

## **Complaint**

Mr B complains that Santander Consumer (UK) Plc (trading as “Santander” Consumer Finance) unfairly entered into a conditional sale agreement with him.

He’s said his affordability for the agreement was not properly considered at the time of sale.

Mr B is also unhappy with the options that he was provided with once he ran into difficulties making his payments.

## **Background**

In December 2021, Santander provided Mr B with finance for a brand-new car. The cash price of the vehicle was £42,264.36. Mr B paid a deposit of £500 and entered into a conditional sale agreement with Santander to cover the remaining £41,764.36.

The ‘Personal Contract Purchase’ (“PCP”) conditional sale agreement had interest, fees and total charges of £8,562.62 and a term of 49 months. This meant the total amount to be repaid of £50,326.98 (not including Mr B’s deposit) was due to be repaid in 48 monthly instalments of £721.76 followed by an optional final payment of £15,682.50.

In January 2023, Mr B formally approached Santander and said that he was having difficulty making his payments. This was after he was already in arrears. Mr B was subsequently referred to Santander’s collections team and then a specialist team for those looking to end finance agreements because they are in financial difficulty.

There were a number of attempts to set up various methods to clear the arrears on Mr B’s agreement. Santander stated it was prepared to allow Mr B to voluntarily terminate his agreement, or sell the vehicle and use the funds to reduce the amount he had left to pay. Mr B wasn’t happy with any options presented and subsequently complained about this as well as Santander’s decision to provide him with the finance in the first place.

Santander said that the checks completed before the agreement was entered into confirmed that the finance was affordable and so it was reasonable to lend. It also thought that it had taken reasonable steps to assist Mr B when he ran into difficulties making his payments. So it didn’t uphold Mr B’s complaint. Mr B was dissatisfied at Santander’s response and referred his complaint to our service.

Mr B’s complaint was then considered by one of our investigators. She thought that Santander ought to have realised that the agreement was unaffordable for Mr B and so it shouldn’t have entered into it with him. So she thought that Mr B’s complaint should be upheld.

Despite being chased for a one, Santander didn’t respond to the investigator’s assessment. It simply took steps to clarify what she was asking it to do to put things right for Mr B. Mr B was not happy with how the investigator suggested that Santander needed to put things right either. So the complaint was passed to an ombudsman for review.

## My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think that there are two questions for me to consider whether Santander acted fairly and reasonably towards Mr B in its dealing with him. The first of these questions is Did Santander act fairly and reasonably towards Mr B when it decided to lend to him? I've started by considering this matter.

*Did Santander act fairly and reasonably towards Mr B when it decided to lend to him?*

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide this part of Mr B's complaint.

Santander needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Santander needed to carry out proportionate checks to be able to understand whether Mr B could make her payments in a sustainable manner before agreeing to lend to him. And if the checks Santander carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

I've kept this in mind when determining whether Santander acted fairly and reasonably when deciding to lend to Mr B.

*Were the checks that Santander carried out before lending to Mr B reasonable and proportionate?*

Santander has provided us with some screenshots. But in truth it hasn't really provided much in the way of detail about the checks it carried out before agreeing to lend to Mr B. That said, the information provided does suggest that it obtained some information from Mr B and carried out some checks. It appears as though Mr B provided details of his employment and his employer.

Santander screenshots also suggest that it also carried out credit searches on Mr B which showed that he had some outstanding balances. However, these balances were relatively well maintained and it appears to have determined that when the payments required to service these commitments meant that he would have enough to make the payments to this agreement.

On the other hand, Mr B says that he was never able to afford these payments given what he was earning at the time.

I've carefully thought about what Santander has said and provided. But simply obtaining information about a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

I'm concerned that Santander appears to have assumed an affordable monthly payment amount without obtaining the actual amount of Mr B's monthly income. Furthermore, it seems as though it concluded that Mr B could afford to make his payments because he wasn't in arrears in on his existing commitments.

However, I'm mindful that Mr B was committing to repayments of approaching £750 a month for just over four years. As this was the case, I would have expected Santander to have had a reasonable understanding of his income, credit commitments and regular living costs in order to determine that such payments were affordable for him.

As I can't see that Santander did take steps to ascertain Mr B's income and regular living costs, I find that it didn't complete fair, reasonable and proportionate affordability checks before entering into this conditional sale agreement with him.

