

The complaint

Ms C and her representative complain that Santander Consumer (UK) Plc (“Santander”) irresponsibly granted her a conditional sale agreement she couldn’t afford to repay.

What happened

In April 2022 Ms C acquired a used car financed by way of a conditional sale agreement from Santander. Ms C was required to make 48 monthly repayments of £401.11, having paid a deposit of £500. A final payment of £12,872.00 was due at the end of the agreement. The total repayable under the agreement was £32,625.28.

The car was eventually sold at auction after Ms C voluntarily terminated the agreement. Ms C remains liable for the outstanding debt.

Ms C and her representative say that the agreement wasn’t affordable and that Ms C was coerced by a third party into entering into it on the understanding that the third party would meet the monthly payments. The third party took over the use of the car from Ms C soon after she took out the agreement. The car was eventually recovered by the police.

Our investigator recommended the complaint be upheld. She thought Santander ought not to have granted the agreement to Ms C once it was aware of the possibility that the agreement was being taken out under coercion. Our investigator also thought that Santander ought to have done more to help her once the agreement had started. Our investigator also thought that had Santander carried out better checks before agreeing to provide the finance it would have seen that the agreement was unlikely to be affordable.

Santander didn’t agree with our investigator’s findings and said all its checks at the time of the agreement had been adequate. It also relied on evidence and information provided by the car dealership.

The case has therefore been passed to me 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.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it, but because I don’t think I need to comment on it in order to reach what I think is the right outcome. As this decision will be published and the given the specific circumstances of this complaint, I have also refrained from making reference to personal details about Ms C as far as possible.

Santander will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So,

I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

In this decision I will first consider the complaint issue that Ms C was coerced into taking out the agreement and that Santander ought to have been aware of this and taken appropriate action. I will then consider whether Santander acted unfairly in deciding to go ahead with giving Ms C finance that was unaffordable to her and which she would be unable to repay sustainably. Finally, I will consider whether Santander ought to have done more to help Ms C once the agreement had started.

Did Santander act fairly and reasonably towards Ms C once it was on notice of allegations of coercion?

Ms C's conditional sale agreement was regulated under the Consumer Credit Act 1974. That means Santander was responsible as the lender for the actions and omissions of the car dealership before the agreement was put in place.

Our investigator thought that Santander ought to have been aware that Ms C was being coerced into taking out the agreement. This was because of a communication that was made to the dealership by a relative. Our investigator said that it wasn't enough for the dealership to have responded to this by getting Ms C to sign a declaration saying that this was untrue and she wanted to go ahead with the agreement.

Santander recently obtained evidence from the dealership. The representative from the dealership says that Ms C was taken to a separate room to ask her about the communication it had received from the relative. In response, Ms C said words to the effect that she was entitled to make decisions on her own behalf. She went on to sign a short note saying that the allegations were untrue and she was happy to go ahead with the agreement. The dealership has also pointed out that the deposit funds came from Ms C's own bank account and that Ms C had signed a document confirming that she understood the finance was being taken out solely in her name.

My role as an ombudsman is to review afresh all the evidence and information in a complaint. I have also kept in mind what evidence and information was likely to have been available to Santander at the time, rather than relying on hindsight.

Ms C provided us with evidence showing that she had a history of mental and physical health issues. This isn't something that was likely to have been available to Santander at the time. Ms C has also pointed out that her driving licence at the time was provisional. That's not necessarily something that in itself suggests the finance ought not to have been provided, although the value of the vehicle and therefore the amount of finance was relatively unusual for a first-time driver.

I think the key issue here is that the dealership didn't do enough to ensure that Ms C wasn't being coerced into taking out the agreement. Having been informed that Ms C was a vulnerable person and of the possibility that someone else was making her apply for the finance, it was open to both the dealership and Santander to carry out further enquiries to ensure that Ms C was making the decision to apply for the finance on her own and without being subjected to the pressure and influence of a third party. Alternatively, having been informed of the situation, it was open to Santander to reject the application.

The dealership has pointed out that third parties often attend with a purchaser to buy a car and there was nothing in the demeanour of those who were with Ms C to suggest that she had been coerced or put under pressure of any sort. But the issue here is that the dealership was already on notice that Ms C was a vulnerable individual. I think it follows from that

knowledge that simply checking with her that she was happy to go ahead with the purchase and then sign something to that effect wasn't enough to deal with the possibility that she was being coerced into the transaction.

I am therefore satisfied that Santander failed to act fairly and reasonably towards Ms C, having been put on notice of the allegations of coercion towards her.

It follows that I am upholding this complaint.

Unaffordable lending complaint

Were the checks that Santander carried out before lending to Ms C reasonable and proportionate?

For completeness, although I have already made an uphold finding in this complaint, given that our investigator has looked into the unaffordable lending aspect, I've considered that too.

Ms C says the agreement wasn't affordable. So I've looked at whether Santander carried out reasonable and proportionate checks and what better checks would have been likely to show.

