

The complaint

Miss R complains that Santander Consumer (UK) Plc ("Santander") irresponsibly granted her a loan she couldn't afford to repay.

What happened

I provided my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

In July 2018, Miss R acquired a used car and financed it through a conditional sale agreement with Santander. Miss R was required to make 48 monthly repayments of £286.06, with a final payment of £5,692.45 at the end of the agreement. The total repayable under the agreement was £19,423.33.

Miss R says that Santander didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable.

Santander has said they completed relevant affordability checks, including taking into account information from Credit Reference Agencies and personal information such as residential status, time at address, occupation, and time in employment. They noted Miss R had no pay day loans and that she hadn't defaulted on any accounts. She had low credit card utilisation and low credit commitments and met their in-house scoring system. Miss R was therefore deemed an appropriate candidate for providing finance to.

Our investigator recommended the complaint be upheld. He thought Santander ought to have realised the agreement wasn't affordable for Miss R.

Santander didn't agree and said Miss R hadn't raised any concerns until a year after the inception of the agreement and had fronted the finance for her boyfriend. They reviewed Miss R's bank statements from around the time of her application and noted that whilst she did occasionally use her overdraft she wasn't being charged for that and that she was still able to make monthly payments towards her credit commitments. They said the agreement may have become unaffordable later for Miss R when her circumstances changed but that otherwise she was likely to have been able to continue paying for the car. The case has been passed to me to make a decision.

What I've provisionally 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.

Santander will be familiar with all the rules, regulations, and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Miss R was only 19 years old at the time of her credit application. She hadn't had time to build a credit history and I don't think it was fair for the business to place so much weight on her credit performance when establishing whether the agreement was affordable for her.

I can't see that Santander considered Miss R's income or her expenditure. Although it did complete a credit check, this won't have indicated what Miss R's regular living expenses were. Given the overall size of the borrowing, the monthly repayments, and the term of the agreement, I think it would have been proportionate for Santander to have done so to ensure it was affordable.

So, I don't think Santander completed proportionate checks.

I think it would have been proportionate for Santander to have asked about Miss R's income and verified it in some way. Miss R has explained that they'd recorded the name of her employer incorrectly. I don't think that would have made much difference here. I've seen that Miss R was in a part time job at the time of application. Her income fluctuated and statements show it was between £450 and £500 per month.

I also think it would also have been proportionate for Santander to have found out more about Miss R's committed expenditure, such as her living costs.

The financial commitment from this car finance agreement took up about 60% of Miss R's total income and left her with about £163 to £213 per month from which to fund other motoring and living expenses. Whilst I can see her rent was being funded through a student loan, I don't think the amount of income left after the finance agreement was taken into account could be considered sufficient to sustainably fund expenses such as car maintenance, tax, petrol, food, and other living expenses. I think Santander should also have taken into account that car insurance would have been significant for a 19-year-old. All told I think this demonstrates that Miss R didn't have enough disposable income to afford the additional borrowing. Santander therefore didn't act fairly by approving the finance.

Santander say that Miss R fronted the agreement for her boyfriend. But Miss R has explained that the sales agent had suggested that would be okay and I don't think it's fair to suggest a 19-year-old, with a very limited credit history, would be aware it was a breach of the agreement. I think it was incumbent on Santander's agents in these antecedent negotiations to ensure Miss R was aware of these matters and I've not seen evidence that they made those enquiries.

Putting things right

As I don't think Santander ought to have approved the lending, it should therefore refund all the payments Miss R has made, including any deposit. However, Miss R did have use of the car until it was SORN in November 2019 (16 months), so I think it's fair she pays for that use. But I don't think monthly payments of about £286 are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

The investigator suggested that Santander should waive any excess mileage charges in respect of this but that there should be no refund of the finance instalments that were paid. But as the agreement will end in 2022 and the car has been off the road since late 2019, I don't think it's likely there will be any excess mileage charges. So, I'm not persuaded the investigator's approach is fair.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss R's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Miss R should pay is £180 for each month she had use of the car. This means Santander can only ask her to repay a total of £2,880. Anything Miss R has paid in excess of that amount should be treated as an

overpayment.

To settle Miss R's complaint Santander should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Miss R has made, less £2,880 for fair usage.
 - If Miss R has paid more than the fair usage figure, Santander should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Miss R has paid less than the fair usage figure, Santander should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Santander has received the fair usage amount, it should remove any adverse information recorded on Miss R's credit file regarding the agreement.

**If HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Miss R a certificate showing how much tax it's taken off if Miss R asks for one.*

My provisional decision

I'm expecting to uphold this complaint and direct Santander Consumer (UK) Plc to put things right in the manner set out above.

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.

Miss R didn't have any further information she wanted to add but Santander did. They said they thought the credit checks carried out were proportionate and showed no affordability issues. They also said that Miss R would have notified them much sooner if the agreement was unaffordable. They said Miss R was responsible for deciding whether she believed the finance to be affordable, and if she thought it wasn't she wouldn't have applied. Santander said that they were unable to discriminate against age as it's a protected characteristic under the Equality Act and they did not agree that this was a reason to expect Miss R did not understand that she was in breach of her contract.

I've considered what Santander had to say but it's not changed my decision. I've already explained why I don't think the checks they performed were proportionate and why I think the agreement wasn't affordable, so I'll not repeat that.

I don't think Miss R would have notified Santander earlier. I say that because her friend was paying the agreement not her. But Santander's affordability checks needed to consider Miss R's ability to repay sustainably. They could never consider the contribution from Miss R's friend as that wasn't there when Santander were required to establish if the agreement was affordable.

Whilst I accept Miss R had some responsibility to ensure she could afford the agreement that doesn't negate Santander's responsibility to ensure the agreement was affordable. I understand that age wasn't something Santander would take into account but I think it's fair to suggest they should have considered Miss R's very limited credit history and inexperience with credit before making their lending decision and I think that was a valid reason why Miss R wouldn't have realised she was in breach of her contract.

Putting things right

I've not been provided with any additional information that has led me to change my provisional decision. That provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint and tell Santander Consumer (UK) Plc to:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Miss R has made, less £2,880 for fair usage.
 - If Miss R has paid more than the fair usage figure, Santander should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Miss R has paid less than the fair usage figure, Santander should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Santander has received the fair usage amount, it should remove any adverse information recorded on Miss R's credit file regarding the agreement.

*If HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Miss R a certificate showing how much tax it's taken off if Miss R asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 22 March 2022.

Phillip McMahon
Ombudsman