

## **The complaint**

Ms M complains that Santander Consumer (UK) Plc irresponsibly approved a fixed sum loan agreement for her that she couldn't afford. She also complains about how they treated her when she fell into financial difficulty.

## **What happened**

In March 2016 Ms M entered into a fixed sum loan agreement with Santander to finance the purchase of a new car. The agreement was for £22,741 over five years, with an advance payment of £750, followed by 48 monthly repayments of £278 and a final monthly payment of £8,650.

The agreement included an annual limit of 8,000 miles.

Ms M said Santander used both her and her husband's income to assess the affordability of the agreement. She said she could not afford the loan after she and her husband separated in 2018.

She said that Santander said that she should sell the car and use the money to pay off the majority of the loan. She said they then reduced her monthly payments to 1p. She said she contacted them about the balloon payment due at the end of the agreement. She said they told her she could afford to pay three quarters of the amount. She said they refused this, telling her they would only accept the full amount.

She said she had to pay £200 a month to a debt collection agency, but now she pays Santander £150 a month. She feels that Santander has put her into further debt by not accepting the offer she made to pay the balloon payment. She also feels they should have known she was in financial difficulty when she and her husband separated.

She said that Santander told a third party debt collector to collect the car, even though they knew she had already sold it, as they'd told her to do.

Ms M said that Santander are wrongly reporting her arrears to the credit reference agencies, and this has affected her ability to re-mortgage. She also feels that it's unfair she has been left with a debt of around £6,000.

She's unhappy that Santander used both her and her husband's income to assess whether or not the agreement in 2016 was affordable, and unhappy with how they treated her when she was in financial difficulty in 2018. She also says the refinancing of the agreement in 2020 was not affordable.

She said she received no arrears notice. She said she told them she was up to date, and she said she was told to ignore the letter she'd received in October 2022 that suggested the agreement was ending.

Santander said they had correctly reported defaults to the Credit Reference Agencies. They said that they'd issued a default notice as Ms M had missed payments on a short term

payment arrangement. They said this had created arrears of £7,604. They said they terminated the agreement because Ms M failed to pay the arrears. They said a further short term arrangement was agreed. They said because this was for a lower monthly payment this would be recorded as a default every month. They said this was a true reflection of her payment history.

Santander had responded to Ms M's complaint that the original agreement had been mis-sold as it had been based on joint income. Santander didn't uphold this complaint as they said they didn't base affordability on joint incomes and that Ms M had confirmed at the time that the repayments were affordable.

Unhappy with Santander's response, Ms M brought her complaint to this service.

Our investigator looked into the complaint. She reached a comprehensive view, upholding Ms M's complaint. In summary she explained that she it was reasonable for Santander to consider joint income for lending involving a household product, in this case a car. And she didn't look further at the affordability of this agreement as Ms M had said in her own testimony that the agreement was affordable at the time.

She went onto look at the circumstances and events after the loan was granted, starting with Ms M's attempt to repay a large amount of the agreement. Ms M had sold the car for just under £13,000. She wanted to put this towards the agreement, but Santander only allowed her to pay the total amount of the monthly agreement payments: £8,217. This left the balloon payment of £8,650 unpaid.

Our investigator felt it was unreasonable for Santander not to accept the Ms M's lump sum payment offer. She said this left Ms M in more debt than she should have been. She felt that Ms M would have had a debt of £4,650, or less if interest had been appropriately deducted. She felt that Santander should have allowed Ms M to enter into a repayment plan for this amount in 2017. They didn't and they didn't explain why.

She looked at Ms M's financial position in 2017, and was satisfied that she'd have been in a position to meet repayments towards the outstanding balance if Santander had considered this. She explained why she felt this would have meant Ms M would not had to refinance the agreement in 2020.

She then considered the refinancing in 2020. She agreed that Ms M matched Santander's criteria for a refinance of the agreement. But she didn't think they had treated Ms M fairly as they didn't conduct checks on the affordability of the new agreement. She explained that the new agreement required Ms M to repay £9,419.84 in one lump sum, after only 12 months. Santander were aware that she only had £4,000 available so they should have checked whether or not Ms M could afford the remaining £5,419.

She didn't think Santander made a fair lending decision when they offered her the new agreement in 2020. Our investigator calculated that the maximum Ms M would have been able to save was around £3,272.88. So, it was unlikely she'd have been in a position to repay the balance of the new agreement by March 2021.

