

The complaint

The estate of Miss D complains that Santander Consumer (UK) Plc irresponsibly gave the late Miss D a conditional sale agreement she couldn't afford.

What happened

In November 2018, Miss D acquired a static caravan using a conditional sale agreement from Santander. The cash price of the caravan was £41,400. She part-exchanged an existing caravan (also under finance from a different lender) and used the equity to pay a deposit of £3,306.62. She also paid a further cash deposit of £1,000. The amount financed by the conditional sale agreement was £37,093.38. Miss D was required to repay 120 monthly repayments of £442.78.

The estate of Miss D notified Santander in November 2022 that Miss D had sadly passed away. The estate agreed to voluntary termination of the conditional sale agreement. Following the termination, Santander said that there was a balance of £3,602.83 outstanding that the estate was required to repay.

The estate of Miss D complained about Santander's decision to lend to Miss D. The estate said that Miss D was retired at the time of the finance application and the monthly repayments were almost half of her entire income. The estate said that the agreement had been unaffordable from the beginning and that appropriate affordability checks by Santander would have shown this.

Santander didn't agree it had acted unfairly when lending. It said it carried out appropriate checks before lending and these checks didn't reveal any affordability concerns.

I sent the estate of Miss D and Santander my provisional decision on 22 December 2023. I explained why I thought the complaint should be upheld in part. I said:

Prior to lending, Santander needed to complete checks to ensure Miss D would be able to afford the repayments without difficulty. There isn't a set list of checks it needed to complete, but it needed to ensure that what checks it did were proportionate in the specific circumstances of that lending decision. In deciding what would be proportionate, it needed to take into account things such as (but not limited to): the amount borrowed, the total repayable, the size of the regular repayments, the term, the cost of borrowing and the consumer's specific circumstances.

As part of the application Miss D declared she was retired with an annual income of around £11,500. She declared a monthly rent payment of £200. Santander completed a credit check which showed she had no existing credit commitments and no history of repayment difficulties with credit. It says based on this it found no affordability concerns.

I find it concerning that Santander was so comfortable that the results of its checks showed no affordability concerns. Especially in the context of this being a ten year agreement with a total repayable in excess of £57,000. At best, Miss D had a

monthly income of around £955 based on what she had declared on her application. After taking away her declared rental payment and payment to Santander, she would have been left with around £310 to meet all of her other essential living costs, including council tax, bills, food, travel and clothing. On top of this, she would be responsible for annual site fees for the caravan as well as utility bills and insurances for it. What Santander could see clearly ought to have concerned it about Miss D's ability to repay the borrowing without difficulty. It's not inconceivable that her essential bills and site fees might exceed that £310 monthly figure leaving her with nothing to buy food.

I've noted that the caravan site which brokered the finance agreement had a discussion about affordability with Miss D before applying for the finance with Santander. It appears that the broker was aware that Miss D's family would be contributing towards the cost of the caravan and this was written in its sales notes. Santander says it didn't know this when accepting the finance application. But it has also provided the notes from the broker to us, so presumably was provided with those documents at some stage.

In any event, Section 56 of the Consumer Credit Act 1974 has the effect of holding Santander responsible for the 'antecedent negotiations' between the broker and Miss D when entering into the conditional sale agreement. Therefore, anything that was said, promised or discussed by the broker in relation to the sale of the caravan being financed by way of the conditional sale agreement is to have been said on behalf of Santander.

This means that Santander's agent (the broker) and by extension, Santander itself, was aware prior to entering into the agreement that Miss D was either: (a) likely not able to afford the credit agreement without assistance from family; and/or (b) was not the one that would be making the payments under the credit agreement. I think this on its own would have been enough to not progress with the application at all, but at the very least ought to have prompted Santander to do more thorough affordability checks before proceeding. I think proportionate checks ought to have included verification of Miss D's income and expenditure.

