

The complaint

Mr S complains that Santander UK Plc lent to him irresponsibly.

What happened

Mr S applied on-line to Santander for a £10,000 loan on 18 August 2023. He supplied information on the application form, the loan was processed and approved. The total to pay over the three year term was £14,135.40. The agreement commenced on 25 August 2023.

Mr S completed a Direct Debit form on 26 August 2023 to make the repayments of £392.65 for 36 months. The first repayment was due on 1 October 2023 and then the first of each month after that. Mr S contacted Santander on 11 September 2023 to say he was not going to be able to pay at that rate. On the information I have - so far Mr S has paid £1 and says he has spent the £10,000. Mr S says his current circumstances are such that he wants Santander to write off the loan and he wants compensation.

Mr S complained to Santander on 13 September 2023 and received its final response letter on 13 September 2023. It did not uphold his complaint. On the same date Mr S referred it to the Financial Ombudsman Service.

One of our investigators looked at the complaint in detail, including the additional information Mr S supplied to him. He did not consider that Santander had done anything wrong. He did not uphold the complaint.

Santander has placed the account on hold – originally one month from 21 March 2024 while the complaint is resolved with the Ombudsman Service. It was aware the complaint was being passed to me, an ombudsman, to resolve it. And so, I am expecting that the account has remained on hold.

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.

We have set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

The rules and regulations in place required Santander to carry out a reasonable and proportionate assessment of Mr S' ability to make the repayments under the loan agreement. This is referred to a '*creditworthiness assessment*'.

A firm must base this on '*sufficient information*'

*'(1) of which it is aware at the time the creditworthiness assessment is carried out;
(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and*

the information must enable the firm to carry out a reasonable creditworthiness assessment.'
– Mr S Credit Sourcebook (CONC) rule 5.2A.7.

CONC contains rules and guidance in relation to the factors that should be taken into account when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

Santander had to think about whether repaying the loan would be sustainable. In practice this meant that the Santander had to ensure that making the repayments on the loan wouldn't cause Mr S undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments he had a contractual or statutory obligation to make, and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Santander to approach the loan application from the perspective of the likelihood of getting its money back. Santander had to consider the impact of the loan repayments on Mr S. Checks also had to be *'proportionate'* to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon several factors including – but not limited to – the circumstances of the Mr S (e.g., their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a Mr S's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- the greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr S's complaint. Having looked at everything I have decided to conclude the affordability checks were proportionate and the loan was not approved irresponsibly.

I have the advantage from both parties of Mr S' application form, his explanation about the entries he made on that form, financial information, records, copy bank statements and two sets of credit histories about Mr S. One set is the credit search results Santander obtained in August 2023 before approving the loan. The other set is a more recent personal credit file (October 2023) report sent to us by Mr S which covers the lending period. And Mr S has sent to us his bank statement for his account plus a detailed explanation about some of the entries I would see on those statements. I'll refer to these later in the decision.

One set of guidance in CONC states that income can include money other than salary and wages. I appreciate that Mr S has admitted to not being truthful on the application form to get the loan – a point that Santander has noted. But I also note that Mr S has proved to us through his copy bank account statements that he did receive the following:

- ESA of just under £451 every two weeks and

- PIP of £691 every four weeks.

These figures added together for a four week period comes to £1,593 which, when translated into a calendar month equivalent means Mr S was receiving about £1,725 income which is more than the £1,400 a month he declared on the application form I have seen.

And so, even if Santander had enquired further into exactly what Mr S received as income, I doubt it would have made a difference to its creditworthiness assessment overall. So, Mr S' concern about Santander's apparent lack of checks about whether he was employed when he has said he was not, is not persuasive to me that Santander has done anything wrong here – especially considering Mr S having told us that he wasn't honest on the form to get the loan. And being in receipt of benefits is not a reason to decline a loan.

I note that Santander used Office of National Statistics (ONS) data to have an idea of Mr S' expenditure and it was a figure (£734 each month) well within the income range. The copy bank statements I have seen (not that I would have expected Santander to look at them) indicates to me that his household expenses were not likely higher than this figure used. I consider this a reasonable and proportionate approach by Santander.

Santander has sent the credit check results it received before approving the loan. Neither Santander's credit check nor Mr S' own personal credit report sent he's to us reveals anything that would have led it to think Mr S was having, or likely having, financial difficulties. He had very little existing credit overall. He had no adverse entries at all. He had no entries relating to insolvency or late payments across any account.