She considered whether Santander treated Ms M fairly when she told them she was in financial difficulty, both in 2017 and in 2020. She didn't think it was fair or reasonable to expect Ms M to pay the final amount in one lump sum or within 12 months whilst the monthly contributions continued at £0.01. So she felt that Santander didn't offer Ms M a sensible forbearance option which provided a realistic prospect of success.

Finally she looked at the circumstances that led to the default and termination of the agreement. Ms M said she was told in a call by Santander that no payments had been missed and there had been an error.

Santander didn't provide a copy of the call, so our investigator considered the circumstances at the time. She said that Ms M had been making the payments, but sporadically – sometimes late but often she made multiple payments in one month. This meant that some payments were shown as missed, with Ms M thinking she was up to date. Santander started the default process when Ms M missed the July 2022 payment.

Our investigator felt that this was an inevitable consequence of the agreement that Santander started in 2020.

She explained why she felt that if Santander had accepted Ms M's offer to repay a further £4,000 off the final balance – either in 2017 or in 2020, her situation would likely be much more favourable at this point and a default may have been avoided entirely.

She felt that Santander should remove £4,000 from the balance of the agreement, reimburse/ write off the interest payable on the second agreement and report the default marker on Ms M's file from March 2020 and not November 2022.

Ms M accepted this outcome but Santander disagreed.

They said they felt they'd tried to help Ms M. They said they could've considered the voluntary surrender option if Ms M had approached them before the car was sold. They said this may have meant she could have "*walked away*" from the agreement.

They said they couldn't allow Ms M to settle the balloon payment at that time as this would have reduced the duration period of the agreement. They said the contract didn't allow them to accept this.

They asked for the matter to be passed to an ombudsman for 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Ms M was supplied with a car under a fixed sum loan agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The first element of Ms M's complaint was about the affordability of the original agreement she entered into in 2016. She was unhappy that Santander had considered her and her husband's income. I'm not considering this further as in her own complaint testimony Ms M says the loan was affordable at the time. And Santander said they didn't rely on joint income. So I won't be making any further findings on this part of Ms M's complaint.

The remainder of Ms M's complaint relates to how Santander treated her when she was in financial difficulty. The Financial Conduct Authority (FCA) was the regulator when Santander lent to Ms M. It required Santander to treat consumers in financial difficulty, like Ms M, with

forbearance and due consideration. The FCA's principles, and Principle 6 in particular required Santander to "*pay due regard to the interests of its customers and treat them fairly*". Its rules and guidance are found in its Consumer Credit Sourcebook (CONC), available online.

Ms M contacted Santander in February 2017 and told them she was in financial difficulty. Their notes show that they advised her that she could sell the car and told her what she'd need to pay to settle the agreement. It also appears that they told her she would have to pay the final balloon payment due under the agreement in one payment when she had the money.

She was given similar advice in May 2017. And again in August 2017 when she called to settle. Santander said they couldn't allow Ms M to pay off any shortfall in instalments as they were "*unable to do this*". They said this was because they couldn't keep funds beyond the original maturity date. She paid £8,217 and Santander agreed a new monthly payment of one pence.

Santander has given no reason or explanation why they couldn't do more to help Ms M at this time. Their explanations seem to be related to the contract not allowing anything else to be done. There's no evidence of any attempt to pay regard to Ms M's interests or treat her fairly. If Santander had considered Ms M's situation at the time, they would likely have designed a solution that would have seen a substantial amount of the agreement settled without increasing Ms M's indebtedness.

If they'd accepted her offer to pay the initial amount of the hire purchase agreement - £8,217 – and the lump sum towards the balloon payment, this would have likely reduced the amount she owed to around £4,650. They refused and offered a modifying agreement for the outstanding amount of £8,650. With added interest she was now required to pay £9,420.

I can't see how this helped Ms M or offered forbearance and due consideration. The FCA handbook says that firms like Santander should allow customers, like Ms M, who are in financial difficulty, reasonable time and opportunity to repay the debt. By refusing Ms M's offer, they did not allow reasonable opportunity to repay the debt. Nor did they allow Ms M's reasonable proposal for repaying the debt, as set out in the FCA Handbook.

Santander's next contact with Ms M was in January 2020 when they wrote to tell her the balloon payment was due in 90 days.