*Would reasonable and proportionate checks have indicated to Santander that Mr B was unable to sustainably make the monthly repayments to his conditional sale agreement?*

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Santander that it was unfair to enter into this agreement with Mr B.

Mr B has provided us with evidence of his financial circumstances at the time he applied for the conditional sale agreement. Of course, I accept different checks might show different things. And just because something shows up in the information Mr B has provided, it doesn't mean it would've shown up in any checks Santander might've carried out.

But in the absence of anything else from Santander showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr B's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr B's bank statements and the other information he's provided because I think that Santander ought to have obtained this before lending to him. Although I do think that it would have been prudent to obtain some kind of proof of income from Mr B bearing in mind the amount of the monthly payment. In any event, I've consulted this information because it is readily available at this stage and it contains the information I now need to reconstruct the proportionate check Santander should have, but failed to carry out in December 2021.

Mr B's bank statements show that he was employed by the employer listed on his finance application. But Mr B was only earning around £1,500.00 a month at this stage. So it's clear that the monthly repayments for this agreement alone would take up around 50% of his income. And then there were the other credit commitments that Santander's credit searches showed, which needed to be covered too.

Santander may question why Mr B sought to purchase the vehicle he did given what the information he's provided showed. I know what Mr B has said about being in a difficult position at the time. But I don't think that he would have needed specialist knowledge to realise how much he was earning a month and what the payments to this agreement were. Furthermore, I don't see how Santander would have been aware of what Mr B says the dealer knew.

Nonetheless, while I'm not unsympathetic to any argument that Santander may raise in relation to the wisdom of Mr B's actions, nonetheless the regulations in place required Santander to take reasonable steps to ascertain Mr B's ability to make monthly payments of approaching £750 a month over four years.

Given what I've been provided with indicates Mr B never had the funds to do so and this was mainly because of what he earned, I'm satisfied that Mr B simply wasn't in a position to make the monthly payments to this agreement, let alone other reasonable associated running costs for the vehicle such as petrol, tax and insurance. In these circumstances, I'm satisfied that Mr B simply wasn't in a position to make the monthly payments to this agreement, without borrowing further or it having a significant adverse impact on his financial position.

So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted Santander to the fact that Mr B wasn't in a position to sustainably make the payments to this agreement. It therefore follows that Santander shouldn't have lent to him and that it ought to put things right.

I will set out what I require Santander to do in order to put things right for Mr B in the *Fair compensation – what Santander needs to do to put things right for Mr B* section of this decision.

The second question I need to consider in order to determine Mr B's complaint is whether Santander acted fairly and reasonably towards him when he ran into difficulty making his payments.

#### *Mr B's concerns regarding forbearance*

I've also considered what Mr B has said about the steps that Santander took to help him once he had difficulty making his payments.

It isn't in dispute that Mr B contacted Santander in January 2023 to explain that he was struggling to make his payments as he'd been off sick from work. Once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations.

Santander's notes suggest that Mr B was immediately passed through to Santander's collections team. From what I can see a number of different options including setting up a payment plan for Mr B to make up his arrears, Mr B's agreement being voluntarily terminated and Mr B selling the vehicle and then reducing what he owed.

Santander may not have been prepared to accept Mr B's choice of purchaser for the vehicle but it did say that it would accept the car being sold to a dealer, which it wasn't necessarily required to do at this stage. However, Mr B didn't return with a dealer offer for the car or any alternative proposal. As Santander didn't hear back from Mr B I don't think that it was unreasonable to return Mr B to its standard arrears team.

So overall it's clear that Santander went through a number of options with Mr B once it became aware of his difficulties making payment. And I don't agree that it didn't try to help him. Furthermore, while I appreciate that Mr B has said that Santander told him that not making the payments to his agreement would not be reported to credit reference agencies, I've not seen anything to support this being the case.

In these circumstances, I've not been persuaded that Santander failed to act fairly and reasonably towards Mr B once he fell into arrears on his agreement and I've not been persuaded to uphold this aspect of the complaint.

