

The complaint

Mr M complains about finance he took out with Santander UK Plc ("Santander").

What happened

I set out what happened leading up to and in the course of Mr M's complaint in my provisional decision, which I issued earlier this year. To make this decision easier to read though I will go through this background again here.

In November 2016 Mr M took out an unsecured personal loan with Santander for £6,000. The loan was for a term of 36 months and his monthly repayments were £176.54.

Mr M applied for the loan online and was automatically accepted having met Santander's lending criteria. However, Mr M indicates that between February 2016 and February 2017 he had a gambling problem. Specifically, he suggests that he was able to borrow in total over £50,000 from several different lenders in this time period which he used for gambling.

Mr M has brought separate complaints in relation to these individual debts. But in this decision I am only looking at his complaint about Santander.

Mr M's stance is that Santander did not carry out appropriate checks before agreeing to lend to him. Mr M suggests if Santander had carried out the checks it should have done then it would have realised his situation, in relation to problem gambling, and would not have lent to him.

Mr M indicates that as result of this debt he made the choice to enter into an individual voluntary arrangement ("IVA"). The debt with Santander formed part of the IVA. The IVA has now come to an end as his parents paid to settle it.

Mr M also mentions he believes the lending in part contributed towards him almost losing his home and the end of his relationship. Mr M wanted to underline that he takes responsibility for his actions, but Santander ought to be held to account for its actions too. Specifically, Mr M would like some compensation for what he sees as *"the enormity of the catastrophic effect"* of what he sees as unaffordable and irresponsible lending on his life. To this end Mr M complained to Santander.

Santander didn't agree it had done anything wrong. It told us Mr M's application was an online application and was never viewed by its underwriters. Its decision to lend was based, in part, on information supplied by Mr M. Its decision was also based on its own internal scoring process and credit bureau information. Moreover, in its view, there was nothing in the information that it relied on that ought reasonably to have made it aware that Mr M was engaged in problem gambling.

Further, it told us Mr M and his former wife did have a joint account with it at the relevant time, the account activity did not indicate that Mr M had a gambling problem.

Moreover, when the debt entered its collections process there were no notes added about problem gambling.

For all of these reasons, it did not agree that its decision to lend to Mr M was inappropriate. Dissatisfied Mr M complained to his service.

I took a look at Mr M's complaint. I issued my provisional decision as I have already mentioned. I said this in my provisional decision about what I had 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Why I have found that Santander's checks did not go far enough

When Santander lent to Mr M it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to him. Under the relevant regulations at that time Santander was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate to the circumstances, which might include considerations about the amount borrowed and Mr M's borrowing history.

That said, exactly what a lender should consider was for each lender to decide, however, the rules listed a number of factors which a lender such as Santander might have wished to take into account. Further, Santander had to be able to demonstrate that it did enough to ensure that Mr M could repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. This assessment needed to be borrower focused. Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did Santander complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?*
- If not, would those checks have shown that Mr M would've been able to repay the loan in a sustainable way?*
- Did Santander act unfairly or unreasonably in some other way?*

If I come to the conclusion that Santander didn't act fairly and reasonably in its dealings with Mr M and that he has lost out as a result. I'll go on to consider what is a fair way to put things right.

As set out above, the regulatory framework requires Santander to have carried out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the loan with it in a sustainable manner. This affordability assessment had to be

borrower focused in the sense that rather than focusing on the credit risk for Santander the assessment needed to have sufficient checks to satisfy it that Mr M would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Mr M's financial situation.

We asked Santander what checks it carried out before it lent to Mr M. Santander indicated that, amongst other things, it had requested and reviewed information about Mr M from both Mr M directly and from credit references agencies, it looked at how his pre-existing debt had been managed by him and also it took into account debt to income ratios based on the data it gathered. It does not appear that it knew about or could reasonably have known about a very large loan Mr M had taken out in August 2016 which would have had a significant impact on Mr M's debt to income ratio.

That said, it chose to lend without checking his actual income and expenditure. So, it did not know what money he had coming in and going out, and it could have easily checked this. Mr M was borrowing a relatively small sum both in total and in relation to the income he said he had. But that said, this was not his first new lending he already had at least £11,000 in new lending, if I take Santander's figures. I know Mr M says the figure was in fact £18,500 but that was over an 18 month period not the 4-12 months Santander talks about. And I think for these purposes the 4-12 months is the more reasonable timeframe to look at.

