

## The complaint

Mr A complains through a representative that Santander Consumer (UK) Plc ("Santander") gave him a conditional sale agreement without carrying out a sufficient affordability assessment.

## What happened

In July 2019, Santander provided Mr A with a conditional sale agreement for a used car. The cash price for the vehicle was £7,489 and Mr A paid a £1,000 deposit. £6,489 was financed with a total of £2,742 in interest, fees and charges. If Mr A paid the finance in line with the credit agreement, then he would've repaid a total of £10,231. This was through 60 monthly repayments of £153.85. The statement of account provided shows the agreement was settled in December 2023.

Santander issued a final response letter about Mr A's complaint, and it didn't uphold it because it considered that it fairly assessed the agreement as being affordable. Mr A's representative then referred the complaint to the Financial Ombudsman.

Mr A's complaint was considered by an investigator didn't uphold the complaint saying reasonable and proportionate checks hadn't been conducted before the agreement started. However, had Santander made further checks, such as checking his bank statements it still would've concluded the loan was affordable for him.

Mr A's representative disagreed, and I've summarised the response below.

- Santander's checks failed to meet the requirements under the regulators responsible lending guidance. The checks should be rigorous and personalised especially for a loan of this size with the long-term financial commitment needed.
- Mr A already had significant debt when the loan was granted, and Santander should've taken steps to find out about his existing liabilities.
- The temporary transfers into Mr A's bank accounts were loans and support from family members.
- Mr A's testimony shows that his outgoings exceeded his income.
- Santander didn't consider the day to day running costs of having the vehicle.
- Mr A has had substantial repair bills for the car including having to replace the clutch.
- Santander's assessment didn't consider the non-financial effects the agreement had on Mr A.
- Mr A was subject to pressure from the sales adviser when the finance agreement was granted.

These comments didn't change the investigator's assessment Mr A's representative provided a further response, but it covered many of the same points it outlined in response to the investigator's assessment. And so, as no agreement could be reached the complaint has been passed to an ombudsman 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.

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 Mr A's complaint. Having carefully thought about everything I've been provided with, I'm not upholding Mr A'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 Mr A before providing it.

I understand why Mr A's representative says the checks need to be rigorous – but that isn't what the regulations say. It has to be proportionate to the circumstances of the application as well as a number of factors that I've explained below.

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.

I'm sorry to hear about the impact repaying this loan had on Mr A but financially as well as with regards to his health. I do hope things have improved for him and my findings below set out why, in the circumstances of this case, I don't think Santander was wrong to have advanced the loan.

Mr A's representative has also raised concerns, in the wider context of the complaint about a number of issues Mr A has had with the car which has left him with significant repair bills and that he had to borrow further funds in order to pay for these. I've thought about this and while I'm sorry to hear about what has happened with the vehicle, I don't think it is fair for me to be able to say that Santander ought to have fairly known that Mr A would have these issues at the point it was approving the finance. If Mr A has any concerns about the quality of the vehicle then he'll need to take that up as a separate matter.

Santander, as part of the application process, took details of Mr A's gross annual income which has been recorded as £40,000. This has been worked out to equate to a net monthly income of £2,561.32. Santander also says that Mr A's income may have been validated against data held with a credit reference agency. It also knew that he worked full time and had been in the same job for over three years and so would've created a degree of certainty that he was in stable employment.

Santander then went about establishing some living costs for Mr A – it has used statistical data from a number of sources including the Office of National Statistics as well as data that is found on Mr A's credit file – which I come on to below.

Santander worked out that Mr A had around £815 per month to afford the loan payments of around £154 per month. The loan appeared affordable based on its checks. As a starting point it isn't unreasonable for a lender to rely on statistical data to establish non-discretionary living costs – as this is set out in the regulations – CONC 5.2.19A.

As I said above, Santander also conducted a credit search before granting the agreement and it has provided a summary of the results that it received. I've considered these results to in order to see whether Santander was given any indication that Mr A was, or was likely to be, having financial difficulties at the time the agreement was granted.

Santander knew that Mr A had six active credit accounts, and he had a total of £1,976 worth of credit card debt at the time. He had non-revolving monthly commitment of £55 and total outstanding debt of £3,900. All these active accounts were up to date with no missed payment markers being reported.

There was no adverse credit file data, there were no defaults, County Court Judgments, or delinquent accounts. The credit file data would've suggested to Santander that Mr A was managing his commitments well without any difficulties. It also conducted a search to see whether Mr A had opened any payday loan accounts, and the results showed he hadn't used any within the last 12 months – and indeed may not have used them at all.

Given there was no adverse payment markers or information, and Mr A didn't appear to be overindebted although Mr A's testimony suggests that he was overindebted at the time. But I don't think given the credit file report Santander received that it would've conclude that. The credit check results wouldn't in my view have prompted Santander to either gather more information or to have declined the application.

I appreciate, the loan may have appeared affordable to Santander but given the term of the loan, and that is solely relied on data for living costs, I don't think that conclusion could be fairly reached and so like the investigator I do think that before the loan was approved, Santander needed to, at the very, least understand what Mr A's actual monthly outgoings were.

It could've gone about doing this a number of ways, it could've simply asked Mr A about his actual living costs, asked for evidence from Mr A about his bills, or used any other documentation it felt it may have needed or as I've done here reviewed the bank statements Mr A has provided. This didn't, and doesn't mean that, Santander had to undertake a full financial review of Mr A's circumstances, merely it just needed to obtain a better idea of Mr A's financial circumstances.

To be clear, this isn't and wasn't designed to be a full financial and / or forensic review of Mr A's finances. In my view that would've been disproportionate given the results of the checks Santander did as well as the fairly modest monthly repayment of around £154.

I accept that had Santander conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Santander conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statements that I now have access to.

The investigator concluded that had Santander reviewed bank statements or dug further into Mr A's financial circumstances it still would've provided the finance. I've taken on board Mr A's testimony, but thinking about the results of the checks Santander did do, as well as the information that I've seen in the bank statements I've concluded that even if Santander would've made better checks it still would've let to Mr A.

It also worth saying here that had bank statements been reviewed, with Mr A's salary was just over the amount Santander was told about and which it says was checked – at nearly £2,800 per month.

Had Santander reviewed Mr A's bank statements – or gathered other information about his living costs, it would've likely discovered a regular payment of £900 which is likely to be rent. There are also other payments for household utilities, insurances, car tax and other regular direct debit payments to other creditors. Like the investigator calculated I do think, these on average come to around £2,100 per month.

In addition, there are a number of payments each month to what appears to be another bank account – held with a different provider. I've not been provided with those statements, so I can't comment on what that other bank account may or may not show.

But given what I've said above about Santander not needing to conduct a forensic review of his bank statements – I do think had Santander made some further enquiries with Mr A about living costs and his financial situation that it would've likely concluded the finance was affordable for him and would've left enough month left over to cover the running costs of the vehicle – for example insurance.

An overview of the bank statements doesn't suggest that Mr A was having financial difficulties to the extent that he was missing payments or wasn't managing his financial as expected. And while I can see that Mr A was using an overdraft, that wouldn't on its own, bearing in mind the other information Santander discovered, be sufficient to say that Mr A ought to not have been granted the finance.

So even if Santander had made better checks, it still would've thought it was reasonable to have advanced this loan. I am therefore not upholding the complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Santander lent irresponsibly to Mr A or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

For the reasons I've outlined above, I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 December 2024.

Robert Walker  
**Ombudsman**