

The complaint

Mr B complains that Santander UK Plc lent to him irresponsibly.

What happened

Mr B took out a loan with Santander in July 2017. He borrowed £5,000 over 48 months, repaying £140.98 a month.

Mr B says he couldn't afford the credit. He says he had lots of debt elsewhere and that if Santander had done proper checks it would have known the credit was unaffordable for him.

Santander says it did all the necessary checks before it lent to Mr B and it didn't see anything which might make it think he couldn't afford the loan.

Our adjudicator initially didn't think Santander had done anything wrong in relation to the lending, although he changed his opinion when Mr B provided more information. Mr B had provided information to show what Santander ought to have seen when it did proportionate checks and, in the adjudicator's view, this indicated that Mr B couldn't afford the loan. Santander didn't provide any substantive information until our adjudicator changed his opinion. At that point it provided the results of the checks it did. Our adjudicator reviewed this information and concluded that it did not change his opinion about the lending.

As Santander did not agree, the complaint has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considering Mr B's complaint.

Having done so, I have come to the same conclusion as our adjudicator. I will explain why I have reached this decision.

Santander needed to take reasonable steps to make sure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr B could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, how much borrowing Mr B had elsewhere and Mr B's income and expenditure. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Santander initially said that it conducted checks to ensure that the credit would be affordable for Mr B when he took out the loan. It didn't provide the evidence of the outcome of those checks at first, and in the absence of other evidence our adjudicator initially accepted Santander's statement that there was nothing of concern in the results of those checks.

However, Mr B then provided evidence of his financial circumstances at the time he took the loan. These showed that he was seriously indebted and had almost no disposable income. This information ought to have been reflected in Santander's checks. Our adjudicator decided that Mr B's complaint should be upheld.

When our adjudicator provided his new opinion to parties, Santander chose to supply the evidence it had previously withheld, along with lengthy and multiple submissions about how Mr B's loan was actually affordable for him. Santander said it had not completed any in-depth investigation at the point of initial submission.

None of these submissions persuade me that the loan was affordable for Mr B. Although Santander did appropriate and proportionate checks I do not consider that it used that information fairly and nor was it fair for it to lend to Mr B based on what it knew.

Santander has now provided a more detailed breakdown of the information it had about Mr B's income and expenditure. It generally underestimates that provided by Mr B. It does show that Mr B was heavily indebted with existing credit - so much so that his total expenditure each month (as calculated using data from external sources which provide an estimate based on market factors and Office of National Statistics data), including essential outgoings like utilities, insurances and food, was such that his calculated disposable income was £32. This would have increased marginally on completion of the loan as it was intended to be used in part to pay off an earlier loan. This alone should have given Santander pause for thought. Santander says it was '*within [an] acceptable threshold of 100%*', indicating that it would have been content to provide the loan to Mr B even if it left him with no disposable income at all. This is a commercial risk decision which Santander is entitled to make, but it does not necessarily mean that any decision to lend to the consumer in those circumstances is fair. It is my view that on the results of those checks alone Santander it was not a fair or reasonable decision to have agreed the loan to Mr B.

Even if the results of the checks had caused Santander to do more checks, I don't think it would have been a fair or reasonable decision to lend to Mr B. Mr B has provided evidence of his committed expenditure each month from the months before the loan was taken out. It shows that in some months his essential spending exceeded his income. He was paying around £1000 a month towards other consumer credit payments – about 45% of his net income. He owed more than a year's net salary on credit cards.

Santander seeks to rely on the fact that Mr B remained up to date on his loan for the first 12 months as proof that Mr B could afford the loan. It also relies on Mr B's regular repayments on an earlier loan. It says it was only after a material change in Mr B's circumstances that he began to fall into arrears. But this is irrelevant – Santander do not know how Mr B maintained his repayments on the loan. It only knows the information available from its credit checks.

Santander has sought to quibble the amount Mr B needed to pay off his credit card debts, intimating that if he had reduced the amount he paid off he would have had more disposable income which he could have used to pay off the loan. Santander says that although its calculations allowed for 2.5% of the balance to be paid each month, in reality some credit cards allow less than that – sometimes only 1% of the balance plus interest. This is quite an extraordinary argument to make. It would not allow Mr B to pay off *those* balances in a reasonable amount of time. At that rate, even if Mr B spent no more on the cards, his

existing balances would take at least eight years to pay off. And Santander has no knowledge of what the minimum repayments would have been on Mr B's other credit cards. Given that credit cards generally charge a much higher rate of interest it is an uneconomical way to service debt.

On balance, on the information available to me, I am satisfied that Santander did not act fairly on the results of its checks. As a result, Mr B lost out.

Putting things right

Santander should not have provided the loan to Mr B. To settle this complaint Santander should do the following:

- Add up the total amount of money Mr B received as a result of having been given this loan.
- Subtract the repayments Mr B has made from this amount.
- If this results in Mr B having paid more than he received, any overpayments must be refunded along with 8% simple interest* calculated from the date the overpayments were made to the date of settlement.
- If any capital balance remains outstanding, Santander should arrange an affordable and suitable payment plan with Mr B. If no such arrangement can be agreed, Mr B can return to this service to make a further complaint.
- Remove any negative information recorded on Mr B's credit file relating to this loan.
- Pay Mr B £250 in additional compensation to recognise the distress and inconvenience to him of Santander's decision to withhold information from this service about this complaint.

*HM Revenue & Customs requires Santander to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I have decided that Santander acted unfairly when it gave Mr B the loan. To put things right I direct Santander UK Plc to pay compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 February 2023.

Sally Allbeury
Ombudsman