Further it appears it took into account of his income from his joint account and his expenditure on his joint mortgage without looking also at his partner's situation who was the other account holder, I don't think it was proportionate to do one without the other.

However, this is a very finely balanced situation. I can see why Santander thought its checks went far enough, for the reasons it has set out. But in all the circumstances, I don't think in this particular instance Santander's checks went far enough. In particular, I would have expected any reasonable lender to check his actual income and expenses in the very particular circumstances of this individual complaint.

Why I have not found that the lending was unaffordable

That said, it is not enough for me to say that I do not think Santander carried out proportionate checks before it lent in order to tell Santander that it has to do something to put things right. I also have to be satisfied that if it had carried out proportionate checks it would have found that Mr M could not afford to borrow from it, or it would have found that it was inappropriate to lend to Mr M for some other reason.

I'll mention here that Mr M has been very clear with us, he sees this complaint as being about irresponsible lending to him due to his problem gambling. Rather than being mainly about unaffordable lending. But he has said enough to us about unaffordable lending that I need to look into this aspect of his complaint too.

As far as I am aware, Mr M had two current accounts, a sole current account, and the joint current account I have already mentioned, no savings accounts, and the joint mortgage account I talked about earlier on. I only have information about Mr M's sole current account.

The difficulty for Mr M here is that in order to make a finding about his financial situation at the relevant time and whether the finance was affordable, I would need information about his joint account[s] too. I don't have that information. Moreover, normally, if lending is unaffordable I'd expect to see that the consumer missed his initial payments. I have seen nothing that persuades me this is the case here. It follows I can make no finding therefore that the lending was unaffordable.

Irresponsible lending

However, as I mentioned before Mr M suggests that his complaint is primarily about irresponsible lending due to his problem gambling, rather than about affordability. I've not got sufficient information to tell if there was anything about the spending on Mr M's joint current account that might have reasonably alerted Santander to Mr M's outlay on gambling during the relevant time. But Mr M's statements for his sole account for September and October 2016 appear to show multiple bets on several days which helped to put Mr M's sole account into an overdraft. I am satisfied in the circumstances that the pattern of spending on gambling most likely would have meant that no reasonable lender would have lent to Mr M in these circumstances. [It follows that I find that Santander acted irresponsibly in lending to Mr M].

Redress

I have found that Santander acted in an irresponsible way in lending to Mr M given what it ought reasonably to have known about his spending on gambling. Therefore, next I have to look at what Santander ought reasonably do, if anything, to put things right.

When I look at redress I can't look at the situation in isolation rather I have to look at the wider overall picture. In these circumstances, I would say it is fair and reasonable that Mr M be asked to repay the capital of his loan given that he had the use of the money he borrowed. Albeit I accept what Mr M says about having spent all of the money on gambling.

But it appears that under the terms of the IVA Mr M (or rather his parents on his behalf) short settled and the debt was marked as settled. Moreover, Santander has told us "[we] can confirm the amount of capital the customer has paid to the loan is £3,991.91" On this basis Santander has already forgone a little over £2,000 that it might otherwise have been able to recoup. It does not appear that if Mr M got a refund of interest and charges this would exceed £2,000 but I am open to any information that shows this is incorrect.

In these circumstances, I don't think it is fair and reasonable to say that in addition to accepting a short settlement Santander must also refund the interest and charges it applied to the loan with interest. I appreciate that it might be very hard for Mr M to hear this, given that entering into the IVA appears to have been very distressing for him, in the first place. It is not my intention to distress Mr M still more, far from it.

As I mention above as far as I am aware the debt has been marked as settled, if this is not the case, I will look at this further in my next decision. I mention this because I am satisfied that if Santander had asked the credit reference agencies to register negative information on Mr M's credit file in relation to the loan, then it should ask for this information to be removed.

Both Mr M and Santander now have till the due date set out above to send in any further information, should they wish to do so. All I would add is that any final submissions should be materially new. Neither party needs to repeat what it's said to us before".

My provisional decision was that I did not intend to ask Santander to take any further action however this was subject to the caveat that this might change if I found that Santander had asked the credit reference agencies to register negative information on Mr M's credit file in relation to the loan.

I invited both parties to respond to my provisional decision should they wish to do so. Both parties did respond.

Santander responded to say, *"I have checked with the relevant department and we can confirm that the customer's credit file is correctly reporting as per the IVA"*. It also let us know it would wait for my next decision.

