the loan agreement. This is referred to a 'creditworthiness assessment'. A firm must base this on 'sufficient information' ...

*'(1) of which it is aware at the time the creditworthiness assessment is carried out;
(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and*

the information must enable the firm to carry out a reasonable creditworthiness assessment.'
– Consumer Credit Sourcebook (CONC) rule 5.2A.7.

CONC contains rules and guidance in relation to the factors that should be taken into account when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

Santander had to think about whether repaying the loan would be sustainable. In practice this meant that the Santander had to ensure that making the repayments on the loan wouldn't cause Mr L undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments he had a contractual or statutory obligation to make, and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Santander to approach the loan application from the perspective of the likelihood of getting its money back. Santander had to consider the impact of the loan repayments on Mr L. Checks also had to be 'proportionate' to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the Mr L (e.g., their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a Mr L's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- the greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr L's complaint.

I have the advantage from both parties of Mr L's application form for loan 1, financial information, records, copy bank statements and two sets of credit histories about Mr L. One set is the credit search results Santander obtained in June and October 2021 before approving the loans. The other set is a more recent personal credit file (2023) report sent to us by Mr L which covers the lending period. And Mr L has sent to us his bank statements for his accounts plus a detailed explanation about some of the entries I would see on those statements. I'll refer to these later in the decision.

Mr L's vulnerabilities

I am sorry to read of the troublesome times Mr L has been through and I understand the long lasting effects bereavement and personal health issues can bring to bear on a person. I trust Mr L is finding assistance where he considers it needed.

Having said that Santander would not have been aware of these points in June 2021 or October 2021. And I would not have expected it to have known. Mr L informed Santander of these issues in March 2023 when raising a complaint about another aspect of his banking with Santander. This complaint has been resolved in September 2023. I note that now Santander is aware it has offered assistance to him.

Mr L's multiple bank accounts.

It seems sensible to start by identifying the accounts of which we have been made aware.

Santander would have known of Mr L's current account which became a joint account before he took these two loans with it. And Mr L had a savings account with Santander.

Dealing with the last first, I have seen copies of the transactions in and out of the Santander savings account. These show that Mr L moved money around a lot and moved money in and out of the account but rarely had much in there. It was the same money being moved around.

In early June 2021 he had around £167 in that savings account and in mid-October 2021, he had around £257. I don't consider the contents of this account likely to have been a significant factor in the lending decisions made in June and October 2021.

The Santander account was a joint one but Mr L has explained to our investigator that the account mainly was used for his use – the income and the outgoings. This was the account into which his supermarket salary was paid and multiple transactions show Mr L buying and selling items using well known on-line second hand clothes and auction sites.

This joint account shows multiple gambling transactions and Mr L has informed us they were all his. I come back to this part later in the decision.

Mr L has shown us statements of an account with Bank A in his sole name which was overdrawn for the period from March 2021 to October 2021, save for a short time when he took a £3,000 loan from that bank. This was in August 2021 – so in between the Santander two loans. In June 2021 the Bank A account was overdrawn and in October 2021 (having been in credit for a short time with the Bank A loan funds) it had a low balance. Mr L hardly used the account. Had Santander seen these Bank A statements it would have been evidence of Mr L being overdrawn or in debt on another account. But I don't think a lot turns on whether Santander saw this account details or not as most of the time Mr L was overdrawn on it.

Equally, I have considered the proportionate nature of the affordability checks a lender is required to do when lending – that does not necessarily amount to forensic accountancy.

Income

In June 2021 Santander was told by Mr L that he earned £18,000 gross. I have seen the application form it has sent to us. So, in another email to us where Santander has indicated that Mr L's monthly salary after tax was £1,800 I consider that to have been a mistake.

£18,000 a year gross salary is £1,500 a month before tax and national insurance. Cross referencing his supermarket salary credits on the Santander bank accounts I have seen that his salary, for instance, on 7 May 2021 was just under £1,248. Later in the year when Mr L came to apply for loan 2 the income credit showed as low as £1,036 in September 2021 and £647 in October 2021.

So, I consider that Santander has utilised the incorrect income for both loan 1 and loan 2. The more recent submissions do explain that it has viewed Mr L's account to see and calculate an average wage. It was much lower than the £1,800 a month figure it says it used when our investigator was considering the complaint.

Having said that I am aware that Santander has submitted evidence to demonstrate Mr L's supplementary income levels from the receipts from the on-line sites to which I referred earlier. Santander is correct – there are a lot of additional transactions. Some are easily recognisable as proceeds from the websites. I'll refer to this as supplementary income Q. And having made enquiries with Mr L, it appears that supplementary income Q is shared with his brother.

Others from an on-line payment services company (well known) are less easily identifiable. I'll refer to these as supplementary income P. They may relate to one of the websites and be sale income, but they could easily be transactions relating to gambling. Either way, I consider that the lack of transparency surrounding supplementary income P leads me to think that Santander would have been acting fairly and prudently to discount them. As I have done.

Outgoings

Santander made enquiries with a credit reference agency (CRA) to establish Mr L's existing credit commitments. It did this for both loan applications.

