

The complaint

Miss B complains that Santander Consumer (UK) Plc, trading as Santander Consumer Finance, wrongly allowed her to borrow money she couldn't afford to repay. She borrowed the money to buy a static caravan, and has also raised concerns over problems with the caravan and what the salesperson told her about the purchase.

What happened

In early 2019 Miss B entered into a conditional sale agreement with Santander Consumer Finance. The purpose of the finance was to fund the purchase of a static caravan, which Miss B had decided to buy following a discussion with a sales representative at a holiday park.

After a few months Miss B became concerned over problems with the caravan. She contacted Santander Consumer Finance to say the caravan was cold and damp, with mould spores developing and leading to respiratory and other physical difficulties. Miss B says at the time she entered into the agreement she was homeless and not working, but that the representative told her to provide details of her previous employment. Miss B adds that the representative also misinformed her about site fees, and that she felt under pressure to sign the credit agreement.

Santander Consumer Finance has since permitted Miss B to exercise her right to terminate the credit agreement early. However, it has sought from her repayment of an outstanding balance – around £6,500.

Santander Consumer Finance doesn't accept that it acted wrongly in approving the lending to Miss B. Its position is that it lent on the basis of information Miss B provided about her employment and income, and that it undertook appropriate affordability checks before agreeing to lend. It says Miss B signed to confirm she was happy with what she'd been told at point of sale and with the state of the caravan, and that she was given ample time to withdraw from the purchase if she so wished.

Our investigator didn't think there was enough evidence to indicate Santander Consumer Finance was responsible for the problems with condition of the caravan. However, she wasn't satisfied that Santander Consumer Finance did enough in terms of an affordability assessment to ensure the lending was appropriate or sustainable. The investigator further considered that if reasonable and proportionate checks had been undertaken, these would have shown that Miss B could not afford the credit it provided to her.

The investigator recommended that Santander Consumer Finance refund – with interest – Miss B's deposit along with the money Miss B paid under the credit agreement, less an amount of £2,860 that she considered a fair reflection of the use Miss B had of the caravan. The investigator didn't think it right that Miss B should be required to pay any further money under the credit agreement, so proposed waiving the remaining balance. She also thought it unfair for any negative information to be shown on Miss B's credit file in relation to the credit agreement, and recommended this be removed.

Santander Consumer Finance didn't agree with the investigator's conclusions. It maintained its previous arguments, saying that Miss B had passed credit scoring checks with a good credit history, and had provided a bank statement in support of her ability to afford the borrowing. She had also signed a declaration confirming – among other things – that she could afford the borrowing without undue difficulty. So Santander Consumer Finance asked for this review.

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.

As our investigator noted, Santander Consumer Finance had certain regulatory obligations it needed to comply with in assessing Miss B's creditworthiness. Those obligations are set out in part 5.2A of the Consumer Credit Sourcebook (CONC) that forms part of the Financial Conduct Authority (FCA) Handbook. Santander Consumer Finance is no doubt familiar with those provisions, so I don't propose to reproduce them in full here.

In summary, in undertaking a creditworthiness assessment the lender needs to establish the customer's propensity and ability to make the payments under the credit agreement. That includes assessing whether the repayments will have a significant adverse impact on the customer's financial situation over the term of the agreement. The assessment doesn't need to be exhaustive, but it does have to be proportionate to the individual circumstances in each case. Bearing these obligations in mind I've reviewed the factors Santander Consumer Finance says it took into account when deciding to lend to Miss B.

Having done so, I'm satisfied Santander Consumer Finance made appropriate assessment of the risk Miss B wouldn't make repayments on time. It has explained the checks it performed and the information it established in relation to Miss B's credit history and current level of credit debt. I don't think that information ought to have led Santander Consumer Finance to conclude it shouldn't lend to Miss B.

But assessing the risk of whether someone will make repayments by the due date isn't the only part of a creditworthiness check. There is the affordability risk to take into account; that is, the risk to the customer that they will be unable to make repayments. In this respect, Santander Consumer Finance seems to me to have relied on rather less information. It has said it obtained a bank statement, and that it accepted what Miss B told it about her employment status and income.

