

## **The complaint**

In summary, Mr P has complained that Santander UK Plc provided him with a credit card when he wasn't able to afford it.

## **What happened**

In October 2016 Mr P opened a credit card account with Santander. He was provided with a credit limit of £5,000.

In its response to Mr P's complaint, Santander said the credit card was taken out on an information only basis. It didn't think the credit card was unsuitable or that Mr P had been treated unfairly, or not given enough information.

When Santander provided us with its file, it said part of the application details submitted, recorded that Mr P had declared his income as £47,000 and his regular outgoings as £650 per month. So, it thought this had likely been the deciding factor in granting Mr P the credit card due to the apparent excess funds which would make the credit card affordable.

Mr P's concerns were investigated by one of our investigators. She thought Santander shouldn't have provided Mr P with the credit card, as she didn't think he would be able to make the repayments on the account.

In response, Santander said in summary, that it carried out various checks on the affordability position of Mr P, such as assessing the credit file and other checks. It also said there were no concerns taking into account Mr P's level of debt. It went on to say that his income of £47,000 taken against his existing level of debt and outgoing expenses of £500 a month, provided a sound foundation to provide the credit.

In addition, it said the application was automated and was not manually approved by underwriting, and Mr P's current account had been kept within the authorised overdraft. It acknowledged betting transactions on the account but didn't think it was its role to tell customers how to run their account.

In response, the investigator said she thought Santander had carried out business focussed checks without considering the risks the additional lending would have on Mr P. In her view, it didn't carry out proportionate checks to ensure the lending was sustainably affordable for Mr P. She thought his management of his current account showed he was barely keeping on top of his finances.

In reply Santander said in order to bring the matter to a close, it was prepared to refund the interest and charges on the account. But it wasn't prepared to remove the adverse data from the credit file, as the credit was taken out online. It also felt its checks were appropriate and met the requirements of a responsible lender. It felt Mr P had to take responsibility for the accrued spend and how he used the card, so the adverse information would stay on his credit file.

In response the investigator explained why she didn't agree with Santander's proposal. Santander said in response that it didn't think further checks had been necessary in this case. And the refund of interest was a gesture of goodwill rather than an admission that it had made an error. It asked that the case be reviewed by an ombudsman. So, the case has been passed to me for 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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr P's complaint.

Having done so, I've decided to uphold Mr P's complaint. I'll explain why.

There are several questions that I've thought about when deciding if Santander treated Mr P fairly and reasonably when it provided him with the credit card.

- 1) Did Santander complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his credit card facility in a sustainable way?
- 2) If not, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did Santander make a fair lending decision?
- 4) Did Santander act unfairly or unreasonably in some other way?

#### **Did Santander complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his credit card facility in a sustainable way?**

The rules that Santander had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr P could afford to repay the credit card and the credit limit he was applying for. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks it needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of Santander's checks needed to reflect the nature of the credit he was being provided with, bearing in mind things such as the amount of credit, the interest rate, his financial circumstances and any indications of customer vulnerability.

The checks to be carried as part of Santander's affordability assessment, needed to be "borrower focussed". What I mean by this is that the checks needed to consider whether paying back the amount he borrowed on the credit card, would cause Mr P any difficulties or have any adverse consequences for him. This isn't an exhaustive list.

With these principles in mind I've thought about whether Santander completed reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his credit card in a sustainable way. So, I think that it was important for Santander to have conducted checks which gave it a thorough understanding of Mr P's financial position and to scrutinise the information it gathered carefully, asking follow-up questions where necessary, before agreeing to lend.

Santander has said it did carry out some checks before it agreed to provide Mr P with the credit card. And this seems to be on the basis of carrying out a credit search, other

unspecified checks, using Office of National Statistics (ONS) data, information provided by Mr P and its automated application process. It says it carried out an affordability assessment based on this information.

It seems to me from what Santander has said, is that the focus of its application process for Mr P was more on whether or not he satisfied its lending criteria. And from what it has said about the application process, I'm not satisfied from the information it has provided, that it carried out reasonable and proportionate checks in respect of Mr P's application.

