

Complaint

Mr C complains that Santander Consumer (UK) Plc (trading as Santander Consumer Finance ("Santander CF")) unfairly entered into a conditional sale agreement with him. He's said that the agreement was unaffordable for him and his struggle to make his repayments caused him ongoing financial strain.

Background

In July 2017, Santander CF provided Mr C with finance for a used car. The cash price of the car was £14,705.00. Mr C paid a deposit of £350. He then entered into a conditional sale agreement with Santander CF for the remaining amount of £14,355.00.

The loan had total interest, fees and charges of £3,936.32 and a 49-month term. This meant that the balance to be repaid of £18,291.32 (which does not include Mr C's deposit) was due to be repaid in 48 monthly instalments of £266.83 followed by an optional final payment of £5,483.48 which Mr C had to pay if he wished to keep the car.

In November 2023, Santander CF was notified that Mr C wanted to complain as he felt that it shouldn't have entered into this conditional sale agreement with him. Mr C said Santander CF ought to have realised that the monthly payments were unaffordable for him and he ended up struggling to make his repayments which caused him ongoing financial strain.

Santander CF didn't uphold Mr C's complaint. Mr C remained dissatisfied at Santander CF's final response and referred his complaint to our service. When providing its file of papers on Mr C's complaint, Santander CF told us that it believed Mr C had complained too late.

Mr C's complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Santander CF that it shouldn't have entered into the conditional sale agreement with Mr C. So he didn't think that Mr C's complaint should be upheld. Mr C disagreed and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Santander CF has argued that Mr C's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr C's complaint as being one alleging that the relationship between him and Santander CF was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr C's complaint. Given the reasons for this, I'm satisfied that whether Mr C's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr C's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr C has not only complained not about the decision to lend but he has also alleged that he suffered ongoing financial strain as a result of struggling to make his repayments.

I'm therefore satisfied that Mr C's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Santander CF. I acknowledge Santander CF may not agree that we can look Mr C's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr C's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr C's complaint is about the fairness of the lending relationship between him and Santander CF, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Santander CF) and the debtor (Mr C), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr C's complaint, I therefore need to think about whether Santander CF's decision to lend to Mr C, or its later actions resulted in the lending relationship between Mr C and Santander CF being unfair to Mr C, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr C's relationship with Santander CF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr C's ability to repay in circumstances where doing so would have revealed the repayments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Santander CF didn't then somehow remove the unfairness this created.

I'll now turn to whether Santander CF acted fairly and reasonably when entering into the conditional sale agreement with Mr C.

What we consider when looking at complaints about irresponsible or unaffordable lending

Santander CF needed to make sure that it didn't lend irresponsibly. In practice, what this

means is that Santander CF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr C 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.

Did Santander CF act fairly and reasonably when entering into the conditional sale agreement with Mr C?

Santander CF says it agreed to this application after it credit scored Mr C and this suggested that the monthly repayments were affordable for him. However, Santander CF hasn't provided us with the output of what it was that it learnt about Mr C or the actual data which it relied upon to determine that the payments to this agreement were affordable for him.

Nonetheless, I've not been provided with anything to indicate that Mr C had any significant adverse information – such as defaults or county court judgments - recorded against him. Furthermore, while I've seen what Mr C has said about the interest rate being higher and showing that his credit score was not great, the APR of 9.9% is commensurate with that generally available at the point of sale for used cars. So I'm not persuaded that the interest rate Mr C received is in itself indicative of him having had difficulties.

Nonetheless, Santander CF hasn't been able to provide the details of the information it relied on when agreeing to lend to Mr C. So I'm not in a position to agree that the checks it carried out were reasonable and proportionate. As Santander CF didn't carry out sufficient checks, I've gone on to decide what I think Santander CF is more likely than not to have seen had it obtained further information from Mr C.

Bearing in mind the circumstances here, I would have expected Santander CF to have had a reasonable understanding about Mr C's regular living expenses as well as his income and existing credit commitments. The information Mr C has provided from the time does appear to show that when his discernible committed regular living expenses are added to payments to the credit commitments Santander CF is likely to have known about and then deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I note that Mr C has now carried out a line-by-line analysis of his bank statements and, in his view, he didn't have sufficient funds to make his repayments. He's also referred to the fact that he was using his overdraft. The first thing for me to say is that Mr C's analysis has been carried out with the use of bank statements and this includes all of his expenditure. I simply wouldn't have expected Santander CF to have gone into this level of detail and I certainly wouldn't expect it to have considered all of Mr C's expenditure.

Equally, while Mr C might have been using his overdraft there isn't an automatic prohibition to lending to a prospective borrower who has used (or is using an overdraft) in the way that Mr C's arguments suggests he believes to be the case. Indeed, if Mr C is unhappy at the way that he was allowed to use his overdraft, then this is a matter he needs to take up with his bank rather than Santander CF.

I also have to keep in mind that Mr C's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mr C wanted the car that he had chosen. I therefore think that any explanations Mr C would have provided at the time are more likely to have been with a view to persuading Santander CF to lend, rather than highlighting any unaffordability. I think it unlikely that Mr C would have sought to demonstrate that the monthly payments were unaffordable, when I think what Santander CF is likely to have seen as a result of carrying out proportionate checks suggests that they were.

Having considered all of this and weighed it up in the round, I don't think that Santander CF accepted an application that it ought reasonably to have realised was unaffordable for Mr C, or that it ought reasonably to have realised would cause significant harm to him.

Indeed, while I accept that this isn't in itself determinative, I do think that the fact Mr C went on to replace this agreement with one, which he doesn't appear to have complained about and that had even higher monthly repayments, does tend to support the fact that the payments were affordable for him.

As this is the case, I don't think that it was unfair for Santander CF to have entered into this conditional sale agreement with Mr C, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr C and Santander CF was unfair to Mr C. I've not been persuaded that Santander CF created unfairness in its relationship with Mr C by irresponsibly lending to him when it entered into this conditional sale agreement with him. And I don't find Santander CF treated Mr C unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 April 2025.

Jeshen Narayanan
Ombudsman