

## Complaint

Miss W complains that Santander Consumer (UK) Plc ("Santander CF") unfairly entered into a conditional-sale agreement with her. She's said that the proper checks weren't carried out which led to her being provided with finance that was unaffordable and this led to further debt and struggles going forward.

## Background

In March 2017, Santander CF provided Miss W with finance for a used car. The cash price of the vehicle was £37,236.15. Miss W paid a deposit of £8,836.15 and entered into a 45-month conditional sale agreement with Santander CF for the remaining £28,400.00 she needed.

The loan had interest, fees and total charges of £4,902.84 and the balance repayable of £33,302.84 (which does not include Miss W's deposit) was due to be repaid in 44 monthly instalments of £529.61 followed by an optional final payment of £10,000.00 which Miss W needed to pay if she wished to keep the car.

The agreement was settled in full, after the car had been stolen and Miss W made a successful insurance claim in September 2018. In March 2024, Miss W complained that the agreement was unaffordable for her and Santander CF should never have entered into it with her. Santander CF didn't uphold the complaint and as Miss W remained dissatisfied she referred the complaint to our service.

Miss W's complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Santander CF that it shouldn't have provided Miss W with the finance. So he didn't think that Miss W's complaint should be upheld.

Miss W disagreed with our investigator 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 Miss W's complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Miss W ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Miss W's complaint as being one alleging that the relationship between her and Santander CF was unfair to her 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 Miss W's complaint. Given the reasons for this, I'm satisfied that whether Miss W's complaint about the conditional sale agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss W's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Miss W has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

I'm therefore satisfied that Miss W's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and Santander CF. I acknowledge Santander CF may still disagree that we can look Miss W'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 Miss W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss W's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her 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 (Miss W), 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 Miss W's complaint, I therefore need to think about whether Santander CF's decision to lend to Miss W, or its later actions resulted in the lending relationship between Miss W and Santander CF being unfair to Miss W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss W's relationship with Santander CF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Miss W's ability to repay in circumstances where doing so would have revealed the monthly payments 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 Miss W.

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

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 Miss W's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 it needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that a lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I kept this in mind when deciding Miss W's complaint.

### *Application to Miss W's complaint - Was Santander CF's decision to enter into the conditional sale agreement with Miss W fair and reasonable?*

Santander CF says it agreed to this application after it completed an income and expenditure assessment on Miss W. During this assessment, Miss W provided details of her employment. Santander CF says it also carried out credit searches on Miss W which showed that not only did she not have any adverse information – such as County Court Judgments ("CCJ") and defaulted accounts – recorded against her, she also had little in the way of active outstanding unsecured debt.

In Santander CF's view, when reasonable repayments to the credit Miss W already owed plus a reasonable amount for Miss W's living expenses were deducted from what it believed her monthly income to be, she had enough left over to make the monthly payments for this agreement. On the other hand, Miss W says that these payments were unaffordable.

I've thought about what Miss W and Santander CF have said.

The first thing for me to say is that I'm satisfied that this isn't a case where a lender took no steps at all to assess whether a customer was able to make the repayments to a credit agreement. Santander CF clearly asked Miss W for some information on her circumstances and it has provided a record of the results of its credit searches.

Nonetheless, while I can see that Santander CF took steps to establish Miss W's employment, I can't see that it took steps to understand what she was paid each month. In reaching my conclusions, I note that many lenders took steps to establish a customer's income electronically. Therefore, the fact that Santander CF didn't ask Miss W for payslips or other proof of income, does not in itself mean that it didn't take steps to establish the funds that Miss W received each month.

However, Santander CF hasn't said and neither has it provided anything to support it having taken steps to establish Miss W's income. And in circumstances where Miss W was being lent close to £30,000.00, I'm simply not in a position to agree that Santander CF carried out proportionate checks in circumstances where it can't show me that it knew how much Miss W received each month.

As this is the case, I've not been satisfied that Santander CF did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Miss W.

In order to do assess whether Santander CF carrying out proportionate checks would have made a difference to its decision to lend, I've looked at the bank statements Miss W has provided us with. To be clear, I've not considered these bank statements on the basis that Santander CF should have obtained them from Miss W before lending to her.

Indeed, there was and still remains no requirement for a lender to obtain bank statements from a customer, prior to lending. It is up to a lender to determine how it assesses income and expenditure. The reason I've considered the bank statements Miss W has provided is because they provide the simplest access to the information I now need to be able to determine what proportionate checks are likely to have shown, at this stage.

As I've explained, the main thing that Santander CF needed to find out about Miss W was how much she received each month. Having looked through the statements, I can see that Miss W has provided us with statements for the account that her income was being paid into and which she was receiving other regular credits.

These bank statements also appear to show that when Miss W's committed regular living expenses are combined with her payments to her credit commitments and then deducted from the total amount she was receiving, she did have sufficient funds left over to make the payments to this agreement.

I also have to consider Miss W's current submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Miss W considered that it was an appropriate time to purchase a vehicle and she clearly wanted the car she had chosen.

In these circumstances, it's fair to say that any explanations she would have provided would have been with a view to persuading Santander CF to lend to her, rather than highlighting the monthly payments were unaffordable. I say this particularly given the fact that while it is possible that Miss W did go on to borrow further elsewhere, I'm satisfied that this would have been down to matters unrelated to taking out this agreement.

Having carefully considered everything, while there is an argument for saying that Santander CF's checks before entering into this conditional sale agreement with Miss W didn't go far enough because Santander CF has not shown me that it knew what Miss W's income was and how much she received each month, I've not been persuaded that reasonable and proportionate checks would have prevented Santander CF from providing these funds, or entering into this agreement with her.

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

Bearing all of this in mind, while I can understand Miss W's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Miss W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 June 2025.

Jeshen Narayanan  
**Ombudsman**