

## The complaint

Mrs S complains that Santander UK PLC lent to her irresponsibly.

## What happened

In January 2017, Mrs S applied for and received, a loan from Santander. It was agreed on the following terms:

Date	Amount	Term	Monthly Repayment	Total repayable
6 January 2017	£1,500	24 months	£75.85	£1,820.40

The purpose of the loan was for a holiday. All repayments were made on time, and the loan was repaid in full. The final payment was made and the loan closed on 5 January 2019.

On 21 June 2024, Mrs S complained to Santander. She said she had been in debt of around £30,000 at the time and was struggling financially. She said if Santander had *“done the relevant checks and due diligence this loan would not have been awarded to [her], and the lending of it was irresponsible”*. As a result of the loan, she had to not pay other bills or essentials in order to repay it. To resolve her complaint, Mrs S asked Santander to refund the interest and charges she’d paid on the loan.

Santander looked into Mrs S’s complaint and issued a final response letter. It explained the checks it carries out on applications it receives. But it said she had complained too late for her concerns to be considered under the complaint handling rules of the Financial Conduct Authority (FCA). It didn’t uphold Mrs S’s complaint.

Mrs S didn’t accept Santander’s response, so she referred her complaint to our service. One of our investigators looked into it and didn’t agree that the complaint had been brought too late. He felt it was reasonable to consider Mrs S’s complaint to be about her credit relationship with the bank being unfair as described in Section 140A of the Consumer Credit Act 1974 (s.140). He went on to consider the detail of Mrs S’s complaint but said he didn’t have enough information from either party to say that Santander had acted unfairly or irresponsibly when agreeing the loan for Mrs S.

Mrs S didn’t accept what our investigator said so, as there was no agreement, the complaint has been passed to me 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Santander thinks this complaint was referred to us too late. Our investigator explained why he didn’t, as a starting point, think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as

described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mrs S says the loan made her financial difficulties worse and she was unable to pay other important things. This may have made the relationship unfair as she had to pay interest that she couldn't afford. I acknowledge Santander still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mrs S's complaint can be reasonably interpreted as being about the fairness of her relationship with Santander, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Santander) and the debtor (Mrs S), 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.

S.140B 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 what Mrs S has complained about, I need to consider whether Santander's decision to lend to her, or its later actions, created unfairness in the relationship between her and the bank such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs S's relationship with Santander is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Santander carry out reasonable and proportionate checks to satisfy itself that Mrs S was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Santander make a fair lending decision?
- Did Santander act unfairly or unreasonably towards Mrs S in some other way?

Santander had to carry out reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay the credit sustainably. It's not about Santander assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

#### Did Santander carry out reasonable and proportionate checks?

Santander has set out the types of things it would generally consider such as a review of the applicant's credit file, statistical information from the Office of National Statistics, and information provided by the applicant themselves.

Mrs S declared she earned £25,000 a year which gave Santander a figure of £1,614 per month net. She said she had committed outgoings of £406. So on the face of it, Mrs S had a net disposable income of £1,200 or so which is more than sufficient to cover the monthly payment of £75.

But Santander has been unable to provide details of what it found on Mrs S's credit file or its calculations regarding her expenditure. This isn't surprising given the time elapsed since the loan was agreed as businesses aren't obliged to retain records indefinitely. But as I can't see what it took into account, I can't fairly conclude that reasonable and proportionate checks were carried out.

#### What would reasonable and proportionate checks have shown at the time? Did Santander make a fair lending decision?

While there is no set list of checks lenders must do before agreeing to lend, they must satisfy themselves that the borrower would be able to repay the loan on a sustainable basis. One way of doing so is to look at the applicant's bank statements for three months or so before the application which will generally give a reasonable view of their financial circumstances at the time.

We asked Mrs S if she could provide copies of her statements from October 2016 to February 2017 to cover the period prior to her application and including the loan being agreed. Unfortunately, she was unable to do so, but she has provided a few statements from other periods. Clearly those statements wouldn't have been available to Santander, so I can't reasonably take those into account.

Mrs S has provided other information such as a financial statement from a debt charity who she'd approached for help in September 2016, and a credit report dated October 2024. I have considered those, but I don't think it would be reasonable to take them into account. I say this because had Santander asked Mrs S for more information about her circumstances, I think it's unlikely it would have asked for a statement from a debt charity or that it would have been volunteered.

The credit report doesn't show what Santander would have seen at the time as it provides a snapshot of her finances for the six years prior to October 2024 – which doesn't encompass the time that this loan was agreed.

I can't reasonably make a finding about what Santander might have found had it carried out more checks. That being so, I can't reasonably say that Santander made an unfair decision to lend to Mrs S.

Did Santander act unfairly or unreasonably towards Mrs S in some other way?

I've carefully read and considered all the information provided by each party to this complaint. Having done so I can see that Mrs S made all payments to the loan on time and repaid it in full. I've seen nothing which suggests she approached Santander for help at any time. I've not seen anything which makes me think Santander has treated Mrs S unfairly in some other way.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 July 2025.

Richard Hale  
**Ombudsman**