

The complaint

Mr M complains that Santander Consumer (UK) Plc provided him with a conditional sale agreement in December 2018 which was unaffordable.

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

What happened

In December 2018 Mr M entered into a four-year conditional sale agreement for a used car. The cash price of the car was around £16,500 and the total repayable under the agreement was about £20,650 with 48 monthly payments of £326 and in the 49th month a payment of £5000 fell due if Mr M wished to keep the car.

Mr M says this loan as unfordable when he entered into it as he only worked part-time earning around £400per month. He also says shortly after taking the car he became a father and had additional expenses to help with his child.

Mr M says he struggled to pay the loan and had to get help from family members to meet the commitment. In June 2020 Mr M complained to Santander that the conditional sale agreement had been unaffordable. Santander didn't uphold his complaint. It said that the supplying dealer had conducted all the correct checks and Mr M had signed to say he understood the terms of the loan and it was affordable.

Mr M disagreed with the decision of Santander and complained to this service. Our investigator didn't recommend his complaint should be upheld. She said that although she didn't think Santander had carried out reasonable and proportionate checks into Mr M's income and expenses, nevertheless had it done so, those checks would have shown this loan was affordable. Our investigator said she didn't think Santander had done anything unfair or unreasonable.

Mr M disagreed with our investigator's view. He said that Santander hadn't rigorously checked the affordability of the loan as it advertised it would. He also said he disagreed with our investigator's view that he had sufficient disposable income left after his expenses to afford the loan.

As the parties weren't able to reach an agreement the complaint has been passed to me. I issued a provisional decision along the following lines.

I'd seen that the car had now been handed back and the agreement voluntary terminated with a relative of Mr M's paying a shortfall of £2500 when doing so. He said he had just needed to end the agreement as he couldn't afford it.

When looking at whether a credit agreement was fair and affordable, I needed to take into account the relevant rules, guidance, good industry practice and law. There were two overarching questions I needed to think about in order to decide what was fair and

reasonable in the circumstances of this complaint. These were:

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

These were the same questions that had been considered by our investigator, but I had reached a different conclusion and will explain why.

Santander said that the necessary checks were carried out to ensure this loan was affordable for Mr M by looking at his banking and credit history. It hadn't reviewed his income and outgoings as it said no concerns were raised from these checks.

Looking at the FCA's Consumer Credit sourcebook ("CONC"), which contains rules for responsible lending by consumer credit companies and to assist in assessing a consumer's ability to repay credit. These checks should have been 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 have been considered.

Here, the information taken for Mr M was that he was living with his parents and had been working in the same job for around eight months. Santander said the credit checks showed Mr M had had his bank account for many years and had had no issues recorded on his credit file but looking at his age, I didn't think it was reasonable for Mr M's bank account history to have carried a significant amount of weight as to his ability to handle and manage credit.

There was also a "Demand and Needs" document signed by Mr M when he had attended the supplying dealership. This document asked Mr M to confirm that the credit agreement was affordable and set out the approximate monthly amount he considered he could meet. The amount recorded was £327 pm which was equal to the actual monthly payments of the credit agreement.

This was a credit agreement for around £20,000 repaid over a four-year period. And while I appreciated Mr M had been 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 thought it was clear this was a substantial commitment for him to meet. I didn't think I could reasonably say that Santander had carried out enough checks when it hadn't ascertained the level of Mr M's income and/or his expenses. And although Santander had ascertained that Mr M was living with his parents and had been in his job for less than a year it didn't appear to have asked about his work history or whether he had any dependents. Had it done so, then I think it was likely Mr M would have revealed he had only very recently become a new father.

I thought Santander should have asked more questions about Mr M's income and expenses. Under CONC 5.2A.16(3) it says; *"It is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence"*. Here, I thought that 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 Mr M's income and asked more questions about his committed spending. As I hadn't seen that Santander had done any of these things, I couldn't reasonably say Santander had made a fair lending decision based on reasonable and proportionate checks.

The next issue I therefore needed to consider was, if reasonable and proportionate checks had been carried out what would they have revealed? Here, I'd seen that Mr M was, at the time he entered into the credit agreement, employed part-time and his contract was for 15 hours a week. This meant his earnings would have been around £400 per month.

However, looking at the bank statements provided by Mr M, I'd also seen that it appeared he had been offered, and accepted, a large number of additional work hours as over-time though I was unclear how regularly this had occurred. I didn't see the payslips for these particular months, but the bank statements showed that in the three months prior to taking out the agreement, Mr M had been able to more than double his expected salary and had been earning around £1000 per month.

But I had also seen a letter provided by Mr M's former employer following his ceasing that part-time role which said Mr M's average wage during his term of employment with them had been his part-time salary.

Looking at the evidence, I didn't think it would be reasonable to assume Mr M would have sustained the level of over-time he worked in the three months before he took out the agreement for the car throughout the duration of the credit agreement.