## **Fair compensation – what Santander needs to do to put things right for Mr B**

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Santander putting Mr B in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr B did enter into the agreement and *was*, at least, given the car in question. He also had use of the vehicle for over two years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr B back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mr B to paying back the £41,764.36 he was originally lent. But I don't think that a refund of the interest fees and charges is appropriate here. Mr B is nowhere near being able to repay what was lent and even if he were to somehow make the remaining monthly payments scheduled – which he cannot – he'd be left with a further significant payment to make at the end in order to take ownership of the car. Only around half of the £15,682.50 final payment would be made up of interest. So in this case, Mr B repaying only the capital lent and keeping the car simply isn't a viable option.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr B bearing in mind he was provided with a conditional sale agreement, he shouldn't have been provided with.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended. After all the asset has some value and it would be reasonable for this to be used to reduce or clear what the borrower owes. So to start with Santander should collect the car from Mr B at no cost to him and as soon as possible. Santander should also terminate Mr B's agreement and collect no further payments under the agreement.

Ordinarily speaking I would typically direct a business to return a borrower's deposit plus interest, together with any payments that were made, in circumstances where an agreement is ended in this way. The lender is then entitled to deduct an amount from any refund to reflect the fact that the vehicle will have depreciated and the borrower will have had the use of it for the period they had it.

I'm mindful that in this case, Mr B is significantly in arrears and he hasn't made a full payment for some time. So I think that Santander should be entitled to keep the payments that have been made so far. I'll now explain why in a bit more detail.

As I've said, Mr B did have use of the car for more than two years. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr B's usage of the car and what sort of costs he might have incurred to stay mobile if he didn't have this car.

In thinking about this, I've thought about what Mr B has said about already having a car and his costs for that vehicle being cheaper. But even though Mr B may have had such a vehicle, he was nonetheless provided with a brand-new prestige branded car, which he has had the use of over two years. So it is clear that this would have been a significant upgrade.

I've seen what he has said about being forced into a position where he had to pay £720 a month. However, I also have to take into account that he went to the motor dealership in the first place and as I've previously explained, Mr B was aware of the monthly payments and how much he was earning at the time. So I don't think it's fair to say that Santander is entirely responsible for what happened here.

I know that Mr B has suggested that he should be refunded some of the payments he made. He's said that he didn't use the vehicle that much. But without wishing to sound blunt that was his choice. Ultimately, he has been in possession of a brand-new prestige vehicle for over two years and the fact that he chose not to utilise the mileage he thought he would when purchasing the vehicle is neither here nor there. This is particularly as Santander is likely to incur costs to recover the vehicle from him and then sell it.

Furthermore, while I sympathise with the fact that he may require a car, I don't think that this means he should be able to keep a car he hasn't been able to afford, or that he should be refunded some payments. On the contrary, given the monthly payments on PCP arrangements like Mr B's are supposed to reflect the monthly cost of renting the car financed, the real question for me to determine here is whether Mr B has paid enough for having had the car as long as he did, not whether he should receive a refund.

Indeed, Santander could legitimately make the argument that keeping the payments Mr B made is not enough here given how much Mr B's is in arrears, he hasn't paid the rental payments and has nonetheless kept the vehicle for some time. But Santander hasn't made this or any other argument over how much Mr B should be required to pay. And this is despite it confirming with our investigator that she was recommending both parties should simply walk away from the rest of the agreement. So it is difficult for me to consider arguments which haven't been made.

Therefore, given all the circumstances and having weighed up everything, I'm satisfied that Santander shouldn't refund any payments to Mr B and that Mr B shouldn't have to make any further payments to Santander either.

I now turn to Mr B's credit file. Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of any credit they shouldn't have been given. I appreciate that Mr B hasn't made payments for some time. But again without any specific arguments on why it would be unfair for Santander to remove any adverse information, it's difficult for me to conclude that requiring adverse information to be removed here would be unfair.

As this is the case, I'm satisfied that Santander should put things right for Mr B by:

- collecting the vehicle from Mr B at no cost to him. Mr B is encouraged to respond to and cooperate with Santander in order for this to be done;
- terminating Mr B's conditional sale agreement;

- removing any adverse information recorded on Mr B's credit file as a result of this agreement.

**My final decision**

For the reasons given above, I'm upholding Mr B's complaint. Santander Consumer (UK) Plc should put things right for Mr B in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 March 2024.

Jeshen Narayanan  
**Ombudsman**