

The complaint

Mr A complains that Santander Consumer (UK) Plc irresponsibly gave him a conditional Sale agreement which he couldn't afford.

What happened

In March 2017, Mr A acquired a used car using a conditional sale agreement from Santander. The cash price of the car was £21,600, with a total repayable of around £28,800. The duration of the agreement was 49 months, the monthly repayments were around £417 and there was a final payment of around £8,800.

Mr A missed a number of his monthly repayments over the first two years of the agreement. In around July 2019, he made a complaint to Santander that the agreement was always unaffordable to him. He said Santander hadn't completed adequate checks before agreeing to lend.

Santander said it carried out the required checks which showed the agreement was affordable to Mr A. It said the dealership that brokered the finance had asked him details of his income and employment and there was nothing adverse recorded on his credit file. It said despite making payments late on 14 different occasions, he'd never told them he was in financial difficulty.

Our investigator recommended the complaint be upheld. She didn't think Santander had completed reasonable and proportionate affordability checks. She said it should have attempted to verify Mr A's income, rather than relying on what he had self-declared. She said Santander could keep the payments Mr A had made towards the car (around £10,000) accounting for the fair usage he'd had of the car. She said it should now arrange to end the agreement without any further costs to Mr A and ensure adverse information was removed from his credit file.

Mr A agreed with the investigator, but Santander didn't. In summary, it said:

- The necessary affordability checks were completed. Mr A told them he was part-exchanging his existing car (which was financed by a different lender) and that this would reduce his outgoings.
- Mr A clearly knew he couldn't afford the finance agreement and was likely dishonest in conversations with the dealership about his circumstances. As the monthly repayments of around £417 were a large amount, Mr A needs to take some responsibility for the information he gave.
- The agreement is currently over £7,000 in arrears and it wouldn't be reasonable to write this amount of debt off. Further, the proposed fair usage figure of £10,000 wasn't reasonable for the type of high-end car Mr A had acquired.
- It gave Mr A 14 different opportunities (each time a payment was missed) to tell them he was struggling financially but he didn't do so. Instead he gave numerous different

reasons for the failed payments.

- It wouldn't be reasonable to remove adverse information from Mr A's credit file as Santander has a responsibility to report a customer's true repayment history to protect him and future lenders.

The complaint has been passed to me for 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.

In doing so, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook.

I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. These questions are:

1. Did Santander complete reasonable and proportionate checks to satisfy itself that Mr A would be able to repay the borrowing in a sustainable way?
 - a. If so, did it make a fair lending decision?
 - b. If not, would reasonable and proportionate checks have shown that Mr A could sustainably repay the borrowing?
2. Did Santander act unfairly or unreasonably in some other way?

If I think Mr A has been disadvantaged in any way by Santander's actions, I'll go onto consider what I think is a fair way to put things right.

Did Santander complete reasonable and proportionate checks to satisfy itself that Mr A would be able to repay the borrowing in a sustainable way?

Before granting credit, Santander were required to carry out a reasonable and proportionate assessment of Mr A's ability to sustainably repay the borrowing. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr A could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay. The latter is the risk posed to Santander as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer's individual circumstances.

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

The total repayable under the conditional sale agreement was a little over £28,800, with monthly repayments of around £417. I think these are relatively large commitments. Santander appears to agree with this too, given what it said in response to the investigator's assessment. As it is a large commitment, both in terms of overall borrowing and regular repayment, my starting point is that any reasonable and proportionate assessment of affordability ought to have been relatively thorough.

Santander hasn't given us a great deal of detail about what information it gathered, how it did so or what it showed. It's suggested that Mr A told them he was earning £27,000 a year and that he intended to part-exchange his existing car finance agreement. But it hasn't shown where this information was recorded, or at what point in the process. It said it carried out a credit check and has given us a very brief summary of what this included.

It said that because it understood Mr A lived at home with his parents, had limited financial commitments and earned around £1,700 a month, he had sufficient disposable income to afford the monthly repayments.

I've noted that Santander has told us Mr A didn't meet part of its lending criteria and this prompted some further questions. But it hasn't said what part of the lending criteria he didn't meet and what further information it gathered to satisfy itself Mr A could still afford the borrowing. Overall, what Santander has told us about its checks is vague and lacking in specific detail.

For example, it has said Mr A didn't have any defaults recorded against him on his credit file, but hasn't provided us with the specific data it gathered. Having reviewed a copy of Mr A's credit file that he has provided, I can see he did have a default recorded within the last two years. While this in itself wouldn't be a reason to refuse lending, it ought to have prompted Santander to complete more thorough checks on his ability to repay such a large debt. From what Santander has provided, I'm not satisfied it didn't see this default.

It doesn't appear Santander attempted to verify Mr A's income, it seems it relied on what he told them. Given the size of the borrowing and repayments, as well as the relatively long term of the agreement, I don't think it was reasonable for Santander to rely solely on what Mr A told them about his finances. I therefore don't think Santander completed a reasonable and proportionate assessment of Mr A's ability to sustainably repay the borrowing.

Would reasonable and proportionate checks have shown that Mr A could sustainably repay the borrowing?

It's not clear what evidence Santander would have reviewed to verify Mr A's income had it carried out a reasonable and proportionate assessment. But in the absence of anything else, I've reviewed his bank statements for the three months leading up to the lending decision. To be clear, I'm not suggesting Santander needed to request bank statements, but I think what the statements show about Mr A's income gives a reasonable indication of what information Santander would have likely discovered had it attempted to verify his income.