She wrote to them in March 2020 to tell them she'd sold the car and could pay £4,000 towards the lump sum due and asking for a longer period to pay the balance. Santander's solution was to "refinance" the agreement, effectively getting Ms M to enter into a new agreement – for the full amount outstanding.

Santander agree that Ms M is a vulnerable customer. I think they should've recognised this sooner by asking appropriate questions when she first told them she was struggling financially. They said they could have done more to help her if she's approached them before she sold the car. That may be true, but it didn't prevent them from providing additional support, or accepting the payment she offered – the full amount she'd obtained for the car.

Instead their solution was to require her to enter into a modifying agreement in April 2020. This required her to pay eleven monthly payments of one pence and one payment of £9,419 after 12 months.

And in April 2021 she could not afford to pay the agreed amount under the new agreement. So it was agreed that she'd pay £100 a month.

Santander's own notes record that they had told her to sell the car. The notes also acknowledge that they shouldn't have gone ahead with the modifying agreement. I'm satisfied this is another example of Santander not considering Ms M's interests or treating her fairly. The modifying agreement increased the amount of debt, and meant that she couldn't repay the debt until 2021. I say more about this below but I'm satisfied this was neither fair nor reasonable, and not in line with the FCA expectations as set out in CONC 7.

Santander realised that Ms M couldn't afford the agreement, and rather than find a solution that suited her situation at that time, they passed her details to a third party debt collector. They agreed that Ms M could afford £200 a month at that time (later reduced to £150 a month) and sent the matter back to Santander – it appears principally because the car had been sold and there was no asset for them to recover.

Ms M was also unhappy that Santander continued to mark her credit file with missed payments, despite her making the agreed payments. Santander said they did this because the payments she was making were lower than the amount in the modifying agreement.

Ms M paid £3,150 to Santander between September 2021 and April 2023. This is a substantial amount towards the amount of £4,650 that would have been outstanding if Santander had treated her with forbearance and accepted her offer to pay £4,000 towards the balloon payment in 2017, or even in 2020.

### **Modifying agreement 2020**

Santander said they didn't consider affordability when they set up the modifying agreement. They said they met their criteria for a refinancing. I'm satisfied they should have conducted a full affordability assessment. I accept and agree with our investigators view that if they had conducted a proportionality check they would have found the agreement was more likely than not to have been unaffordable.

But I'm not going to consider this further. That's because, as I've explained above, a modifying agreement was not the appropriate solution to Ms M's financial difficulties and should not have been offered to her.

From as early as 2017 Santander knew Ms M was in financial difficulty, and they later also acknowledged her circumstances meant she was vulnerable.

So I'm satisfied that Santander should have accepted her offer to repay a larger amount in 2017, or certainly in 2020. That would have been the appropriate method of forbearance and due consideration.

Their approach also led to Ms M having defaults recorded on her credit file. It's difficult to say what would have happened if the appropriate steps had been taken by Santander in 2017. What we can say is that Ms M made the payments towards the payment plan. I accept these weren't always paid on the agreed date, and this caused some difficulty for Santander. But payments were made.

It was the missed payment in July 2022 that led to Santander adding the default to Ms M's credit file. It should have been clear to Santander in 2020 that the agreement was in default and the default should have been recorded at that time. I appreciate Ms M feels she shouldn't have a default, but I disagree. I think the history shows that she was in financial difficulty, was unable to settle the agreement, and she would likely have defaulted in 2020, even if Santander had done what I've suggested.

### **Putting things right**

I've explained why I'm satisfied that Santander didn't treat Ms M fairly when she told them she was in financial difficulty. I think the actions they took led her to be in significantly more financial difficulty than she should have been.

I think they should have accepted her offer to pay the £12,970 she'd received for the car. This would have left her with a balance of £4,650 to pay. And in line with CONC, they should have suspended interest on that amount.

Ms M has also been through considerable distress and inconvenience during this period. Santander's failure to treat her with forbearance and due consideration has undoubtedly added to her distress, and increased her anxiety. For this distress, Santander should pay Ms M £300.

So I think Santander should:

- Remove £4,000 from the balance of the agreement.
- Reimburse/ write off the interest payable on the second agreement.
- Report the default marker on Ms M's file from March 2020 and not November 2022.
- Pay Ms M £300 for distress and inconvenience caused

### **My final decision**

For the reasons set out above I'm upholding Ms M's complaint. Santander Consumer (UK) Plc should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 22 December 2023.

Gordon Ramsay  
**Ombudsman**