

The complaint

Miss R believes Santander Consumer (UK) Plc acted irresponsibly by agreeing a conditional sale agreement she'd applied for.

What happened

In June 2019, Miss R was supplied with a used car through a conditional sale agreement with Santander. Miss R paid a £500 deposit and the agreement was for £23,280 over 43 months, with 42 monthly repayments of £429.34 and a final payment of £11,619.50.

Miss R has complained that Santander didn't act responsibly when approving the finance. She's said she made it clear she wanted the finance agreement to be in joint names with her partner at the time, because this was the only way it was affordable. And, if Santander had carried out affordability checks, then this would've been obvious to them. But the finance was put in her sole name and, when she separated from her partner shortly after taking out the agreement, she couldn't maintain the payments.

Santander didn't agree they'd acted irresponsibly, so Miss R brought her complaint to the Financial Ombudsman Service for investigation.

Santander said they carried out the appropriate checks when they approved the finance. But they didn't respond to our requests to provide evidence of this. So the investigator couldn't confirm whether Santander's checks were proportionate or not. Because of this, she relied on the information Miss R provided – her bank statements – to establish what her financial circumstances were at the time of the application.

Having reviewed the bank statements, the investigator said Miss R's average income less her average expenditure left her with £31.13 disposable income from which to pay the finance payment of £429.34. So the investigator said that, if Santander had carried out a income and expenditure check, they would've seen that Miss R couldn't afford the payments.

The investigator said Santander's lending decision wasn't fair, and they should cancel the agreement and take back the car. She said Miss R should pay for the use of the car while she had it but, because the finance shouldn't have been agreed, any payments she made above the fair usage figure should be refunded. So the investigator said Miss R should only have to pay £375 for each month she had the car.

So the investigator said that Santander should refund Miss R her deposit and all of the payments she'd made (less £375 for each month she had the car) plus interest. She also said Santander should remove any negative information about the finance from Miss R's credit file and, if after any refund had been calculated, Miss R remained in arrears, then Santander should arrange an affordable repayment plan.

Santander didn't agree with the investigator, and they provided a copy of the credit search they'd carried out when Miss R applied for the finance. But they didn't provide anything to show the income, expenditure and affordability checks they'd done at the time. They also said that don't offer joint agreements and, if this wasn't suitable for Miss R, then she was

under no obligation to sign. And they thought the affordability issues resulted from Miss R's change in circumstances and weren't an issue when the finance was approved.

The investigator considered the information Santander had provided but said that this didn't alter her view – she didn't think Santander had considered Miss R's income or expenditure, so she didn't think the checks carried out were proportionate. Santander still didn't agree, saying it wasn't reasonable for the investigator to rely on Miss R's bank statements when they didn't have sight of these at the point the application was made. So they've asked for an ombudsman to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

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

And, if I determine that Santander didn't act fairly and reasonably when considering Miss R's application, I'll also consider what I think is a fair way to put things right.

Did Santander complete reasonable and proportionate checks to satisfy itself that Miss R would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

I've seen a copy of the application information and of the overview of the credit search Santander did at the time of the application. The application doesn't show any income or expenditure information and the 'Affordability Checks' section has been left blank. The credit search overview shows that Miss R owed £15,800 on 9 active credit accounts, with monthly payments of £559. It also shows that Miss R owed £1,508 on credit cards. It doesn't show and county court judgements, defaults, payday loans or high cost credit accounts.

Santander have said that Miss R *"had a good credit score, good repayment history with no outstanding defaults or payday loans. This indicates that they had no issues paying back credit and no concerns were identified ... we are not required under [Financial Conduct Authority] regulations to conduct further affordability checks on all customers, and there was no reason to do this on this application."*

I disagree with Santander on this. Miss R was taking out a finance agreement with a relatively large payment over an extended period of time. And from what I've seen, Santander made no effort to check this was affordable i.e. by completing the Affordability Checks section of the application. Instead they relied upon an overview of a credit file and assumed that an undeclared income would be sufficient to support the new payments.

Given this, I would've expected Santander to do additional checks before making their lending decision.