Mr S provided a plausible reason or the loan being needed.

In these circumstances, it would not have been expected, and it would have been disproportionate, for Santander to have asked for and reviewed several sets of personal bank statements before lending Mr S this loan. He was not an existing Santander customer. And so, any evidence of transactions which Mr S has said relate to gambling would not have been seen by Santander. There's no evidence of Mr S telling Santander about his gambling. There is a term in the loan agreement which is that use of the loan funds for gambling is not allowed.

I realise that Mr S thinks that Santander ought to have had all the information he may have had before approving the loan. But the regulations covering responsible lending for regulated firms do not require that. I have decided on all the evidence, the checks carried out by Santander were proportionate and I would not have expected it to have done more than it did before lending £10,000 to a new customer with repayments of just under £393 a month. Even accounting for the length of term, which I have done, still I think it did enough.

Mr S' personal conditions

For privacy reasons I do not give details here of all that Mr S has told us about three conditions from which he suffers and for which he has said he expected Santander to have accommodated him. It's already been mentioned that Mr S was in receipt of certain benefit payments. Mr S also maintains that Santander failed to recognise and accommodate his conditions when assessing his loan application. Mr S has criticised the form in that it had no space or place in which he could '*declare my reliance on... benefits (ESA and PIP)*'

He says that but for this omission by Santander, '*...it is highly probable that my loan request would have been rightfully declined, thus preventing the current predicament.*'

Mr S goes on. He has sent to me a medical letter (undated) which relates to a request that a benefits assessment is carried out at Mr S' home rather than at a centre. This mentions that two years before this letter was written he had been in supported accommodation. This links with Mr S' point that it was a significant detail which in his view ...

‘...indicate[s] potential limitations in my mental capacity to understand and consent to financial agreements.’

He says Santander would have seen reference to this address on his credit search report. It shows on the personal one he has sent to us. There’s no evidence of it appearing in the Santander credit search details it obtained in August 2023. Even if it did see reference to a former address, I’d consider it disproportionate for Santander to be expected to investigate past addresses of an applicant and what that may mean to an individual. So, I disagree with Mr S’ submissions here.

However, to address Mr S’ concerns my review of the mental capacity element he’s raised with his complaint has led me to consider the statutes relating to mental capacity and the Code of Practice linked with that legislation. In relation to a complaint, then the CONC Guidelines chapter 2.10 are the relevant set of provisions.

The starting point for this complaint is in CONC 2.10.4 of the Guidance which states that:

‘A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.’

And the FCA Guide lists some indicators *‘behavioural or otherwise’* which if the lender observes any of them, may lead to the firm having reasonable grounds to suspect that a customer may have some form of *‘mental capacity limitation’*.

There was nothing in the evidence I have from either party that Santander knew, or ought to have known, of Mr S’ issues. And I go further, even if it had – which I do not accept – then Santander’s regulator states at CONC 2.10.7:

‘...this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision.’

And so, I do not accept that Santander’s application form was lacking, or that Santander knew or ought to have known all that Mr S told it later about his disabilities. And it’s not incumbent on a lender to decline an applicant based on any evidence of that nature – this would potentially be discriminatory.

CONC 7.3 – treating a customer fairly

Mr S has sent to me no evidence of Santander having treated him unfairly. This is a new element of the complaint. This was raised by Mr S after the view written by our investigator.

If Mr S wishes to raise this as a separate complaint he could do so and then evidence may be sent to the Financial Ombudsman Service if it comes to us. But as it’s recently been raised then I do not plan to delay the resolution of the main plank of this complaint – irresponsible lending – by focussing on what happened after the loan had been approved. Added to which, Santander has not been informed of this element and to comply with the principles of natural justice it deserves a chance to consider it and reply. But that is not within this complaint.

Request that the loan is written-off

Mr S has asked that the loan is written off. As I have made a decision that the loan was not irresponsibly lent then I can make no redress directions and I have no grounds on which to direct Santander to do what Mr S wants – which is that £10,000 of cash he received and had

the benefit of be written-off. If Mr S has no means with which to pay it back, that will have to be a matter he submits to Santander.

Having said that, Santander currently is aware of Mr S' financial and personal situation and so moving forward will need to factor these into any future debt collection activities. I remind Santander of its obligation to treat Mr S fairly and with forbearance.

My final decision

My final decision is that I do not uphold Mr S' complaint about irresponsible lending.

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

Rachael Williams
Ombudsman