At loan 1 - Santander had been told by Mr L his rent/mortgage was £250 a month, and £250 for 'other outgoings'. Mr L had said he had four other credit cards. Santander also used Office of National Statistics (ONS) data and calculated that Mr L's outgoings were £1,287 which it has explained includes accommodation cost, the ONS data and the information it had obtained from the CRA report. That CRA report had informed it that Mr L's total outstanding debt was £11,380 which was across differing types of credit – cards, a loan, and an overdraft.

I have used the information from Mr L's personal CRA report and the information Santander gave to our investigator and what it has sent to us recently and they show similar levels of credit commitments.

Mr L was not in his overdraft when he applied for loan 1 and the CRA indicated that Mr L had no adverse entries on his file. So, I accept that this may have looked fairly positive when Santander did the checks in June 2021. That has changed as I can see that Mr L's financial position has deteriorated more recently. Many of his accounts now are in default. But I am being asked to look at the situation of which Santander was aware, having carried out proportionate checks, at the time of the lending.

My concern here is that using Mr L's basic salary and using Santander's 'outgoings figure' of £1,287 on the true income figure Mr L was receiving from his salary, then I do not consider this loan to have been considered affordable. And the same applies to Loan 2 when his basic salary was even lower. Which leads me to the supplemental income.

Other transactions on the statements

Dealing with supplemental income Q, I do not think that it's considered fair or reasonable to make a lending decision on such unconventional and likely sporadic transactions of the kind Mr L has described – old furniture and second-hand clothes items. Plus, I understand Mr L splits this with his brother. So not all those receipts are his. I have seen on the statements, payments to that named individual.

The repayments for the Santander loans were scheduled to be modest for each of the loans. Dealing with loan 1 first they were £79 but the term was for four years. This was scheduled to be a long term loan. And so, reliance on part the supplementary income Q as Mr L's income for a four year period seems wrong to me.

But even with all that I have said, if scrutiny of the Santander current account was what was required to decide on the loan being one Mr L could afford and was sustainable for four years, then the gambling transactions revealed with that scrutiny could not have been ignored.

And these transactions I turn to now were ones which were obviously gambling – not the ones to which I have referred as supplemental income P. The bank statements entries make reference to casinos or 'slots' or are obviously names of betting and gambling websites.

A perusal of the period 23 April 2021 to 22 May 2021 on the joint bank account statements shows me that Mr L had a pattern of doing two lots of £100 together every few days. The total spent was £1,500 in that period. So, it was clear that Mr L was spending more than his

supermarket regular salary on gambling. Reviewing earlier and later months shows much the same pattern – this was not an isolated period.

My experience is that a person who gambled as extensively as Mr L likely did use the on-line payment services company to which I referred earlier to aid him in the betting and gambling. And so an element of applied logic suggests that the supplemental income P is very likely of gambling receipts. But I appreciate it is not totally clear.

So, factoring the obvious (named) gambling into the equation, whatever the nature of the supplemental income P, I consider that Santander had enough information to appreciate that Mr L was not one to whom it ought to have extended a loan of £2,500 in June 2021.

Loan 2 – I hold the same view. But the changes by October 2021 are that

- Mr L's supermarket salary income had reduced a lot
- His credit commitments total had increased from about £11,000 to £22,000 in a few months which I consider a large increase
- Mr L was using his overdraft when he applied for Loan 2.
- The Santander current account still showed signs of gambling spending.

In all the circumstances I consider that Santander may have carried out proportionate checks but having information it got wrong (such as his basic income) plus having easy access to a great deal of Mr L's transactions on his account, then I think that it failed to see the detail presented when doing those checks.

I plan to uphold the complaint in full and I've set out below what Santander needs to do to put things right for Mr L.

Mr L's and Santander's responses

Mr L agreed with all that I'd said in the provisional decision.

Santander has had time to respond and has not.

In the interests of reaching a resolution, especially bearing in mind the vulnerabilities Mr L has explained to us and which I appreciate are profound, then I consider it fair and reasonable to issue a final decision to draw this complaint to a close.

So, as Mr L agrees and as I've not heard from Santander, I've no reason to depart from the conclusions I reached on 2 May 2024 and which are set out above and form part of this decision. For those same reasons I uphold Mr L's complaint.

Putting things right

I uphold the complaint about loans 1 and 2, and I direct that Santander should do as set out below.

I am aware that the loans remain outstanding. Santander is entitled to offset the refund sums due to Mr L against the debt that he owes to it. This needs to be factored into the redress calculations.

And considering the information Santander now knows of Mr L's personal circumstances including his conditions and his difficulty in managing money then I'd expect that it would treat Mr L with the forbearance and care due to him.

- remove all interest, fees and charges applied to the loans,

- treat any payments made by Mr L as payments towards the total capital amounts of £3,500,
- if Mr L has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement,
- but if there's still an outstanding balance, Santander should come to a reasonable repayment plan with Mr L.
- if the actions outlined in this redress section lead to the balance on the accounts being £0, then I direct that Santander removes any adverse payment information about the loans from Mr L's credit file. Otherwise, Mr L needs to be aware that the credit file will remain as it is.

* HM Revenue & Customs requires Santander to take off tax from this interest. It must give Mr L a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold the complaint and I direct that Santander UK Plc does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 June 2024.

Rachael Williams
Ombudsman