

The complaint

Miss O complains that Santander Consumer (UK) Plc trading as Santander Consumer Finance provided her with a conditional sale agreement in September 2019 which was unaffordable.

This complaint has been brought by a family member on behalf of Miss O but for ease of reference I am only going to refer to Miss O as the agreement was in her name.

What happened

In September 2019 Miss O entered into a four-year conditional sale agreement for a used car. The cash price of the car was £19,300, the interest on the agreement was around £2,950 meaning the total to repay was £22,250. Under the agreement Miss O was to make 48 monthly payments of around £300 and in the 49th month she could opt to pay around £7,750 to buy the car outright.

Miss O says at the time she entered into this agreement she was on maternity leave, and had Santander carried out proper checks as to her income and outgoings, it would have found that this credit agreement wasn't one she would be able to sustainably afford. She says she didn't return to work after her maternity leave because she found that the cost of childcare would be prohibitive due to her level of earnings.

Miss O made some payments under the agreement but stopped around February 2020. Miss O says she hasn't used the car since March 2020 when it was SORN.

In April 2020 Miss O complained to Santander that the conditional sale agreement had been unaffordable. Santander didn't uphold her complaint. It said that the supplying dealer had conducted all the correct credit checks and Miss O had signed to say she understood the terms of the loan and that it was affordable for her.

Miss O disagreed with the decision of Santander and complained to this service. Our investigator recommended her complaint should be upheld. Our investigator said that he didn't think Santander had carried out reasonable and proportionate checks into Miss O's income and expenses, and had it done so, those checks would have shown this loan was unaffordable.

Our investigator said he thought it would be fair for Santander to collect the car, cancel the agreement with nothing further to pay and remove any adverse information about this agreement from Miss O's credit file. He also said that he thought it would be fair for Miss O to pay for the usage she had of the car and for Santander to keep the payments Miss O had made under the agreement to cover this.

Miss O agreed with our investigator's view, but Santander disagreed. It said that while it accepted Miss O's income had been around £699pm in September 2019 (as per the payslip she had provided) she had actually been on reduced pay at that time being on maternity leave. Santander said it couldn't assume Miss O would be unable to afford

payments because she was on maternity leave as that would be discrimination, it was possible she had other sources of income available to her while her earnings were restricted.

Santander said maternity pay was only a temporary situation and the payslip showed Miss O's gross annual salary was £18,813 which equated to a monthly income of around £1,370pm net. It said that as the agreement was for a 48-month period it was unlikely Miss O would have been on a reduced maternity income for the duration of the agreement. Santander said it hadn't known Miss O was on maternity leave at the time she entered into the agreement.

Santander said that looking at the bank statements that had been provided by Miss O, it had seen that the monthly insurance payments which the investigator had included as an outgoing for Miss O, were actually covered by a payment coming in from someone else and so this cost shouldn't have been included in her outgoings.

Santander said sufficient affordability checks on Miss O had been carried out at the point of sale.

As the parties weren't able to reach an agreement the complaint has been passed to me.

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 looking at whether a credit agreement was fair and affordable, I need to take into account the relevant rules, guidance, good industry practice and law. There are two overarching questions I need to think about in order to decide what is fair and reasonable in the circumstances of this complaint. These are:

- Did Santander complete reasonable and proportionate checks to satisfy itself that Miss O would be able to repay the loan 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 Miss O would've been able to sustainably repay the agreement
- Did Santander act unfairly or unreasonably in some other way?

Santander says that the necessary checks were carried out to ensure this loan was affordable for Miss O by looking at her credit history, her residential status, time at the address, occupation and time in employment. It didn't review her income and outgoings.

I've considered the FCA's Consumer Credit sourcebook ("CONC"), which contains rules for responsible lending by consumer credit companies and assists credit providers in assessing a consumer's ability to repay credit. These rules say checks should be conducted to ensure any lending is affordable and sustainable for the borrower and so should be borrower focused and proportionate to the circumstances of the credit. That means things like the amount being borrowed, the length of the loan, the size of the repayments as well as credit history should be considered.

Here, the information taken for Miss O was that she had been employed in her role for

three years, had been living in her accommodation for five years and on the electoral roll for four years. Santander says the credit checks showed Miss O had no defaults or payday loans recorded and that she had a good credit score that suited its lending requirements.

Santander hasn't been able to provide a copy of the credit check it undertook on Miss O, so I've seen a copy of a more recent credit report provided by Miss O. This report contains information that is likely to have been in any credit report seen by Santander prior to agreeing the conditional sale agreement. There appears to have been some missed payments for a credit card account in 2018 although the account was subsequently settled. There were no defaults recorded.

There was also a "Demand and Needs" document signed by Miss O when she attended the supplying dealership. This document asks Miss O to confirm that the credit agreement is affordable and sets out the maximum monthly amount she considers she can meet. The amount recorded is £280pm which was around £20pm less than the actual monthly payments Miss O then agreed to when taking out the credit agreement. I've also seen that just above Miss O's signature on this document it's recorded that Miss O was aware of the increased monthly payments and she couldn't see any reason why these payments couldn't be met.

This was a credit agreement for £22,250 to be repaid over a four-year period. And while I appreciate Miss O was asked to consider the affordability of the loan as part of the process of taking out of the credit agreement, looking at the length of the agreement and the amount of the monthly payments I think it's clear this was a substantial commitment for her to meet. And Miss O's statement that she could afford the payments doesn't detract from Santander's responsibility to properly assess whether it was affordable for her.