I say this because Santander was providing Mr P with a significant credit limit of £5,000 for his credit card. And it appears to have taken what he told it about his income and expenses at face value without taking steps to verify the information he had given it. And this appears to be supported by its statement that his income of £47,000 and his regular outgoings as £650 per month, was likely been the deciding factor in granting Mr P the credit card due to the **"apparent excess funds which would make the credit card affordable"** (my emphasis).

It also appears to have relied on information from a credit reference agency, but it hasn't provided a copy of the credit file report that it obtained. So, it isn't clear to me from the information it has provided what those credit checks showed about Mr P's circumstances at the time it provided him with the credit card facility. Or how the information it obtained and the checks it carried out suggested that the credit it was providing to Mr P was sustainably affordable for him. Its argument appears to be in this case, that this service should accept that the credit card was affordable for Mr P, because its automated application process approved Mr P's credit card application. And the credit checks it carried didn't show any missed payments. These aren't arguments that I find persuasive.

#### *What would reasonable and proportionate checks have shown at the time?*

I think Santander should have ensured that the scope and extent of its checks were adapted to the circumstances of Mr P's application. Mr P was applying for a credit card with a credit limit of £5,000, which I think was a significant level of credit.

Mr P held a bank account with Santander, and I think it would have been able to verify his income and outgoings by reviewing the information it held about him. It only appears to have reviewed his bank statements after he had made his complaint.

I think that if Santander had carried out these checks on Mr P's finances in this way, it would have seen that his current account wasn't in a healthy state. I say this because, the account movement statements provided by Santander show that his account was heavily overdrawn in the weeks leading up to his applying for the credit card. And this suggests to me that Mr P wasn't in control of his finances and was having difficulties in managing them. And he also appears to have been in a cycle of taking out pay day loans, which should also have alerted Santander to question whether the credit card was affordable for him.

I don't intend to make a finding about whether the extent of Mr P's gambling (either in absolute terms or as a proportion of his income) had become a habit or addiction which, in and of itself, made it irresponsible for Santander to have lent to him. Whilst that is clearly a risk, I believe a range of other indicators that Santander saw, or ought to have seen that I've outlined above, which should have made it realise that it was unlikely Mr P would have been able to sustainably make repayments on his credit card, and that it wasn't appropriate to provide him with that credit.

Our investigator explained to Santander that we'd generally expect a lender to refund all interest, fees and charges added to any account that shouldn't have been provided and also remove any associated adverse information recorded on the consumer's credit file.

But while we have a general approach to how we might tell a lender to put things right if it has provided credit it shouldn't have, we can tell it to do something different and/or something more if there's a strong enough reason to say that's what would be fair and reasonable to do in the circumstances of that individual case. But, in this case, Santander hasn't explained why I should do something different, other than to say that Mr P has to take responsibility for the accrued spend on the credit card account. And that it is obliged to record factually correct information.

But what Santander hasn't acknowledged or understood is that the only reason Mr P had the credit card to use, was because it lent to him irresponsibly. I accept that he's had the benefit of the borrowing on the card. But I don't think it's fair or reasonable for Mr P to have to deal with the implications of any adverse information on his credit file, when this information will be recorded about an account, which shouldn't have been provided to him in the first place.

So, in these circumstances, I've not been persuaded that there's a strong enough reason for me to depart from our usual approach to putting things right in upheld cases about unaffordable or irresponsible lending. And I think that Santander should remove any adverse information recorded on Mr P's credit file as a result of this credit card account.

### **Putting things right**

I think it is fair and reasonable for Mr P to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has paid interest and charges on a credit card that shouldn't have been provided to him. So, I think Mr P has lost out and Santander should put things right for him. Santander should:

- Refund any interest, fees and charges incurred on the credit card account. Any refunds should be applied to reduce Mr P's outstanding balance.
- Check for any periods when Mr P's payments would have been enough to clear his balance and, if this is the case, it should pay 8% annual simple interest\* on any periods when Mr P would have been in credit.
- Remove any adverse information recorded on Mr P's credit file as a result of this credit card account.
- \*HM Revenue & Customs requires Santander to deduct tax from this interest. Santander should give Mr P a certificate showing how much tax it's deducted, if he asks for one.

### **My final decision**

For the reasons I've set out above, my decision is to uphold Mr P's complaint about Santander Bank UK Plc. It needs to calculate and pay Mr P compensation using the methodology I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 15 July 2021.

Simon Dibble  
**Ombudsman**