Would reasonable and proportionate checks have shown that Miss R could sustainably repay the borrowing?

The main additional check I'd expect Santander to have done is to check Miss R's income and expenditure to ensure their finance was affordable at the point of application, and to see that affordability was sustainable throughout the lifetime of the lending.

Miss R has provided her bank statements for the period 22 February to 7 June 2019. And she signed the agreement with Santander on 3 June 2019. While I appreciate Santander's comments that these bank statements weren't made available to them at the time; in the absence of anything else, I think they give a good indication of what Santander would likely have discovered if they'd asked about Miss R's income and expenditure at the time.

The bank statements show that Miss R had an average monthly income of £2,494.71. And her average outgoings for rent, council tax, water rates, mobile phone, TV licence, TV package, loans and credit card was £2,094.89 a month. Which leaves a disposable income of £399.82 from which Miss R would need to pay essential items such as food and clothing, as well as Santander's payment of £429.34.

The bank statements also show that Miss R was reliant upon money from savings, money paid to her by friends and family (which she says was repayment of money she'd lent them in the past), and income from selling clothing etc. through an app – although this still wasn't enough to cover the entire cost of the agreement. And, even with this, she was going overdrawn on a regular basis. What's more, Miss R also paid two payments to her energy supplier, in March and early June, each in excess of £500. All of this would indicate that Miss R was suffering financial difficulties when she took out the finance agreement – difficulties which became worse when she separated from her partner a few months later.

Based on this, I'm satisfied that, had Santander carried out reasonable and proportionate checks, they would've seen that the finance wasn't affordable or the payments sustainable. And they wouldn't have approved the loan. So, in not doing the additional checks I'd expect them to do, Santander didn't act responsibly when approving the finance.

Did Santander act unfairly or unreasonably in some other way?

I haven't seen anything to make me think Santander acted unfairly or unreasonably in some other way.

Putting things right

As I don't think the finance should've been approved, I've thought about how to put Miss R back in the position she would've been in if this hadn't happened. So I think that Santander should cancel the agreement and take back the car (at no cost to Miss R). They should also refund the payments she'd made, less an amount for her fair usage of the car.

There's no set formula for working out what fair usage should be. So I've considered the amount of interest charged on the agreement overall, Miss R's usage of the car, and what it would've cost her to stay mobile in a similar car had she not entered into this agreement. Having done so, I agree with the investigator that £375 for each month Miss R had the car is fair and reasonable in the circumstances.

Santander have challenged this, saying that they are able to confirm the exact amount of interest that's been charged on each monthly payment. But, when deciding what fair usage should be, I don't think this is the fairest way to calculate it because the amount of interest charged on each payment varies every month. And, as detailed above, I think there are other considerations which impact what the fair usage payment should be. So, after taking account all of the circumstances of this case, I'm satisfied that £375 a month is fair.

Santander have also said Miss R didn't pay any deposit. But I've seen a copy of a receipt for the £500 deposit Miss R paid direct to the dealership and the corresponding entry on her bank statements. The vehicle order form also shows "*Cash Deposit Paid Today £500.*"

But the bank statements Miss R has provided also show that the £500 deposit was refunded to her, by the dealership, on 5 June 2019. So, while I can't agree with Santander that Miss R didn't pay a deposit, the deposit she did pay has already been refunded to her. So I won't be asking Santander to refund this again.

Because of the above, I disagree with the exact remedy recommended by the investigator. I've made Miss R aware of what changes I intended to make and gave her the opportunity to make any comments she had on these changes. And Miss R didn't make any comments.

Given this, I'm satisfied that Santander should:

- cancel the agreement;
- arrange to collect the car at no cost to Miss R;
- refund everything Miss R has paid, minus a deduction of £375 for every month she was in possession of the car to account for her fair usage of it, plus 8% simple yearly interest on any overpayments Miss R has made, from the date of the overpayment to the date of the refund[†]; and
- remove all adverse information relating to the finance agreement from Miss R's credit file.

[†]HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Miss R a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained above I uphold Miss R's complaint. Santander Consumer (UK) Plc must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 15 July 2021.

Andrew Burford
Ombudsman