

## **The complaint**

Mr H is complaining about Santander Consumer (UK) Plc trading as Santander Consumer Finance. He says they shouldn't have lent to him as the loan was unaffordable.

## **What happened**

In February 2018, Mr H took out a conditional sale agreement with Santander to finance the purchase of a car. He paid no deposit and borrowed £17,995 - the cash price of the vehicle. The agreement required him to make 60 monthly repayments of £411.05, with the total amount payable being over £24,500.

In August 2023 Mr H complained to Santander saying the agreement was unaffordable.

In response to Mr H's complaint, Santander said they'd completed identity and credit checks before lending to Mr H and his agreement was automatically accepted. They said they then wouldn't need to conduct further affordability checks unless any concerns had been raised about his creditworthiness and ability to pay back credit – which wasn't the case.

Mr H remained unhappy, so he brought his complaint to our service and one of our investigators looked into it. Our investigator didn't think Santander had done proportionate checks and said if they had, they couldn't have fairly decided to lend to Mr H.

Santander reiterated that they'd done appropriate checks. And they said they didn't agree with our investigator's assessment of affordability. So the complaint has been passed to me for 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.

Having done so, I'm upholding Mr H's complaint for broadly the same reasons as our investigator – I'll explain more below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

### *Did Santander carry out proportionate checks?*

Santander said they'd checked Mr H's credit file – which gave them no cause for concern. I can see they found he had two active accounts with a total balance of just over £2,000 and monthly credit commitments of £157. They found no evidence of defaults or missed payments.

I've seen no evidence Santander took any steps to estimate or verify Mr H's income. Without this, I can't say Santander did proportionate checks - CONC 5.2A.15R requires a firm to take reasonable steps to determine or make a reasonable estimate of the customer's current income unless the firm is able to demonstrate that it's obvious in the circumstances that the customer is able to make the repayments. Santander haven't said they thought it was obvious that Mr H would be able to make the repayments. And Mr H needed to make monthly repayments of over £400 for the next five years. So I'm not satisfied the checks were proportionate.

### *If Santander had carried out proportionate checks, what would they have found?*

Santander could have looked at Mr H's payslips or bank statements to check his income. If they had, they'd have seen that his employer changed between December 2017 and January 2018. He also changed from weekly pay to monthly pay – but his average net pay seemed to be similar – he was taking home around £1,300 per month.

With repayments of over £400 per month as well as the existing credit commitments of £157 per month against income of £1,300 per month Mr H was left with around £740 per month for his day-to-day living expenses. This doesn't seem like a lot, so I'd have expected Santander to also take some steps to estimate or understand Mr H's expenditure.

Mr H has told us he was living at his parents' house but also spending time at his partner's, and that his partner was the mother of his child. He's said he was making contributions to both. From Mr H's bank statements I can see a lot of transactions between Mr H and both his mum and his partner. He's explained that as well as contributing to living costs, he was also borrowing from them from time to time. On average, across November 2017 to January 2018, Mr H was paying a net amount of around £340 to his mum and £160 to his partner – so a total of £500 per month. I've thought about whether it would be reasonable to expect Santander to have included these payments to family members and on balance I'm satisfied that £500 per month is within a reasonable range for rent and bills. If they'd asked Mr H about his expenditure or used statistical data, it's likely they'd have arrived at a similar amount.

On top of this Mr H was spending around £350 on food and fuel, and around £40 per month on road tax and bank charges. So his living costs totalled around £890 per month – £150 more than he'd expect to have available after paying his credit commitments.

Taking all of this together, I'm satisfied that if Santander had done proportionate checks, they couldn't have fairly decided to lend to Mr H.

### **Putting things right**

As I don't think Santander should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr H has had use of the vehicle so it's fair he pays the cash price of the vehicle. Santander should do the following:

- End the agreement and transfer ownership to Mr H, if this hasn't already been done.
- Refund all the payments Mr H has made in excess of £17,995, being the cash price of the vehicle, adding 8% simple interest per year from the date of each overpayment

to the date of settlement.

- If Mr H has paid less than £17,995, Santander should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Remove any adverse information recorded on Mr H's credit file regarding the agreement once the £17,995 has been recovered in full.

If Santander consider tax should be deducted from the interest element of my award they should provide Mr H a certificate showing how much they've taken off so that Mr H can reclaim that amount, assuming he is eligible to do so.

### **My final decision**

As I've explained, I'm upholding this complaint. Santander Consumer (UK) Plc trading as Santander Consumer Finance need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 March 2024.

Clare King  
**Ombudsman**