These show Mr A was earning around £1,000 a month, significantly less than Santander says he declared during the application process. These also show his regular financial commitments were a car finance loan, a personal loan, a credit card, two mobile phone contracts and a gym membership which totalled around £450 a month. The car finance loan was for around £300 and this is the loan Santander had said it understood was being settled.

I can't see where Santander learned that Mr A was going to be settling this existing car finance agreement. But even if this had come from Mr A, I don't think it was reasonable for Santander to rely on that.

Had Mr A been part-exchanging his existing car as part of this particular finance deal it would have been a reasonable conclusion for Santander to reach. But that wasn't the case and Santander ought to have realised that. Further, Mr A had taken out that existing car finance loan less than a year earlier, so Santander ought to have known he wouldn't have been able to come out of the agreement without incurring a large financial liability. And if he were to part-exchange it for another car elsewhere, he was likely to continue having to pay finance on that car too.

Based on what Santander ought to have found out about Mr A's income, it would have likely discovered he would be repaying around £715 a month towards two car finance payments as well as his credit card commitment, which was around £25 to £30 a month. It would have also likely known about his mobile phone commitments as I've seen these detailed on his credit report. I think it would have been reasonable for Santander to conclude that Mr A's regular commitments would be around £780 a month, leaving him with around £220 for his car insurance, fuel, maintenance costs as well as general living costs such as food.

Santander has said the car it was financing was a high-end car, meaning insurance was likely to not be cheap. I don't think £220 would be sufficient to cover Mr A's reasonable living costs and ongoing costs in relation to the car, while still leaving him with a reasonable amount of money for emergencies. Taking all of this into account, I don't think Santander ought to have concluded Mr A could sustainably afford the finance repayments if it had carried out a reasonable and proportionate assessment of his ability to repay it.

Santander has argued that Mr A likely gave false or misleading information during the application process and should therefore take some responsibility. It's not particularly clear whether Mr A did give incorrect information given the scarce detail and evidence Santander has provided about the application process. But irrespective of what Mr A may have said during the application process, it doesn't absolve Santander of its responsibility to carry out reasonable and proportionate affordability checks. And had it done so here, it would likely have discovered what the true position was regarding Mr A's ability to repay the borrowing. So, I don't think Mr A's actions prevented Santander from making a reasonable and fair lending decision.

Did Santander act unfairly or unreasonably in some other way?

Santander says Mr A had 14 separate missed payments on his finance agreement before he raised his complaint about affordability. It says each time he gave differing reasons for why payments were late and never indicated it was due to affordability.

While Mr A could have raised his financial difficulty with Santander at an earlier point, Santander could also have done more. It's clear that 14 different instances of late payments are more likely than not to be indicative of someone in financial difficulty. It seems Santander just accepted Mr A's explanations each and every time without probing this further or exploring alternative solutions with him to resolve his payment problems – particularly because a disproportionately high number seemed to relate to issues with his bank.

It seems on many occasions Santander accepted payment of arrears by third parties rather than Mr A himself. Mr A was also reluctant to give any specific details about the reasons for late payment on many of the occasions. This, along with the number and frequency of the

payment difficulties ought to have alerted Santander to the possibility he was in financial difficulty.

I can see that Santander did eventually discuss voluntary termination with Mr A but he didn't want to take this option. However, I haven't seen that Santander took steps to understand Mr A's financial circumstances and properly explored all options available to assist him.

Had Santander stepped in sooner I think it could have looked to limit Mr A's liability by properly discussing his termination options. It could also have limited the charges that were added to the agreement for non-payment, which have further increased his arrears. Although I think Santander could have done more, I'm not proposing to direct any award specifically in relation to these errors as the redress I'll be proposing in relation to its lending decision I think adequately compensates Mr A for what has happened overall.

Putting things right

As I don't think Santander should have entered into the conditional sale agreement with Mr A, he should be put back in the position he would have been in (or as close as possible), but for that lending decision.

I therefore think Santander should now take possession of the car if it hasn't already, at no cost to Mr A and end the finance agreement with nothing further to pay. It should also refund everything Mr A has paid under the agreement, minus a deduction for the fair usage he has had of the car.

There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've taken into account the amount of interest charged under the agreement, the amount of usage Mr A has had of the car and the costs Mr A might have incurred to stay mobile elsewhere had he not entered into this agreement.

I understand Mr A has paid a little over £10,000 towards the agreement and he's covered a reasonable amount of mileage in that time. Our investigator suggested that Santander should be entitled to keep everything Mr A had paid to reflect his usage of the car. Having considered this carefully, including all of the factors I've listed above, I think this is fair and reasonable in the circumstances.

Santander has argued it isn't a fair reflection of usage given it is a high-end car. However, it hasn't provided anything to suggest what it thinks would be reasonable and why. So, I've not seen any persuasive reason to reach a different conclusion.

Lastly, I think Santander ought to remove any adverse information it has recorded on Mr A's credit file in relation to this agreement. I've noted that Santander says it has a responsibility to record accurate information with credit reference agencies. While I agree, it also has a responsibility to record information which is fair. Here, it wouldn't be fair to adversely impact Mr A's credit file because of a lending decision Santander shouldn't have made. Had it carried out reasonable and proportionate affordability checks, Mr A would likely never have entered into this agreement and been in a position where he couldn't afford the repayments.

My final decision

For the reasons given above, I uphold this complaint and direct Santander Consumer (UK) Plc to:

- Collect the car (if it hasn't already) at no cost to Mr A.

- End the finance agreement with nothing further to pay. It can keep all repayments Mr A has made towards the finance agreement to account for the fair usage he has had of the car.
- Remove all adverse information it has recorded on Mr A's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 February 2021.

Tero Hiltunen
Ombudsman