

complaint

Mr M complains Santander Consumer (UK) Plc terminated his hire purchase agreement when it fell into arrears. He feels more allowance should have been made for his ill-health. Mr M is represented in this complaint by his daughter, who I will call "H".

background

H explains Mr M took out the agreement although she's been using the vehicle to take him to hospital appointments.

H told us her father is in poor health and she has been responsible for the payments. But she's had to reduce her hours of work to help care for him. So she's fallen into arrears. Since making the complaint H has put forward several offers to pay off the arrears and settle the agreement. She says she feels she should be given a second chance as the vehicle is required to transport her father to hospital for appointments - although it's currently off the road.

Santander told us the agreement started in April 2016 but soon fell into arrears. In August 2016 it said H had called and advised it was she who was making the monthly payments. But she couldn't pay due to an unexpected bill. It said over the following months multiple arrangements were put in place but these weren't always met. It said it had terminated the agreement in early 2018. And although H had made an offer to pay £5,000 off the amount owing - as the agreement had been terminated it wasn't willing to accept this. It felt the termination should stand.

On behalf of her father H didn't agree and complained to us.

I issued a provisional decision on this complaint on 24 July 2018 in which I said I was minded to uphold the complaint. But this was due to affordability issues rather than the action Santander had taken when the account fell into arrears.

Since then H has accepted my findings on behalf of her father. Santander has not provided any further evidence or comment. In those circumstances I'm not minded to change my provisional 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.

The circumstances of this complaint are complex. And it's been hard at times to remember the agreement is in Mr M's name, not H's - even though it seems there's been some informal family arrangement regarding paying for this vehicle and who would use it. And it's been known to all parties from an early stage that Mr M was seemingly "*fronting*" the agreement for H. Whether he would see it in those terms is not clear.

The basis on which this complaint is brought appears to have more to do with the alleged unfairness of Santander in defaulting the loan and then terminating it after the account remained in substantial arrears. Whilst that's an issue which needs to be considered I'm required to look at the overall situation. And I think it's necessary to go back to the start and decide if the loan was affordable in the first place and / or wasn't a suitable product for Mr M.

The Financial Conduct Authority (FCA) lays down various rules and guidance regarding consumer credit in its sourcebook (CONC). These set out the principles which businesses should follow and give guidance as to checks which should be undertaken.

CONC 5.2.1 states: (1) *"Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer."*

CONC 5.2 (2) *A firm carrying out the assessment required in (1) must consider: (a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made.*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

So it's clear there's a responsibility on Santander to make checks which are proportionate but sufficient to ensure a consumer can borrow and repay the loan. As far as I can see the only checks carried out related to Mr M's credit file, an electoral register check and a statement from Mr M that he could afford the loan.

And with the information obtained I'd expect a business to then consider other relevant factors which relate to the individual borrower. This would include factors such as age, income and expenditure.

Age itself is not a bar to obtaining credit - but it is a factor which may need to be taken into account in determining the suitability of a particular product. The impact on an individual's financial situation of the payment terms is more likely than not affected by the ability of the individual to deal with any difficulties that may arise. And it's less likely someone in his eighties is able to overcome unexpected financial problems by finding employment or other sources of income. And if the individual is on a fixed income with little or no capital the impact of a significant lump sum as part of an agreement is a relevant consideration in respects of the suitability and/ or affordability of a product.

It's noted in Santander's records that the credit information obtained showed Mr M had only £91 of monthly commitments. But it's told me it doesn't have any record of Mr M's income and other expenditure - only an income and expenditure form from H - which isn't relevant. It was hardly credible that £91 was Mr M's only expenditure - and subsequent information shows Mr M has several hundred pounds of other monthly commitments. Not only that he was liable for the balloon payment.

The agreement was for 48 months duration with a monthly payment of £153.65 - which significantly increased the monthly payments on the credit agreement for his previous vehicle. And the final balloon payment was £5,703. I can't see any consideration was given to - or checks made - as to how he was going to make this payment. I've asked H about this - she says her father has no capital and it was assumed the payment would be rolled over onto a new agreement when the time came for the car to be exchanged.

In my opinion it's clear Mr M didn't understand how this worked. Or if he was unable to pay this sum he'd lose the car and/ or have to enter into a further credit arrangement.

Given he had no prospect of paying this amount I don't think the loan was affordable or suitable for Mr M.

The agreement soon fell into arrears and several promises made by H about repayment of arrears were not fulfilled. So I wouldn't criticise the decision of Santander to place the loan in default and terminate the agreement if I looked at these facts in isolation. If the terms of an agreement are not being met - regardless of what informal arrangements have been reached within a family - Santander is entitled to apply its terms. I'm aware H has subsequently made offers to settle the account - including a payment of £5,000. I understand the money would be provided by a third party - not connected to the agreement. But Santander has refused this - and I don't think it was unfair to do so.

I raised the issue of whether the lump sum was ever affordable with Santander and it's responded. Santander doesn't think I should look at aspects which the customer hasn't raised - but I don't agree. Whilst the complaint was mainly directed to the alleged unfairness of terminating the agreement - it must be relevant in determining that question to consider whether the agreement should ever have been made. Especially as Santander has an obligation to make sure the agreement is affordable and appropriate for its customer. And it seems we've only come to this situation as the agreement was not appropriate or affordable.

Santander has suggested the apparent availability of a £5,000 lump sum offer towards settlement is evidence of Mr M's ability to afford the balloon payment. But this seems to miss the point that the decision about affordability is judged at the time the agreement is made. And the information provided to both this service and Santander indicates this offer comes only after the agreement was terminated and from a third party not directly concerned with the agreement. And I've seen no evidence to confirm this sum would be available if the need arose.

H has told me the vehicle is currently not being used and SORN declarations have been made. As Santander wishes to confirm the termination and recover the vehicle I don't think I should insist it maintains the relationship with Mr M.

I'm aware my provisional decision did not wholly coincide with the wishes of either party. And as it's now being repeated in a final decision I imagine the parties still hold their original positions. Whilst H has accepted the provisional decision on behalf of her father - it's apparent the preferred option would be to keep the vehicle.

My final decision only becomes binding if Mr M (or H on his behalf) accept it. So it still remains open to the parties to reach an alternative outcome acceptable to both.

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

I'm ordering Santander Consumer (UK) Plc to:

1. Arrange collection of the vehicle at no cost to Mr M.
2. Cancel the agreement with nothing further for Mr M to pay.
3. Return the deposit of £2,050.

4. Refund all late payment charges.
5. Arrange to remove all details of the agreement from Mr M's credit record.
6. Refund interest from payments made from date of inception to date of termination.

8% simple interest per year should be added to items 3, 4 and 6 above from date of payment to date of settlement.

Santander can deduct any arrears prior to making any repayment arising from 2, 3 and 5 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 September 2018.

Stephen D. Ross
ombudsman