

The complaint

Mr C believes Santander Consumer (UK) Plc trading as Santander Consumer Finance acted irresponsibly by agreeing a conditional sale agreement he'd applied for.

Mr C is being represented in this complaint by Ms N. But, for ease of reference, my decision will refer to them both as Mr C.

What happened

On 15 May 2018, Mr C took out a conditional sale agreement with Santander to fund the purchase of a used caravan. He part exchanged his existing caravan for £16,947.53 and the agreement was for £92,052.47 over 120 months, with monthly repayments of £1,098.82. In late 2021, Mr C voluntarily terminated the agreement and handed back the caravan.

Mr C had purchased five static caravans between 2015 and 2018, each more expensive than the last. Given his age, the length of time the finance was over, and because the payment was around two-thirds of his income; Mr C felt that Santander had acted irresponsibly by approving it.

Santander didn't agree. They said they'd carried out checks which showed the finance was affordable. But they acknowledged they'd hadn't properly dealt with Mr C's request for information under data protection legislation and offered him £100 by way of an apology. Mr C wasn't happy with this and brought his complaint to us for investigation.

Our investigator thought Santander had carried out reasonable and proportionate checks when they assessed Mr C's application. But they didn't agree these showed the finance was affordable – they said Mr C's outgoings were more than his income.

The investigator said that, to put Mr C back in a position he would've been in had he not taken this agreement, Santander should refund the deposit he paid. And they should also refund £270.96 a month (the difference between what Mr C paid Santander and what he would've continued to pay towards his previous caravan had he not part-exchanged it) from the date the finance was taken out to the date when it was terminated.

Santander queried whether Mr C had any additional income not showing on his bank statements, as his living expenses also weren't showing on these statements. And they considered this indicated their finance was affordable. The investigator said this was something Santander should've considered at the time they approved the lending and done the appropriate checks. As such Santander 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 Mr C 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 Mr C 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 Mr C'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 Mr C 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.

Santander have confirmed that, when considering a finance application, they take into consideration the information held by the credit reference agencies, as well as other personal information. They use a credit scoring system to help them evaluate the application and will only accept applications *"if the acceptable risk to us is not exceeded."*

Santander have also confirmed that, for Mr C's application, they also reviewed his bank statements and required his existing caravan loan to be repaid as part of the approval process. They've also said that, while they'd noted Mr C's age, it would be illegal for them to discriminate against Mr C and decline the application just because of how old he was.

Given the above, I'm satisfied that Santander carried out were reasonable and proportionate checks. And they've said that these checks showed that Mr C had *"significant disposable income at the end of each month [and] on this basis the finance proposal was accepted."*

Did Santander make a fair lending decision?

I've seen a copy of the credit check that Santander did on Mr C, and this doesn't show any arrears, defaults, or county court judgements. It shows that Mr C owed a total of £91,100 and was paying £827 a month towards this. This is the loan for the caravan Mr C was part-exchanging, and Santander were making it a requirement of their lending that this finance was repaid.

I've also seen the bank statements for the periods 12 November to 11 December 2017 and 17 January to 10 April 2018, which Mr C submitted to Santander as part of his application. And these show he was paying £827.86 a month for the existing caravan loan.

The bank statements also show Mr C's income was made up entirely of state and private pensions, which he received on a weekly, four-weekly, and monthly basis. Based on the figures on the statements, I've calculated Mr C's income to be £1,365.16 a month.

Mr C was a homeowner, with no mortgage, so he had no monthly mortgage or rental payments. His bank statements show that he was paying out the equivalent of £168.97 a month for utility bills and insurances. So, this would give Mr C a disposable income of £1,196.19 a month.

However, these outgoings don't include any council tax, travel costs, or food/clothing. And, deducting Santander's payment from the disposable income, this would only leave Mr C with £97.37 a month to cover these costs. In addition, Santander were financing the purchase of a caravan, so they should've factored in the cost of site fees – from what I've seen these were around £3,500 a year, the equivalent to £291.67 a month.

Based on this, I'm satisfied that the finance wasn't affordable for Mr C. And, based on the information they had, Santander shouldn't have approved it.

Santander have queried if Mr C had any additional income, as his living expenses weren't showing on his bank statements. However, this is something Santander should've considered in 2018 when making their lending decision. And Mr C's bank statements show both cash withdrawals and occasional card payments, which were used to fund his living expenses. And there's no evidence of any additional income.

What's more, Mr C has explained that he was using his savings to support the repayments and other living expenses. And, when these savings were depleted, Ms N's mother assisted him through her pensions and savings. The need to use savings to support repayments shows that any affordability wasn't sustainable.

As such, I'm also satisfied that Santander didn't make a fair lending decision.

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 that Santander acted fairly, I need to consider how to put Mr C back in the position he would've been in, if the finance hadn't been approved. But this isn't entirely possible as Mr C part-exchanged a caravan he otherwise would've kept, and it isn't possible to give this back to him. Nor is it possible to reinstate the finance agreement for this caravan, as it was with a different lender and settled in 2018.

Because of this, I'm in agreement with the investigator that Mr C should be, as far as possible, put back into the same *financial* position as he was in 2018. So, Santander should refund the deposit Mr C paid as this represents the equity he had in the caravan he part-exchanged.

What's more, Santander should refund the difference between what Mr C was paying them, and what he was paying for the part-exchanged caravan. This has the effect of bringing the payment down to what Mr C was paying for the part-exchanged caravan, and the amount Santander doesn't refund represents the cost of the fair usage Mr C had while he was in possession of the new caravan.

So, Santander should:

- close the agreement with nothing further to pay;
- remove any negative information relating to this agreement from Mr C's credit file;

- refund the £16,947.53 deposit Mr C paid;
- refund £270.96 of every monthly repayment Mr C made;
- apply 8% simple yearly interest on these refunds, calculated from the date Mr C made the payments to the date of the refund [†];and
- (if this hasn't already been paid) pay Mr C the £100 compensation for the errors in dealing with his data subject access request.

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

My final decision

For the reasons explained above I uphold Mr C's complaint. Santander Consumer (UK) Plc trading as Santander Consumer Finance must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 August 2022.

Andrew Burford
Ombudsman