In my view, that is unlikely to be enough to be a proportionate assessment in the circumstances of Miss B's application. The sole bank statement Santander Consumer Finance said it took into account didn't substantiate what Miss B told it about her employment, or contain any salary payments that might serve to support her stated income. Indeed, I think a prudent lender, lending responsibly, would have been put on notice by the bank statement in question that it could not simply rely on the content as evidence of Miss B's ability to afford the borrowing.

Guidance in CONC 5.2A.16(3) says that

“For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).”

The bank statement Santander Consumer Finance accepted didn't contain information relating to Miss B's stated income. And it doesn't appear this information was obtained via the credit reference checks Santander Consumer Finance did undertake. Given Santander Consumer Finance used the income figure it did, I can only reasonably conclude that it relied solely on what Miss B told it about her income. As the guidance says, that's not generally sufficient, and I see no reason to make an exception in this case.

When considering the matter of affordability, in addition to income there is also the question of expenditure. Even if Miss B was able to demonstrate her income at the stated level, there doesn't seem to have been much in the way of assessment of her outgoings other than that she carried a low level of existing credit. But the overall financial commitment Miss B was entering into in purchasing the static caravan included not just the monthly credit repayments of £363. For example, she was also obliged – after an introductory period – to pay annual site fees of over £4,600, or a little under £400 per month.

Those figures combined come to nearly half Miss B's monthly net income. Yet this doesn't appear to have prompted Santander Consumer Finance to undertake a more rigorous assessment of Miss B's other outgoings. And that suggests to me Santander Consumer Finance didn't make a reasonable assessment of whether the repayments would have a significant adverse impact on Miss B's financial situation over the term of the agreement. While I note Santander Consumer Finance has sought to make the point that Miss B signed a declaration on affordability, I don't accept that has a bearing on whether it ought to have met its regulatory obligations.

Like our investigator, I'm satisfied that if Santander Consumer Finance had made a reasonable creditworthiness assessment, it wouldn't have approved her application. It follows that she wouldn't have paid out the money she has in relation to the purchase of the static caravan. So she should get this money back, less a deduction for her use of the caravan. It also stands to reason she shouldn't have to pay out any more money towards the loan. So the investigator's redress proposal seems to me to be a fair way of resolving matters.

Of course, I recognise that if she hadn't been lent the money, Miss B wouldn't have experienced the problems she's highlighted with the caravan. But I don't think there's enough evidence to say the caravan was defective at point of supply, such that it might make Santander Consumer Finance liable to pay her additional compensation for her personal health.

There are other possible explanations for the problems she's cited that could be the cause of the damp and mould; it doesn't necessarily follow that it was due to quality defects in the caravan's construction. I think if Miss B was looking to pursue that aspect of her claim further, she'd need to do more to demonstrate fault. So I make no further award or direction in this respect.

My final decision

My final decision, therefore, is that I am upholding Miss B's complaint. To resolve it, Santander Consumer (UK) Plc must, within 28 days of Miss B's acceptance of my decision, take the following steps:

1. Ensure the credit agreement has been terminated and that Miss B has nothing further to pay in relation to it
2. Remove any missed payment information recorded in relation to the credit agreement from Miss B's credit file, and report the account as fully settled effective from the date the agreement was terminated

3. Refund the £2,000 deposit Miss B paid for the static caravan
4. Calculate the total Miss B has repaid under the credit agreement. Deduct £286 per month (subject to an overall deduction of £2,860) as an assessment of fair usage and refund the difference to Miss B
5. pay Miss B 8% simple interest per year on the amounts in 3. and 4. from the date she made each payment until the date it pays this settlement.

If Santander deducts tax from any part of this award, it should inform Miss B that it has done so, specify the amount it has deducted and provide her with a tax deduction certificate if she asks for one, to allow her to reclaim the tax from Her Majesty's Revenue & Customs (HMRC) if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 8 March 2022.

Niall Taylor
Ombudsman