I can't be sure exactly what evidence and information Santander would have discovered. But in the absence of anything Santander did, I've relied on copies of Miss D's bank statements from around the time of the sale. I'm not suggesting Santander needed to manually review her bank statements before lending, but I think the information contained in them gives a good indication of what Santander would likely have discovered about her regular income and expenditure if it had sought to verify this in some way.

Having done so, it's clear that Miss D's income was broadly what she had declared and that after deducting the regular repayment to Santander, her regular monthly living costs far exceeded what she had left. I'm therefore satisfied that any reasonable further enquiries into Miss D's financial circumstances would have revealed that this conditional sale agreement was unaffordable to her. This means I think Santander acted unfairly when lending.

I've therefore thought about how to put things right. In doing so, it's important to note that while the conditional sale agreement was unaffordable to Miss D, it doesn't appear that she (or her estate) has suffered any financial loss in relation to it, at least not until the agreement was ended by voluntary termination.

I say this because it appears all the repayments (less a small sum each month of

£36.78) was paid by Miss D's family. A similar arrangement appears to have been in place with Miss D's previous static caravan, whereby a family member was paying the monthly repayments on her behalf. According to the notes from the broker in this sale, Miss D's family appear to have been present during the sales process and had jointly agreed to the monthly repayment figure and had agreed to contribute towards the costs, as they would be using the static caravan too.

It seems there had always intended to be an arrangement between Miss D and her family that the conditional sale agreement would be in her name, but that someone else would make the majority of the repayments for her. As someone else was making the majority of the payments, I can't see that Miss D suffered any financial loss as a result of Santander accepting her finance application. It seems Miss D was able to afford the £36.78 each month that she contributed. I'm also mindful that Miss D and her family had use of the caravan over a four year period.

Having said this, the estate of Miss D has suffered a financial loss upon voluntary termination. This is because Santander is seeking recovery of the shortfall of around £3,600 from the estate. As I don't think Santander should have entered into the conditional sale agreement, I don't think it's fair or reasonable that it now seeks to recover that shortfall from the estate. This is because the estate ought never to have been in a situation where it needed to pay this sum to Santander if it had acted fairly during the application.

In making this award, I'm mindful that Santander has already received repayments over a four year period towards this agreement which I'm not proposing it refunds (as those payments were largely not made by Miss D or her estate) and they will adequately account for any fair usage Miss D and her family received of the caravan.

Santander had nothing further to add. The executor of Miss D's estate said that Santander ought to pay compensation for the emotional distress it caused Miss D and the executor of the estate. The executor of the estate said that as well as the finance, Miss D was also responsible for site fees, upkeep and utilities which were not small expenses.

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.

I've carefully considered the additional points the estate of Miss D has made in response to my provisional decision. While I realise this will come as a disappointment, I don't think Santander needs to pay further compensation on top of writing off the remaining balance of the loan. I'll explain why.

I note the executor of the estate has said that Santander's actions caused them distress. I don't doubt that, but I can only consider losses or compensation incurred by the eligible complainant. The eligible complainant in this case is the late Miss D and her estate, not the executor(s) as individuals.

I've not seen anything to persuade me that Santander's actions in lending to her caused Miss D distress or any financial loss. As I set out in my provisional decision, her family were covering the majority of the costs of the finance agreement and this appears to have been pre-agreed between them prior to entering into the agreement. While I accept that additional costs will have been incurred by Miss D while in possession of the caravan, I've seen insufficient evidence to demonstrate those costs were unaffordable to her.

For the reasons I gave in my provisional decision, I think Santander did act unfairly in entering into the finance agreement with Miss D. But that did not cause Miss D or her estate any financial loss (when taking into account fair usage of the caravan) until the agreement was terminated and the caravan handed back. I'm therefore satisfied that a fair way to put things right is for Santander to end the finance agreement with nothing further to pay.

My final decision

For the reasons given above, I uphold this complaint and direct Santander Consumer (UK) Plc to:

- End the conditional sale agreement with nothing further to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss D to accept or reject my decision before 22 February 2024.

Tero Hiltunen
Ombudsman