

Complaint

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

Background

In May 2017, Santander CF provided Mr W with loan to facilitate the purchase of a used car. The cash price of the car was £9,995.00. Mr W paid a deposit of £995. Santander CF then provided him with a fixed-sum loan for the remaining amount of £9,000.00.

The loan had total interest, fees and charges of £1,874.22 and a 42-month term. This meant that the balance to be repaid of £10,874.22 (which does not include Mr W's deposit) was due to be repaid in 42 monthly instalments of £258.91.

In December 2024, Mr W complained to Santander CF saying that it should have realised that it shouldn't have provided this loan to him. Mr W said that Santander CF ought to have realised that he'd just exited an Individual Voluntary Arrangement and so had a low credit score which meant that he shouldn't have been lent to.

Santander CF didn't uphold Mr W's complaint. Mr W remained dissatisfied and referred his complaint to our service. When Santander CF provided its file of papers on Mr W's complaint, it told us that it believed Mr W had complained too late. Mr 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 the loan to Mr W. So he didn't think that Mr W's complaint should be upheld.

Mr 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 Mr W'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 W'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 W's complaint. Given the reasons for this, I'm satisfied that whether Mr W's complaint was made in time or not has no impact on that outcome.

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

I'm therefore satisfied that Mr W'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 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 Mr W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr W'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 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 Mr W's complaint, I therefore need to think about whether Santander CF's decision to lend to Mr W, or its later actions resulted in the lending relationship between Mr W and Santander CF being unfair to Mr W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

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 W 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 providing the loan to Mr W?

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

As Santander CF hasn't been able to provide the details of the information it relied on when agreeing to lend to Mr W, I'm not in a position to agree that the checks it carried out were reasonable and proportionate. So 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 W. Bearing in mind the circumstances here, I would have expected Santander CF to have had a reasonable understanding about Mr W's regular living expenses as well as his income and existing credit commitments.

The information Mr W has provided from the time does appear to show that he was transferring funds to his partner in order to meet the household expenditure. Nonetheless, even allowing for this when Mr W's 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 also have to keep in mind that Mr W's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mr W wanted the car that he had chosen. I therefore think that any explanations Mr W 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 W 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. This is particularly as the bank statements provided don't clearly show me that the monthly repayments were unaffordable for him.

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 W, or that it ought reasonably to have realised would cause significant harm to him. As this is the case, I don't think that it was unfair for Santander CF to have provided this loan to Mr W, or that it doing so created unfairness.

In reaching my conclusions, I've noted what Mr W has said about believing that he was being provided with a company car, which his company, rather than him, was the debtor for. I don't know what Mr W was told by the broker that arranged the loan at the time. However, I've noted the agreement for the fixed sum loan is in Mr W's name, rather than the name of a limited company.

Furthermore, as Mr W himself has noted, he is listed as a manager, with the company he says he was led to believe he was a partner in on the agreement, rather than as a partner in the business. It's possible that the expectation was that Mr W's company would credit him with the funds in order to make the payments. But given the payments were going in an account in Mr W's name and all of the documentation from the time lists Mr W as the debtor, I cannot reasonably say that Santander CF is responsible for misleading Mr W into believing that the loan was being provided to his company, rather than him.

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

So having considered everything, while I can understand Mr W'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 W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

For the sake of completeness, I would add that I've noted that Mr W has raised concerns about Santander CF's actions once he began having difficulty making his payments. However, as our investigator has explained, Mr W needs to raise these concerns with Santander in the first instance. Subject to any jurisdiction concerns, Mr W may be able to complain to us should he be unhappy with Santander CF's response to any complaint about these matters.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 September 2025.

Jeshen Narayanan
Ombudsman