

## **The complaint**

Ms M complains that Santander Consumer (UK) Plc ("Santander") gave her a loan without conducting an affordability assessment.

Ms M also says that when her circumstances changed Santander didn't help her for example by lowering the loan interest rate. Due to Santander's actions Ms M had a County Court Judgement (CCJ) recorded against her and a charging order on her property.

## **What happened**

In November 2011, Santander provided Ms M with a fixed sum loan agreement to purchase a car. The price for the vehicle was £5,757.49 and Ms M made an advanced payment of £800. This left £4,957.49 to be financed at an APR of 17.3%. Ms M was due to make 59 monthly repayments of £119.13 followed by a final payment of £269.13. Had Ms M paid the loan in line with the agreement she would've repaid a total of £6,097.80.

Ms M had some problems repaying the agreement and Santander sought and was granted a CCJ in June 2013. This was followed by a charging order on Ms M's property in August 2017.

Santander issued a final response letter in August 2023 dealing with Ms M's complaint, and it didn't uphold the complaint. Unhappy with this response, Ms M referred the complaint to the Financial Ombudsman.

Initially, the investigator reviewed whether the complaint had been made in time, in order to be satisfied the complaint was within our jurisdiction. However, Santander consented to an investigation and so this jurisdiction concern fell away.

The first outcome reached by an Investigator was that the complaint ought to be dismissed because a court had granted a CCJ and so the investigator said we ought not to consider the complaint further.

An ombudsman colleague then reviewed the complaint and decided that the part of Ms M's complaint concerning the affordability checks ought to be considered. But she said anything to do with the help and support offered by Santander while Ms M was experiencing financial difficulties ought to be dismissed without further consideration.

Both parties appear to have agreed and the case was returned for an investigation into what happened when the loan was granted. An Investigator didn't uphold Ms M's complaint. He said that Santander hadn't done enough checks when the loan was granted but as Ms M couldn't provide copies of her bank statements from around the time the loan was approved, he wasn't able to say what Santander may have seen had it made better checks.

Ms M disagreed and I've summarised her response below;

- Santander hasn't provided any information to show what figures it used for Ms M's outgoings.

- At the time Ms M was in arrears with her mortgage and had requested payment holidays.
- It isn't possible to obtain bank statements or a credit report from the time.
- Ms M says her income at the time was around £1,000 and her outgoings were more than this each month.

These comments didn't change the investigator's assessment and so the complaint has 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.

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 Ms M's complaint. Having carefully thought about everything I've been provided with; I'm not upholding Ms M's complaint. I'd like to explain why in a little more detail.

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 any lending was sustainable for Ms M before providing it.

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.

This decision only deals with Santander's checks and decision to provide the loan, it doesn't deal with what happened afterwards and its treatment of Ms M while she was in difficulties, due to the reasons given in my colleague's decision.

The first thing to say is that this loan was taken out over 12 years ago and that has meant – due to the passage of time - that some of the information and evidence that was either collected or would now need to be reviewed is no longer available. This isn't surprising. But I am required to come to a decision, and I've done so based on the evidence and information that has been sent to me.

I think at the time Santander would've likely asked Ms M for details about her income and may or may not have asked her about her outgoings. It isn't possible to know because the information is no longer available. So, I can't be sure what if any income Ms M declared to Santander at the time – or indeed whether it was asked about. But Santander did know about Ms M was in full time employment and that she had worked there for over six years – which would've shown it some stability in her employment history.

However, I do know at the time of the loan being advanced a copy of Ms M's mortgage statement was provided covering the period between July and September 2011. This statement showed during these dates that the mortgage payments had been made, as expected. There was no evidence from the statement of any arrears or payment holiday requests.

Santander has also carried out a credit search and it has explained that the full results it received are no longer available, but it has provided a summary document of what it was told. It is also worth saying here that Santander wasn't required to carry out a credit search let alone one to a specific standard.

I haven't read too much into the fact the full report isn't available, but I've reviewed the summary to see whether there was anything concerning which ought to have led Santander to either reject the application or to have conducted further checks.

The results, in the summary document showed that Ms M didn't have any defaulted accounts, CCJs or delinquent accounts. The credit results indicated that Ms M had 9 active credit accounts, and these had been well maintained. The results also showed she had a mortgage payment of £437 per month which is echoed in the mortgage statement. In addition, the credit check results indicated Ms M's existing credit commitments were at least £351 per month (in addition to the mortgage).

I think Santander ought to have investigated Ms M's finances more closely and sought to have verified her income and expenditure given what it didn't really know what other outgoings she had. So, I don't think its checks went far enough but that doesn't mean that Ms M's complaint can be upheld.

If it is decided that a lender's checks needed to go further before a loan or other forms of credit are granted, then we try to, as far as it is possible to recreate what the lender may have seen at the time had a proportionate check been conducted. This usually involves asking for further information such as bank statements, tenancy agreements, full credit reports or any other documentation that can be provided to show a customer's financial circumstances at the time the credit was advanced.

Tying to the circumstances of this complaint, Santander's checks were not likely proportionate and as such I now need to review and think about what Santander may have discovered had it conducted better checks. And whether those checks would've led it to conclude that Ms M couldn't afford the monthly repayment, she was committed to making.

I can see the Investigator asked for bank statements as a way of seeing what Ms M's financial circumstances were at the time, this isn't an unreasonable approach to have taken. And I can see from the emails that Ms M has tried to obtain a copy of her bank statements as well as her credit file from 2011 but it's not been possible to get hold of these due to the amount of time that has passed.

In the absence of this evidence – or any other documentary evidence from this time, I can't fairly say Santander would've known the loan was unaffordable for Ms M without any evidence of this. As such, and I know Ms M will be disappointed by this, but I can't uphold her complaint against Santander.

I've seen copies of other correspondence in 2012 where she reached out to another bank to let them know about her change in circumstances as well as the letter, she sent to Santander at the end of 2012. However, these letters only tell me that Ms M has struggled with payments due to a change in circumstances. Unfortunately, they don't show me what her financial position was in November 2011.

Ms M has also mentioned a completed income and expenditure (IE) form which shows that with her loan repayment to Santander her monthly outgoings were more than her income. I've looked on file for this document, but I can't see a copy of it.

However, Ms M has said she was advised to send an IE by a debt counsellor – indicating it was completed after the loan was granted. Ms M has provided a copy of a letter she sent to Santander in December 2012. This letter also referenced phone calls with Santander in September 2012 and provided further details of her change in circumstances over the previous 6 months.

The system notes provided by Santander also show that it was aware Ms M was receiving help in October 2012 – but this was after the loan was approved and its around this time that the first mention of any external support that Ms M was receiving has been acknowledged.

So, I can't fairly say is that the IE showed Santander what Ms M's finances were at the time the loan was approved – given the content of the system notes as well as what Ms M said in her December 2012 letter. Rather, it's more likely the IE shows what Ms M's financial position was at a later date when she explained her difficulties.

But even if I am wrong about the IE form and it was produced around the time the loan was advanced, I still can't be sure exactly what information Santander would've likely discovered from conducting what I consider to be a proportionate check – given the lack of other supporting documents. Or whether the information Santander may have collected from Ms M at the time was consistent with the information in the IE document.

Having reviewed all the evidence, I am in the circumstances of this complaint not upholding it because although a proportionate check wasn't conducted, I can't say for sure what Santander would've seen had it made better checks and therefore I can't fairly conclude the loan wasn't affordable for Ms M.

### **My final decision**

For the reasons I've outlined above, I am not upholding Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 July 2024.

Robert Walker  
**Ombudsman**