Mr M's response was as follows. In summary, Mr M thanked us for my provisional decision. Mr M explained how emotionally difficult it has been and still is, to deal with his complaint and why that was. He wanted to know how Santander could have carried out checks if his application was automatically accepted. He repeated points he had made before about why he thinks that if Santander had taken proper account of his borrowing history with third parties it would not have lent to him. He also repeated that in the circumstances Santander ought to have been aware of his problem gambling.

Further, Mr M reiterated points he had made before about why he blames Santander, amongst others, for the adverse events in his life. He repeated that his parents made the payment that settled his IVA.

Mr M made us aware that he did not have any information about how much he had paid Santander in interest and charges.

Mr M mentioned his credit file from 2018 of which we have a copy. He told us that Santander had registered a default against his account and he wanted this removed.

Finally, Mr M underlined he wants his voice to be heard and his concerns understood.

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.

I thank Mr M for his very candid response to my provisional decision. And I don't underestimate how upsetting he has found it to go over a period of his personal history that he finds painful. We would not have asked about any of this if had not been strictly necessary to investigate his complaint. I also can well understand why he wants his voice heard and his concerns understood, he is entitled to expect that from this service. I wish to reassure him I have heard his voice and thought about his concerns, just as I have done for Santander.

I've reviewed the complete file again thought about what Mr M and Santander have each said in response to my provisional decision and revisited my provisional decision.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I can well understand why Mr M wants to go through all the ins and outs of how Santander processed his application. But there is no need to go through all of this again because I have already found that Santander did not carry out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the loan with it in a sustainable manner. I have also found that the lending was irresponsible. It appears that Santander no longer disputes these points so those findings from my provisional decision still stand.

But to give Mr M some peace of mind I will mention just because his loan was what Santander call a *"system accept"* does not mean that checks are not carried out. As I understand it these checks can be done very quickly being automated using artificial

intelligence. And I have no reason to doubt based on the information that I have on file that Santander carried out the checks it said it did.

I don't doubt that it was very tough indeed for Mr M when his marriage broke down, he almost lost his house and he entered into the IVA. Although I just don't have enough detail about any of this especially the reason for entering into the IVA to be able to say that is fair or reasonable to say Santander caused these events and therefore Santander must take responsibility for the impact of these events.

Moreover, it remains the case that Mr M was able to short settle the debt with Santander and therefore did not ever pay off a substantial part of the capital. It does not help his position that his parent's settled the IVA because this means a third party (i.e. his parents) not he made the financial loss. I say this because nothing Mr M tells us suggests he repaid his parents. I don't say this to upset Mr M still further, far from it. But I think I have to take these points into account when thinking about what redress is fair and reasonable.

Furthermore, nothing I have seen suggests that Mr M paid more than £2,000 in interest and charges to Santander. And as I have already mentioned I must look at the whole picture when deciding what redress is appropriate.

I can see from the copy of the credit file from 2018 that Santander has asked the credit reference agencies to register negative information on Mr M's credit file about this loan. I said in my provisional decision that if I had information to show this had happened I would consider it in this decision. I also outlined that I would ask Santander to remove this information as I have found that Santander acted irresponsibly in lending to Mr M.

Santander's response to my provisional decision appeared to suggest that it was a condition of the IVA that it had to register the default and report the other adverse information. If that was so I might have no proper basis for asking Santander to ask the credit reference agencies to remove this information. But when I followed-up on Santander's response and asked Santander if the registration of the default and the negative information had been agreed as part of the IVA, Santander sent in a new response. This new response suggested that this was not a condition of the IVA. Mr M told us that registering the default was not a condition of the IVA. We asked the IVA supervisor for the original IVA proposal to see what this said about this point. However, the supervisor did not have this information. As far as I can see it is not a requirement of the Insolvency Service's IVA protocol to register this information and the relevant guidance from the Information Commissioner's Office does not say this information ought to be registered in general where there is an IVA.

Therefore, in the circumstances, I find it is fair and reasonable that Santander must remove the negative information it has asked the credit reference agencies to mark on Mr M's credit file. In particular it must remove the default and the late/missed payment markers and just mark the debt as settled.

My final decision

My final decision is that Santander UK Plc must remove the negative data that is the default and the late/missed payment markers that it has asked the credit reference agencies to register on Mr M's credit file. Once his credit file has been updated it must reimburse any fee Mr M has to pay to the credit reference agencies to get an up-to-date copy of his credit file so that he can check that this information has been updated should he wish to do that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2022.

Joyce Gordon
Ombudsman