

The complaint

Ms S complains through a representative that Santander Consumer (UK) Plc trading as Santander Consumer Finance (“Santander”) gave her a conditional sale agreement without carrying out adequate affordability checks.

What happened

In August 2015, Santander provided Ms S with a conditional sale agreement for a used car. The cash price for the vehicle was £7,972 and she paid a £250 deposit meaning £7,722 was financed. There were interest, fees and charges of £2,352.69 with a total to repay of £10,324.69. Ms S was due to make 48 monthly payments of £166.47 followed by a final payment of £2,084.13. The agreement was settled in April 2019.

Santander issued a final response letter about Ms S’s complaint in December 2023. The response dealt with the lending decision as well as whether commission was paid to the broker. Santander said no error was made in providing the finance.

Unhappy with this response Ms S’s representative referred the complaint to the Financial Ombudsman. But it made it clear at this point that is only referring the complaint about the lending decision.

Ms S’s complaint was considered by an investigator. The investigator said the checks carried out by Santander weren’t proportionate and so it ought to have carried out further checks into Ms S’s finances before granting the loan. But if it had done this it still would’ve decided the loan was affordable.

Ms S’s representative didn’t accept the findings saying in summary that the checks weren’t sufficient given Ms S had only recently started working for her employer. Santander ought to have realised her income wasn’t sufficient to cover the costs of the loan – as well as other associated car costs such as petrol and insurance which caused financial strain. Finally, Ms S was coerced in to signing the agreement as she wasn’t given enough time to consider her options or to review the terms of the agreement thoroughly.

These comments didn’t change the investigator’s assessment and so the complaint has been passed to an ombudsman for a decision.

After the complaint was passed to me, I asked for Santander for further information about the checks that it carried out and this information has now been supplied.

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.

Although, Ms S entered into the agreement over nine years ago, Santander has consented to the complaint being looked at and so there are no outstanding jurisdiction concerns.

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 Ms S's complaint. Having carefully thought about everything I've been provided with and I'm not upholding Ms S's complaint. I'd like to explain why 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 any lending was sustainable for Ms S before providing it.

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.

Santander has now submitted to the Financial Ombudsman a full file which provides details of the checks that it carried out on Ms S before it granted the loan.

Ms S has also raised arguments about the role of the dealer (broker) throughout its dealing with her about the sale, including she didn't receive documentation, she felt pressured to sign the agreement and she wasn't given adequate time to review the terms. These are all arguments about whether the broker acted correctly while dealing with Ms S. In those circumstances the broker is the correct party to direct this complaint to.

Indeed, I don't think that I can fairly or reasonably come to a conclusion on the actions of the broker without first having its version of events, which I've not yet had and will not have because Ms S has not complained to that party.

So, if Ms S has concerns about the actions of the dealer – as acting as a credit broker then she will need to approach it and raise her concerns. She may – subject to our relevant jurisdiction criteria being met – be able to refer matters here should she be unhappy with the broker's response. Most importantly, I wish to make it clear that I've not made any findings in relation to action or inaction of the broker, which Ms S says she's unhappy about.

Santander, as part of the application process, took details of Ms S's employment and it knew she'd only recently started working. It told the Financial Ombudsman that it would've gathered details about her income and then cross referenced it with a credit reference agency. But the information I've been provided with doesn't show what, if any, income information it took from Ms S and it also looks like Santander didn't take any details about Ms S's living costs beyond knowing that she lived with parents.

Santander conducted a credit search before granting the agreement and it has provided a copy of the results that it received. I've considered these results to in order to see whether Santander was given any indication that Ms S was or was likely having financial difficulties at the time the agreement was granted. But the credit results showed that Ms S had no adverse payment information, such as defaults, insolvencies or missed payments. She only had 3 active accounts including a credit card which wasn't currently being used.

The credit search results wouldn't have indicated to Santander that Ms S was currently having, or was likely to have in the near future, financial difficulties and so I don't think these

results would've been sufficient to have led Santander to carry out further checks or to have declined her application.

Santander has explained that following its checks it felt it was comfortable to lend to Ms S. I can understand, to an extent, why it reached this conclusion. The credit file was in effect clear, and it knew that Ms S lived at home with parents and so wouldn't have had the same level of living costs compared to someone in say rented or mortgaged accommodation.

However, I do have concerns that based on the information that was recently provided by Santander that it had no information about either about Ms S's income nor what her typical monthly outgoings were. I've therefore concluded Santander ought to have made further enquires with Ms S before it advanced this agreement in order to make sure the loan was affordable.

It could've gone about finding out more information about Ms S's finances a number of ways, it could've asked for Ms S what her income and outgoings were, asked for evidence from Ms S about any bills she may have had, any other documentation it felt were necessary or as I've done here used a copy of his bank statements to work out what her living costs likely were.

This didn't, and doesn't mean that, Santander had to undertake a full financial review of Ms S's circumstances, merely it just needed to obtain an understanding of what her average monthly living costs were.

I accept that had Santander conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Santander conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statements that I now have access to that Ms S's representative provided.

The bank statements support that Ms S was in recently gained employment as there are no credits to account that could be classed as wages until the start of July 2015 – which does support the application details that Ms S had only recently started work. In July Ms S received nearly £750 in salary.

I understand both from what Ms S's representative said, as well as Santander's application, that Ms S had recently started a new job – and so that left her in a more precarious position. I agree with this to an extent – but beyond asking and checking what her income was I can't fairly say Santander could've done anymore to satisfy itself that Ms S was employed and receiving a salary.

I also have to weigh this up against the fact Ms S has said she went to the garage as she needed the car for work. So, I think either asking about her income and or checking it through statements or a payslip would've been sufficient for Santander at the time.

The bank statements provided do support that Ms S was living at home with parents as there are minimal other non-discretionary costs such as bills or other direct debt and / or standing order payments. I can see existing payments for an online media subscription, payment to the DVLA, car insurance, mobile phone payments and a mobile cloud-based service. But these costs come to £110 per month.

On top of this there are existing petrol costs of on average £35 per week as well as food costs of around £100 per month. Overall, the total living costs that I can see come to around £350 per month which is around the amount the investigator established.

I appreciate that the representative says that Santander ought to have thought about the costs associated with having a car such as petrol and insurance. But the bank statements show Ms S was already making payments for these and as I've said above this is factored into the regular payments that I can see she was already making.

I accept there are other transactions on the account as well, but these are payments from a well-known online marketplace and other costs with eating out or going out and I don't think I can fairly say Santander ought to have factored those into any assessment it conducted especially when I think it needed to work out her regular living costs and income.

So, I do think, that had Santander made better checks before lending it would've likely discovered, from the bank statements that Ms S would likely be in a position to afford the repayments she was committed to making. I am therefore not upholding Ms S's complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Santander lent irresponsibly to Ms S or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've outlined above, I am not upholding Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 20 December 2024.

Robert Walker
Ombudsman