

The complaint

Ms W complains that Santander Consumer (UK) Plc lent to her irresponsibly.

What happened

On 13 September 2009, Ms W entered into a fixed sum loan agreement with Santander to acquire a used vehicle. It was agreed on the following terms:

Date	Amount of credit	Monthly repayment	Term	Total payable
27 Sept 2009	£10,756	£309.04	48 months	£15,983.92

Ms W made all payments to 27 June 2011 on time but on 29 July 2011, her direct debit was unpaid. From 30 August 2011, all payments were made on time until the agreement was repaid in full on 27 September 2013.

On 16 June 2024, Ms W complained to Santander saying the agreement was mis-sold to her. In summary, she said Santander:

- failed to carry out proper checks regarding whether she could afford the agreement sustainably and didn't ask for any evidence of her ability to repay it. It simply *"presumed that [her] disposable income was sufficient to cover the monthly repayments"*;
- didn't disclose Discretionary Commission Arrangements (DCA);
- breached its *"fiduciary duty"* towards her by failing *"to act responsibly in [her] best interest"* and didn't properly comply with her Data Subject Access Request (DSAR) as it didn't disclose DCA;
- didn't provide a legible copy of her credit agreement;
- failed to account for her vulnerability as English isn't her first language.

When she referred her complaint to our service, Ms W asked Santander for *"a full refund including all interest, payment protection and DCA but also a compensation for all inconvenience, stress, distress, and financial hardship the bank caused to [her] by its irresponsible lending, conspiracy and lack of transparency"*.

Santander looked into Ms W's complaint and issued a final response letter. It said:

- it had carried out credit checks and was satisfied the finance was affordable for Ms W when it was agreed. It said she had signed and affordability notice confirming she was able to make the repayments and didn't foresee any circumstances that would affect her ability to do so.
- it confirmed it had received Ms W's complaint about DCA and it had set up a separate complaint to deal with it once the Financial Conduct Authority (FCA) had completed its investigation into the issue.
- it had complied with Ms W's DSAR and provided all information it could. It had dealt with follow up correspondence and provided further copies of some documents –

including the credit agreement - to try to make them more legible.

Santander didn't uphold Ms W's complaint.

As Ms W didn't accept what Santander said, she referred her complaint to our service. Santander initially told us that it felt the complaint about the lending decision had been brought too late for us to consider it. It said the FCA complaint handling rules meant the complaint fell outside our jurisdiction on time limits.

One of our investigators looked into it. He said Ms W had brought her complaint as soon as she became aware of her cause to do so. He explained this to Santander, and it gave its consent to us looking into Ms W's concerns.

Our investigator explained to Ms W that her complaint about DCA would need to be considered separately due to ongoing legal issues, but that we could review her complaint about irresponsible lending and her DSAR. Ms W accepted that and set out a legal framework on which she had based her complaint.

Ultimately, our investigator didn't uphold Ms W's complaint. He said Santander had told us it had carried out checks on Ms W's application but was now unable to provide evidence of what it saw. So our investigator said he didn't think proportionate checks were done and went on to consider what further checks may have shown.

Our investigator asked Ms W for copies of her bank statements for a few months prior to her application so he could get an understanding of her circumstances at the time. He felt the statements showed that Ms W had sufficient disposable income to have made this agreement affordable for her. For that reason, he said that if Santander had carried out further checks, it would likely have reached the same lending decision.

Ms W didn't agree with our investigator's view of her complaint. She questioned our investigator's calculations regarding her disposable income, didn't accept that Santander had carried out a creditworthiness assessment as required in the regulations and explained more about the difficult circumstances she found herself in as a result of having this agreement. As there was no agreement, 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.

Ms W has provided a lot of information to support her case including reference to several pieces of legislation such as the Consumer Credit Act 1974 (CCA), the Consumer Rights Act 2015, Misrepresentation Act 1967 and regulations such as Unfair Terms in Consumer Contracts Regulations 1999 and those issued by the FCA. She has suggested that Santander breached the law and regulations in various ways and sought remedy due to those breaches.

The role of this service however, isn't to decide cases on a purely legal or regulatory point of view, but on the basis of what we feel is fair and reasonable – as described in the FCA's Handbook – specifically the Dispute Resolution section (DISP) 3.6.1R. While I have read and considered everything Ms W has told us, I don't propose to answer every point she's made and will instead focus for most of this decision on the crux of her complaint – that is that she feels Santander lent to her irresponsibly. That is not to be discourteous, rather it reflects the informal nature of our service.