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 Ms C could make her payments in a sustainable manner before agreeing to lend to her. 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.

Santander says it carried out an identity and credit check before granting the finance. Ms C says she was asked to bring a payslip as evidence of her income. She also says she was asked to provide details of her monthly expenses and bills.

Santander has provided us with some screenshots from its checks. But it hasn't really provided much else in the way of detail about the checks it carried out before agreeing to lend to Ms C. That said, the information provided does suggest that it obtained some information from Ms C and carried out some checks that are consistent with what Ms C has told us.

The screenshot information I've seen shows Ms C's net monthly income and that she was living with her parents. It also shows that Ms C had a good recent financial history with no significant adverse markings on her credit file, such as late payments or defaults. Ms C also sent us a copy of her credit report which backs that up. So it seems as though Santander concluded that Ms C could afford to make her payments each month because she wasn't in arrears on her existing credit commitments.

But as things stand, I can't see evidence of what Santander found out about what Ms C's regular monthly non-credit commitments were. Without having details of her regular monthly expenses, Santander wouldn't have gained a reasonable understanding of whether the agreement was affordable or not. I think this was necessary given the size of the repayments and that Ms C would need to be able to sustainably make them over four years. That means, based on what I've seen, I'm not able to say that Santander completed proportionate checks.

Would reasonable and proportionate checks have indicated to Santander that Ms C was unable to sustainably make the monthly repayments to her 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 indicated to Santander that it was unfair to enter into this agreement with Ms C.

I can't be certain what Ms C would have told Santander had it asked about her regular expenditure. I don't necessarily think Santander needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in the statements Ms C has sent us, covering the three months leading up to the agreement. This is helpful to gain a reasonable idea of what would most likely have been disclosed.

I see our investigator looked at these bank statements but I've also reviewed them myself. Ms C has also told us about a saving account she was using for specific future expenditure – as well as a safeguard given that her income stream was variable. The statements show Ms C's income which is broadly in line with what she told Santander. Although she was living at home, Ms C was also paying £500 each month towards household costs. Ms C also paid for her own food and transport costs. She was also making use of short term borrowing to pay for certain items. All of this worked out to a further £800 each month. Having noted that there was some variation in her income each month, sometimes by as much as several hundred pounds, I think in some months she wouldn't have had enough to meet her regular outgoings, even before allowing for the repayments due under the agreement. I also think an important factor is that Ms C didn't have a car previously and so wasn't already facing the regular expenses, such as insurance, petrol, road tax and repairs, that go with car ownership. And given that in any event she also wouldn't have any disposable income left over once she made her monthly repayment, the agreement appears to have been unaffordable.

It follows that what I've been provided with indicates Ms C could only just manage the monthly repayments, without any disposable income available to her. I'm therefore satisfied that she wouldn't be able to sustainably afford the monthly payments for this agreement, let alone the associated running costs for the car. In these circumstances, I'm satisfied that Ms C simply wasn't in a position to make the monthly payments to this agreement, without borrowing further and thereby having a significant adverse impact on her financial position.

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

Forbearance and options to end the agreement

Again, given that our investigator commented on this issue, I've also considered what Ms C has said about the steps Santander took to help her when she contacted them after the agreement had started.

Ms C told Santander that the third party was now using the car exclusively and that the car registration was in their name. By this point, Santander had already been contacted by one of Ms C's relatives who had raised concerns about Ms C being a vulnerable person and having been coerced into taking out the agreement.

Having explained that a third party was now using the car, Ms C was told by Santander's representative that she would need to keep up with the repayments. Ms C also requested details of how much it would cost to settle the agreement. Santander said it would keep the file under review. She was also told that she would be liable for costs if Santander had to trace and recover the car. In terms of further options available to her, she was also told she

could alert the police as to what had happened or voluntarily terminate the agreement – a step that would have required Ms C to pay a high proportion of the agreement balance plus the costs of returning the car. It appears that Santander was already aware that the car was uninsured.

I therefore agree that Santander ought to have done more to support Ms C given what it now knew and that this backed up the information that had previously been provided – but not acted upon – at the start of the agreement.

Putting things right – what Santander needs to do

For the reasons given above, I uphold this complaint and direct Santander to:

- Refund all payments Ms C has made, including the £500 deposit, towards the conditional sale agreement.
- Pay Ms C 8% simple interest per year on each amount she paid, from the date of each payment to the date of settlement.*
- Cancel the debt with nothing further to pay.
- Remove any adverse information from Ms Cs credit file in relation to the agreement (if it has not done so already).

*HM Revenue & Customs requires Santander Consumer (UK) Plc to take off tax from this interest. Santander Consumer (UK) Plc must give Ms C a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've given I uphold this complaint and require Santander Consumer (UK) Plc to compensate Ms C in the manner I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 5 July 2024.

Michael Goldberg
Ombudsman