

complaint

Miss M has complained that Santander Consumer (UK) Plc ("Santander") are pursuing her for a debt linked to a conditional sale agreement which she says she was forced to take out by her ex-husband.

background

Miss M entered into a conditional sale agreement for a car with Santander in August 2017. The agreement was for £40,636.55 and was due to be repaid over five years in monthly instalments of £654.88. Within a short period of time Miss M fell into arrears on her repayments and a new payment plan was put in place. However Miss M was also unable to meet the revised monthly repayments and Santander decided to cancel the agreement and repossess the car. This resulted in Miss M's credit file being negatively impacted.

When Miss M applied for the finance for the car she was accompanied by a man ("Mr X") who told Santander he was her relative. When Miss M was unable to meet her monthly repayments Mr X was added to her account as a third party representative and began communicating with Santander and attempted to arrange alternative repayment plans. He also made promises to cover the repayments himself. When Santander ultimately decided to cancel the agreement and repossess the car, it was Mr X who brought a complaint to our service on behalf of Miss M about how Santander had handled the issue.

During the course of our investigation we spoke to Miss M directly. During our first direct conversation with her she disclosed that Mr X did not have the relationship with her he told us about. Rather he was her ex-husband. She explained that they were only married for a short time and during that time he coerced her into taking out a large amount of credit, from various providers, and that their relationship had been abusive.

Miss M explained that the car she had obtained through the conditional sale agreement with Santander was never intended to be for her but was for Mr X. In fact he had tried to get the car on credit a week earlier, at the same car dealership via Santander, but his application had been unsuccessful. When he returned with Miss M he arranged everything with the dealership directly and until very recently had the car in his sole possession.

When our investigator looked into the complaint she found that Santander was wrong to offer the finance to Miss M in the first instance. She believed that the checks which Santander had done, which were basic, had not gone far enough. If Santander had done more than just basic credit checks it would have been apparent that Miss M was always going to struggle to meet her monthly repayments and just could not afford them. A more thorough check would also have shown that Miss M had taken out a large amount of credit over a very short period of time; and this noticeable change in behaviour could have been an indicator that she was in a vulnerable position.

Our investigator asked Santander to cancel the credit agreement and take the car back at no cost to Miss M. In addition she asked it to refund the full deposit paid for the car along with 8% simple interest, and write off the outstanding balance removing any reference to the agreement from Miss M's credit file.

Santander responded by saying it was inappropriate for this service to comment on the types of checks it has in place or how it establishes its lending criteria. It made no reference to Miss M's potential vulnerability or the nature of the relationship between her and Mr X other than to say it has "...no control or influence over a customer's personal relationships." It

rejected the investigator's suggested resolution and asked for a formal decision, so the complaint has been passed to me to consider.

my findings

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

Santander has said that it carried out all the relevant checks it was obliged to and there was nothing in those checks that indicated Miss M would struggle to meet her monthly repayments. In addition it has said that at no time did Mr X indicate that Miss M would struggle to meet her monthly repayments when he was discussing the repayments with Santander on her behalf.

The obligations that lenders should follow, in order to ensure they lend responsibly, are set out by the Financial Conduct Authority ("FCA") in the Consumer Credit Sourcebook ("CONC"). In particular CONC 5 and CONC 5A make reference to responsible lending and the standards businesses are expected to adhere to when providing finance to consumers. CONC states, amongst other things, that businesses are required to treat consumer with due care and diligence. In this particular case I believe that Santander has failed in its duty to treat Miss M with the necessary levels of care or diligence.

According to its records when Miss M and Mr X went to the car dealership to apply for finance, Santander undertook an in house credit check and also checked Miss M's credit score on Experian. We asked for information on the in house credit check and what it entailed. Santander refused to share this information with us, so we have only been able to review the information that Santander would've seen on the Experian check it carried out.

Looking at that, I can see that Miss M had taken out over £18,000 in credit in the five months before she applied for this loan, £16,000 of which was for another car. And the information inputted to calculate her monthly credit commitment contained no amount for rent/mortgages and the cost of the monthly repayments for this finance also had not been included. Given the amount of pre-existing debt, and the fact that the new agreement would require additional monthly repayments in excess of £650, I would've expected Santander to have asked for more information from Miss M to ensure that she was going to be able to meet this, not unsubstantial, commitment.

Miss M has told us that Mr X forced her to lie on her application and state that she was in full time employment and earning several thousand pounds a month when she was not. Rather Miss M only had part time agency work and had no guaranteed fixed income at the time. When we asked Miss M to provide us with copies of her bank statements her employment status and the fact that she was already struggling financially became clear. For the six month period previous to this application Miss M had been living within her overdraft. She was in no position financially to increase her monthly outgoings by this amount. This is reflected in the fact that Miss M failed to meet the first monthly repayment when it came due.

Santander responded to this point by stating it is entitled to rely on the information that consumers provide it. If it is provided with incorrect or false information it is fraud on the part of the consumer and not the fault of the business. I do accept that businesses need to be able to rely on information that consumers give them in order to function. However, the guidelines set out in CONC state that in some situations it is necessary, both for the sake of the consumer and that of the business, to carry out more substantial checks. In this instance

I believe the information on the Experian credit file, regarding existing commitments and the time frame they were taken out, was enough to alert Santander it needed to perform a more thorough affordability check. If it had carried out this check, as it's obliged to, I don't believe Santander would have provided Miss M with the finance as it would've been apparent she couldn't afford it.

In addition to the issues surrounding the lack of affordability is Miss M's vulnerability. Santander has responded to our request to remove all traces of this finance from her credit file by saying that it would result in Miss M having a clean credit file and being able to obtain credit once again. It asked us how doing this will help Miss M avoid similar financial problems in the future.

I'm satisfied, on balance, based on the information I have seen and shared with Santander, Miss M is a survivor of domestic abuse and was coerced into taking out this credit for a car that was used by her ex-husband. Further it does not appear that Santander disputes this. A number of recent reports by the British Banking Association, the FCA and the women's charity Refuge, all speak at length about the devastating, long lasting and negative impact financial abuse can have on victims.

Our role here is to come to a fair and reasonable outcome for both parties. Given the obligations set out in CONC, and the recent work done by the FCA on identifying and supporting vulnerable consumers, and relevant industry guidance such as UK Finance's financial abuse code of practice, I believe that Santander failed to provide Miss M the duty of care and diligence it owed her. And I don't agree that removing all traces of this agreement from her credit file would be inappropriate. Instead continuing to insist that she lives with the consequences of being a victim of domestic and financial abuse is contrary to the underlying principles of the relevant provisions I mention above and is therefore unfair to her.

In conclusion I find that if Santander had carried out proportionate checks, as it is obliged to do, it would have recognised that Miss M couldn't afford the finance she was applying for. And it may have also helped to identify her as someone in a financially vulnerable position who by reason of that vulnerability ought not to have been lent to in the particular circumstances of this individual complaint. For all of these reasons I am upholding Miss M's complaint.

my final decision

For the reasons outlined above, I uphold Miss M's complaint.

Santander Consumer (UK) Plc should:

- Cancel Miss M's conditional sales agreement and take back the car at no cost to Miss M.
- Refund the deposit of £1,343.75 along with simple interest at 8% per year the interest to run from the date of payment to the date of settlement
- Write off the outstanding finance balance with nothing further owed by Miss M; and
- Remove any reference to the agreement from Miss M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 August 2019.

Karen Hanlon
ombudsman