Irresponsible lending

We've set out our approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Santander needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Ms W irresponsibly. 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 Ms W was in a position to sustainably meet the repayments?
- 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 Ms W in some other way?

Santander had to carry out reasonable and proportionate checks to satisfy itself that Ms W 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 loan 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 loan, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Santander carry out reasonable and proportionate checks?

Santander has said Ms W's application for finance was put through its usual process and approved on that basis. It explained this process involves a full review of the applicant's credit report, and a creditworthiness, indebtedness and affordability assessment. This helps the bank to build an internal credit score which allows it to agree or decline applications quickly. Some applications are referred for further assessment when more checks are necessary to verify income for example.

Santander says Ms W's application passed its checks first time which means there were no issues identified at the time of the application.

These kinds of systems are not uncommon in the industry and I think they are generally reliable enough to constitute a reasonable and proportionate check as required by the regulations. But we would normally expect to be able to see the results of the check to understand what has been considered when an application was agreed.

However, Santander has been unable to provide details of what it saw at the time. I don't think that is unusual given the lending decision took place in 2009 and the agreement was repaid in full over ten years before the complaint was raised. Businesses are not obliged to hold information indefinitely. But because I can't see what it took into account, I can't fairly say that reasonable and proportionate checks were carried out at the time.

What would reasonable and proportionate checks have shown at the time? Did it reach a fair decision to lend?

There is no set list of checks a business must carry out before agreeing to lend – it must, as I've said above, satisfy itself that any credit given is affordable for the consumer on a sustainable basis. In order to do that, it must obtain a reasonable understanding of the

consumer's financial circumstances. One way of doing that is to obtain bank statements for a few months prior to the application as our investigator did in this case.

I've looked at those same statements and have come to a similar conclusion. Based on the information contained, it appears Ms W had a disposable income of approximately £600 which was sufficient to cover this repayment of £310, and allow for some unexpected expenditure should something crop up.

Ms W has disputed this finding, saying we've used an "*overly narrow definition of outgoings*", but I don't agree. We've taken into account credit commitments and essential items such as housing costs. Had Santander asked for more information at the time – such as checking these statements – I suspect it would have reached a similar conclusion. And I note that Ms W signed a declaration confirming she felt the agreement was affordable.

Had Santander spoken to her at the time or asked further questions, I'm confident she would have satisfied it of her ability to repay the agreement. Overall, based on the available information provided by Santander and Ms W, I think the bank reached a fair decision to lend to her.

Did Santander act unfairly or unreasonably towards Ms W in some other way?

As I said earlier, I can see that Ms W made all but one repayment when it fell due and repaid the agreement in full and on time. Santander has provided contact notes for the whole period of the agreement, and I can see Ms W spoke to it in August 2011 when her direct debit was returned unpaid by her bank. The notes say that she told it her wages were paid late which caused the problem.

The notes show no evidence of any approaches from Ms W for help regarding her payments or financial difficulties, and I've seen nothing which makes me think the bank should have been aware she was struggling. It follows that I've not seen anything to suggest Santander treated Ms W unfairly in some other way.

DCA

I've noted what each party to the complaint has said about Ms W's DCA complaint and, as that will be considered separately, I'll make no further comment on it.

DSAR

Ms W has complained about the quality of the documentation provided to her under her DSAR. I note she has acknowledged she has received a copy of the credit agreement which is "*more readable*", but she is not satisfied that it meets all the requirements of CCA as she says it was not properly signed by the bank.

I have considered what she's said in that regard, but I don't think it makes a difference to her underlying complaint. I say this because it's clear Ms W entered into the contract with the bank and it provided the necessary funds to her enabling her to acquire the car she wanted. She has repaid the agreement on the terms stated within the contract. Neither party has disputed entering the contract, and each party has discharged their duties under it.

I don't think a signature on the form being illegible or no name being given, would mean I could, on a fair and reasonable basis, say Santander should refund charges and interest it received under the terms of the contract.

For the reasons I've already given, I don't think Santander lent irresponsibly to Ms W or

otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A of the CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

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 Ms W to accept or reject my decision before 29 July 2025.

Richard Hale
Ombudsman