

The complaint

Mr D complains about credit granted to him by Santander Consumer (UK) Plc (trading as Santander Consumer Finance).

What happened

Santander agreed credit of £8,800 for Mr D on 20 March 2017 in order for him to acquire a car. The cash price of the car was £10,000. The total amount owed under the agreement came to £11,984.80 including interest and charges. Mr D paid a deposit of £1,200 and the remainder was to be repaid by 52 instalments of £207.40.

The credit was granted under a conditional sale agreement meaning Santander was the owner of the car until the credit had been repaid and Mr D was, in essence, paying for its use. I can see from the account history that Mr D met his repayments and the credit was repaid as per the agreement. The account closed in July 2021.

Mr D said that Santander should not have agreed to lend to him. It should have realised that the repayments would be unaffordable for him because of the significant amount of existing debt he had. Mr D said that he managed to meet his repayments but with extreme difficulty and ended up in more debt by the end of the agreement. By then he owed £16,000 on credit cards, £10,000 on an overdraft and £30,000 to HMRC. He explained that he was only able to finally repay his debts upon receipt of an inheritance.

Santander didn't uphold Mr D's complaint. It said it conducted a full credit assessment before lending to Mr D and found that he had a relatively low level of existing debt. The information it saw raised no affordability issues.

Mr D referred his complaint to us and one of our investigators looked into it. They found that Santander should have carried out more comprehensive affordability checks than it did before entering into an agreement with Mr D. They also found that further checks would have shown the credit to be unaffordable for him and so recommended that his complaint be upheld.

Santander didn't agree with this recommendation. It said that Mr D never missed his payments or expressed any concerns with financial difficulties during the agreement. The agreement was paid off on time. Santander asked for the complaint to come to an ombudsman for a review and it's come to me.

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.

The Financial Conduct Authority (FCA) was the regulator when Santander lent to Mr D. Its rules and guidance said that before agreeing credit for Mr D, Santander needed to check that he could afford to meet his repayments sustainably. In other words without incurring or increasing problem indebtedness, without having to borrow further, and

while meeting his other debt payments and other normal outgoings. These checks needed to be proportionate to the nature of the credit (the amount and term, for example) and to Mr D's particular circumstances.

Ultimately, Santander needed to treat Mr D fairly and take full account of his interests when making its lending decision. It would not be lending fairly if "it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."

With this in mind, my main considerations are did Santander complete reasonable and proportionate checks when assessing Mr D's application to satisfy itself that he would be able to make his repayments sustainably? If not, what would reasonable and proportionate checks have shown? Ultimately, did Santander make a fair lending decision?

Santander said that it carried out the correct affordability checks during the credit application and the agreement was approved because Mr D met the approval threshold at that time. It said that no affordability concerns were raised by the dealership or Mr D during the process. Santander also said, in its final response to Mr D, that he was provided with an affordability statement during the application process which he signed and that "this statement confers the responsibility onto the customer to ensure that they are able to meet the monthly instalments throughout the lifetime of the agreement".

Let me begin by saying that I cannot agree with this view. Santander was required to carry out proportionate checks to ensure Mr D would be able to meet his repayments over the lifetime of the agreement and the affordability declaration didn't absolve Santander of this responsibility.

When Mr D applied for credit Santander gathered some information from him about his circumstances and checked his credit file. It noted that Mr D had a mortgage with a monthly repayment of £1,028, was paying £340 on his non-revolving credit accounts and had over £17,000 of existing credit card debt. The only adverse information recorded was a defaulted amount of £100 almost three years prior. Mr D was making the minimum repayment at least towards his credit card accounts, given the lack of adverse information on his file. This would have amounted to several hundred pounds.

Agreeing this loan could commit Mr D to repaying a further £200 a month for over four years and the consequences of not managing these repayments were potentially serious in that he might lose access to a car aside from the financial impacts. Santander noted that Mr D was self-employed but I haven't seen any information about his income or expenditure, so I don't know what, if any, information Santander gathered about his means. Altogether, I can't say that Santander carried out proportionate checks on this occasion.

I've looked into what such checks would likely have revealed about Mr D's ability to repay the credit in a sustainable manner. Mr D provided us with a recent copy of his credit file, his bank statements from around that time and his tax returns. I'm not suggesting this is the information Santander ought to have gathered but I think it's reasonable for me to rely on these as a proxy for what proportionate checks might have revealed.

Mr D had been repaying an existing hire purchase agreement at a lower monthly rate which this agreement replaced. However, he was still left paying about £500 a month on existing debt. This included several credit cards with combined balances of £17,000 and an overdraft balance of about £9,000. Mr D's bank statements show identifiable household bills of about £600. This means that together with his mortgage Mr D was

committed to payments of over £2,100 a month. Mr D also had car running costs, food and child-related spending of several hundred pounds a month. His bank statements from around that time show a gross monthly income averaging around £3,000 and his tax return confirms an annual taxable gross of about £30,000.

I think it's likely Santander would have learnt that Mr D was living beyond his means and had been for some time to have accumulated his level of debt. I think it would have declined to lend to him under these circumstances because he wasn't likely to be able to repay the credit in a sustainable manner. Furthermore, I don't think Santander treated Mr D fairly or with regard to his interests by agreeing credit for him given his financial situation. Mr D was managing to service his debts but he wasn't making any inroads into repaying them and appeared to be reliant on credit. Although he managed to meet his repayments, his financial situation hadn't improved by the end of the agreement and, according to Mr D, he was even further in debt.

Putting things right

As I don't think Santander ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or fees under the agreement. Mr D should therefore only have to repay the amount he borrowed. Anything Mr D has paid in excess of that amount should be refunded as an overpayment.

To settle Mr D's complaint Santander should:

- Refund any payments Mr D has made over £8,800; and
- Add 8% simple interest per year* from the date of each overpayment to the date of settlement; and
- Remove any adverse information recorded on Mr D's credit file, if any, regarding the agreement.

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

My final decision

For the reasons I've set out above, I'm upholding Mr D's complaint about Santander Consumer (UK) Plc (trading as Santander Consumer Finance) and it needs to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 May 2023.

Michelle Boundy
Ombudsman