So, I thought in these circumstances it would be fair to think that had Santander done checks that were borrower focused about Mr M's hours of work and what was guaranteed, then although it would have been revealed Mr M had an option to do overtime this wasn't necessarily always available. And, therefore, it would have been reasonable to take a portion of his overtime earnings into account when considering his income particularly when considering the length of this agreement. I thought it would have been fair to take Mr M's income as being £750 per month

I'd seen Mr M changed jobs sometime after September 2018 where his hours then appeared to be settled and so his earnings didn't vary very much. From that point, Mr M had earned around £550 per month. But I accepted it was unlikely this change would have been anticipated by Mr M in December 2018 and it hadn't been something he had raised when discussing affordability of the car at the dealership. So, I didn't think Santander would have uncovered this forthcoming change to Mr M's income even if it had carried out checks into his employment.

Mr M lived at home and paid his parents keep which covered his clothes, food and bus fare. The amount he had paid varied depending on his earnings and was around £100 per week when he did overtime but was reduced when he earned less. He had also paid for his mobile phone (£36 per month), another loan (around £40 per month) and an overdraft fee (£6 per month). Following the birth of his child in December 2018, Mr M made a contribution of £139 per month and this contribution was based on his income.

I accepted Mr M's child maintenance payment hadn't been in place at the time he had entered into the credit agreement. But as set out above, I thought if Santander had asked Mr M more questions about his expenses, it would have considered there would be a financial liability for him to meet in respect of his child.

When adding Mr M's expenses together and looking at his part-time earnings and an

uplift of 50 - 75% for his overtime Mr M had a disposable income of £231 to £356 per month. This wasn't enough to cover the cost of the conditional sale agreement and I didn't think Santander would have considered this credit agreement was affordable for him.

So, for the reasons given above I intended to uphold Mr M's complaint. I thought that if Santander had carried out reasonable and proportionate checks regarding Mr M's income and expenses then these would have shown that he was unable to sustainably repay the agreement.

Mr M had returned the car, but there had been a £2,502.43 shortfall that he had needed to pay when he voluntarily terminated the agreement. I'd seen this had been paid for by a member of Mr M's family and not Mr M. As this wasn't Mr M's loss and Santander only has relationship with him, I couldn't fairly ask it to repay this amount to Mr M. This was because this wasn't Mr M's money. However, I did think it would be fair for Santander to repay Mr M the interest element of his monthly payments as the agreement shouldn't have gone live.

The final question I needed to consider was whether Santander had acted unfairly or unreasonably in some other way. Although I thought it hadn't made reasonable and proportionate checks into Mr M's income and expenses, I hadn't seen any evidence that it acted unfairly in any other way.

Mr M accepts my provisional but Santander disagrees. It says that Mr M maintained all the payments due under the agreement and didn't raise a complaint about the affordability for two and half years which then was actually raised by a relative of Mr M's. Santander also says that it was Mr M who gave the budget he had available for the car after other expenses to the supplying dealer and the dealer had completed a demand and needs document.

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.

Looking again at my provisional view and the evidence that's been presented I haven't changed my view.

While I appreciate the payments were made on this agreement, I've seen this was because Mr M was relying heavily on assistance from family to do so and borrowed regularly. Taking into account Mr M's age, and that he was living at home, I'm not surprised his family stepped in and assisted him when he was financially struggling. I don't think I can reasonably say the agreement was affordable based on the payments being made for a time. In the end, Mr M has had to voluntarily terminate the agreement and return the car.

I also don't think it's reasonable in these particular circumstances to find that the loan was affordable for Mr M because the complaint was brought to Santander on his behalf after two and half years. I appreciate it may have taken some time for the complaint to have been made but Mr M's family had reached a point where they could no longer continue to support him with the agreement. This was Mr M's financial commitment and not his family's, they were under no obligation to assist him and although they had chosen to do so for a time doesn't mean it was affordable for Mr M.

I appreciate Mr M may have been the one who provided his monthly available budget for the car to the supplying dealer. And that this figure was recorded on the "Demand and Needs"

document but I disagree with Santander that completing this document meant the supplying dealer had gone “*above and beyond standard industry practice*”. I’ve seen that Mr M’s stated monthly budget matched the agreement’s monthly payments, but looking at the rules set out in CONC it’s clear that generally it isn’t enough to accept what a consumer says about their current income without verifying it with independent checks. I’ve seen no evidence that Mr M was asked about his income and outgoings. I am satisfied that Santander didn’t carry out reasonable and proportionate checks that Mr M was able to repay this credit agreement in a sustainable way.

I am also still satisfied that had it made those checks it would have considered, due to the level of Mr M’s earnings, that this agreement was unaffordable for him. As set out above, I still think it’s reasonable to take a proportion of Mr M’s overtime into account when looking at his earnings, particularly when looking at the amount of the credit and the length of the agreement. And that this meant Mr M didn’t have sufficient disposable income to cover the monthly costs of the financial agreement.

So, for the reasons given above I’m upholding Mr M’s complaint.

Putting things right

I’m asking Santander to do the following:

- Reimburse Mr M the interest element of the payments he made under the conditional sale agreement together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Mr M any charges that were added to the account together interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information about this account from Mr M’s credit file.

My final decision

As set out above I’m upholding Mr M’s complaint. I’m asking Santander Consumer (UK) Plc to do the following:

- Reimburse Mr M the interest element of the payments he made under the conditional sale agreement together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Mr M any charges that were added to the account together interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information about this account from Mr M’s credit file.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 30 August 2021.

Jocelyn Griffith
Ombudsman