I don't think I can reasonably say that Santander carried out enough checks as it didn't ascertain the level of Miss O's income and/or her expenses. And although Santander recorded that Miss O had been living in her accommodation for several years and had been in her job for three years, it doesn't appear to have asked any questions as to her earnings and wasn't aware she was on maternity leave. Miss O says she told the supplying dealer that she was receiving maternity pay at the time she acquired the car.

Here, I think due to the amount of the credit being borrowed and the length of the agreement, that it would have been proportionate for Santander to have verified Miss O's income and asked more questions about her committed spending. And as I haven't seen that Santander did either of these things, I can't reasonably say Santander made a fair lending decision based on reasonable and proportionate checks.

The next issue I therefore need to consider is, if reasonable and proportionate checks had been carried out what would they have revealed? Here, I've seen that Miss O was, at the time she entered into the credit agreement, receiving maternity pay from her employer. From the payslip she provided for the month of September 2019 she was in receipt of £698pm. I can also see from that payslip that Miss O was in a full-time post and her usual gross salary was around £18,800.

Under the rules of maternity pay run by Miss O's employer she was due to receive eight weeks full pay, 18 weeks at half pay, 13 weeks SMP and then there would be a period of 13 weeks unpaid. I think this information would have been important in assessing whether a credit agreement was sustainably affordable. I don't think it would be discriminatory to ascertain how Miss O intended to meet the payments going forward. I

disagree with Santander that it could be assumed Miss O may have had other resources available to cover the payments for the period of her maternity of leave as that wasn't the case, Miss O says she had, at maximum, a savings pot of around £150 available. So, I think this information should have been requested.

Santander also says that Miss O's usual monthly income was around £1,370 pm and although I accept she may have chosen to return to work full-time in the future I don't think I can reasonably say that her income should be considered at her pre-maternity leave figure when looking at whether this credit agreement was affordable. I think it would be fair to look at her actual income and expenses at the point she took out the agreement. So, I think Santander should have taken Miss O's income as being £698pm assessing whether it would be affordable for her.

Miss O says at the time she entered into this agreement her partner was paying the rent and utility bills, she covered the water rates amounting to £29pm, £59pm towards her mobile and £12pm for the TV licence. In addition to these expenses Miss O was also paying £196pm for a separate credit agreement that she had taken out about six months before for a four-year term for another car. This meant that, with this conditional sale agreement and the other credit agreement, Miss O was paying around £498 pm towards both cars and would have had to cover those costs for some time.

I've seen that insurance payments were also being deducted from Miss O's bank account though it appears that cost was being covered by someone else as a payment into her account matches that outgoing. However, even disregarding this payment, Miss O would have been left with around £200 pm disposable income after paying both of her credit agreements. From that amount she had to cover the expenses shown above as well as any other usual and expected costs such as travel, food and car tax. I think it's reasonable to say that had Santander carried out reasonable and proportionate checks as to Miss O's disposable income and her ability to cover the cost of this conditional sale agreement, it would have found that it was unaffordable.

So, for the reasons given above I'm upholding Miss O's complaint. I think that if Santander had carried out reasonable and proportionate checks regarding Miss O's income and expenses these would have shown that she was unable to sustainably repay the agreement.

Miss O still has the car although she has been unable to make payments under the agreement for some months now and there are arrears. Miss O says she hasn't used the car since March 2020, and it is now SORN. Looking at the mileage, Miss O has driven the car around an additional 5,400 miles in around six months which closely fits the agreement on 10,000 miles per year and that the car didn't have a new MOT carried out in March 2020, I find Miss O is credible and consistent about not having used the car since that point. However, I think it would be fair for Miss O to pay for the usage she did have 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 thought about the amount of interest that was charged under the agreement, the usage Miss O likely had of the car and what her costs to stay mobile might have been had she not entered into this agreement. Looking at the amount Miss O has paid under the agreement I think it would be fair and reasonable for Santander to retain all of these payments she has made under the agreement to cover the cost of that use.

The final question I need to consider is whether Santander acted unfairly or unreasonably in some other way. Although I think it didn't make reasonable and proportionate checks into Miss O's income and expenses, I haven't seen any evidence that it acted unfairly in

any other way.

Putting things right

As this agreement shouldn't have gone live due to it being unaffordable for Miss O then Santander should put her back in the position she would have been in had she not entered into the credit agreement, save as explained above, that it's fair Miss O pays for the use she had of the car. This includes removing any adverse information from her credit file as although she hasn't been making payments it would be unfair that she's disadvantaged by that failure, when the credit agreement shouldn't have been provided to her as it was unaffordable.

So, I'm asking Santander to do the following:

- Collect the car at no cost to Miss O.
- Cancel the agreement with nothing to pay.
- Remove any adverse information from Miss O's credit file relating to this account.

My final decision

For the reasons given above I'm upholding Miss O's complaint. I'm asking Santander Consumer (UK) Plc trading as Santander Consumer Finance to do the following:

- Collect the car at no cost to Miss O.
- Cancel the agreement with nothing to pay.
- Remove any adverse information from Miss O's credit file relating to this account

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 18 October 2021.

Jocelyn Griffith
Ombudsman