

complaint

Mr B complains about a conditional sale agreement that he had with Santander Consumer (UK) Plc.

background

I set out the background to Mr B's complaint in my earlier decision, which was a provisional decision. However, so that all the relevant information is in this one document I'll set out the background again.

In June 2017 Mr B entered into a conditional sale agreement with Santander to finance the acquisition of a new caravan. He did not intend to live in the caravan rather the caravan was for leisure purposes for the use of his family, and the for the purposes of renting out when not in use.

The amount of credit provided by Santander was £40,675, the term of the agreement was seven years. Two years down the line Mr B was obliged to end the agreement early. He told us this was because he couldn't afford the repayments. Moreover, Mr B's stance is that he was never able to afford the finance. He indicated that his financial situation hadn't changed in all the time he was a party to the contract. He suggested this means that right from the get-go he could not afford to borrow this money. But he did also tell us that he had taken out a new loan (in July 2017) i.e. after he entered into the conditional sale agreement. In addition, he also told us that he is self-employed, and his income fluctuates as a result.

Mr B suggested the credit broker, a limited company that I will call "B", unknown to him, had given Santander inaccurate information about his finances when he first applied for the agreement. In particular, he suggested it had misinformed Santander about his income by saying it was more than it actually was. He thought that if Santander had been given correct information about this point it would never have agreed to the conditional sale agreement in the first place. He also pointed out that he'd not been asked to supply information about his expenditure as part of the application, which he thought demonstrated Santander's checks has not been as thorough as they are required to be. Moreover, he told he had paid a large deposit (£10,500) but he had borrowed this money too from a family member.

Further, Mr B also told us he had only entered into the agreement on the basis that he'd be able to rent out the caravan and the rental income would fully cover his repayments. He suggested that B had given him this impression. Moreover, he had been led to believe that B would buy back the caravan from him, at a market rate, should he want to sell it. But this all turned out to be incorrect. Mr B suggested he'd had to borrow from family to cover some of the costs of the caravan pitch which was further indication, from his perspective that he was finding the upkeep of the caravan to be a struggle.

Things did not go to plan, Mr B did not keep up with the repayments. As a result, he had to end the agreement early through a process known as voluntary termination. Even though he no longer has possession of the caravan Mr B still owes Santander money because he has not paid it everything he owes it under the terms of the voluntary termination, and it is pursuing him for this outstanding debt.

Santander said it contacted B for its take on what happened when the contract was made. B said it hadn't provided any information to Santander about Mr B's finances during the

application process. Rather Mr B had keyed in the information himself because he had made the application using an online application form, albeit that he'd done this in B's offices. Therefore, any information that was incorrect was down to Mr B. In any event Santander said it had not asked for information about Mr B's income as part of the application process.

Furthermore, Santander indicated that it had carried out what it thought were appropriate checks before agreeing to lend to Mr B. Those checks hadn't shown up anything that made it think it ought not to lend to Mr B. It hadn't checked Mr B's income and expenditure as it hadn't thought it needed to in this instance. It told us its process for checking affordability was in line with its regulatory obligations.

Santander said there was no provision in the contract between Mr B and B for B to buy back the caravan. Rather, Mr B and B had agreed if Mr B wanted to sell the caravan he would offer it to B before anyone else. But B wasn't obliged to buy back the caravan if it didn't want to and there was nothing about what price would be paid.

Further, Santander said Mr B's repayment history had not suggested he couldn't afford the finance, quite the reverse. It pointed out he had made nine monthly payments of £626.45 before ever he told it he was having money troubles. It thought his money troubles came about because his circumstances had changed since he took out the agreement.

Moreover, Santander thought it was significant that Mr B had provided it with seemingly inconsistent information when he finally told it he was struggling. Specifically, its records showed that when it asked Mr B about his income and expenditure in June 2018 the information he provided showed he had disposable income of around £700 per month. But when it did the same thing again in November 2018 it seemed he was over-committed by approximately £200 per month. It didn't see how this was possible if Mr B's finances had been in a steady state which is what he suggested.

Santander added that Mr B would have known how much he had to pay each month, if he thought this was too much for him he should have said so at the time and not gone ahead with the deal.

Dissatisfied, Mr B complained to our service.

I looked at Mr B's complaint and I issued a provisional decision. In summary, I found that in the circumstances I was not satisfied that the checks Santander undertook before lending to Mr B were proportionate or that it undertook a reasonable assessment of what it did know about Mr B. However, when I looked at whether Mr B could afford the lending, I concluded that I could not currently find that Mr B was unable to afford the finance at the time he made the agreement. It followed that I couldn't uphold this complaint point. Further, on balance I was not persuaded that B had misrepresented the contract to Mr B and that is why he entered into it. It followed I did not uphold this complaint point either. Overall, for the reasons I had gone through, I did not uphold Mr B's complaint.

I invited both Mr B and Santander to respond to my provisional decision should they wish to do so. Both Mr B and Santander responded.

In brief, Mr B provided further information including some new information. Specifically, he gave us new information about an account held solely in the name of his wife. He explained that while this account was held in his wife's name only, this was the account from which their joint household bills were paid. He suggested that to get an accurate understanding of

his financial situation at the time he entered into the agreement with Santander we need to take on board what this statement showed too. He also sent us information about his two credit card accounts. Mr B reiterated what he had said before about needing to borrow from third parties to fund the deposit and to pay for the upkeep of the caravan.

We sent the new information to Santander. In summary, Santander responded to say, the information that Mr B provided once the complaint was with us, about his financial situation (in particular his bank statements) showed he had £1,000 of disposable income per month. On that basis the repayments to it were affordable, in its opinion. Rather, it thought that the new agreement with monthly payments of £660.37 that Mr B took out in July 2017, significantly changed his financial situation and that might have caused him to fall into arrears with it. Moreover, it repeated the size of the deposit that Mr B had been able to provide, indicated that he had significant disposable income. It was not to know, at the time, that this money had been a loan from Mr B's father. Neither could it reasonably be expected to have worked this out. In addition, it did not think the information about Mr B's wife's account was relevant as its agreement with Mr B was in his sole name.

my findings

I thank both Mr B and Santander for their responses to my provisional decision. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision.

It seems that the only issue now is whether Mr B could afford the borrowing the parties are still very much disagreed on this point.

Mr B's financial situation in June 2017 was not straightforward, but on the face of it, Mr B's payment history suggested he was able to afford the borrowing. As I have mentioned before, he made nine straight monthly payments seemingly without problem. Mr B though suggests that all was not as it seemed. For example, as early as December 2017 he was having difficulties making the repayments. And I accept this. But I can't discount Santander's point, the repayments on the finance he took out with the third party, in July 2017 were substantial in the context, and it might have been this third party debt, rather than the repayments to Santander that caused this difficulty. Moreover, the fact that it took until December 2017 for him to start to have problems repaying suggests at first the repayments were not causing financial problems. That is if I go by his repayment history alone. But I recognise that is not the whole story, so I've taken a look again at Mr B's wider financial circumstances.

Mr B made use of two accounts and they throw more light on his financial state when he took out the finance with Santander. In particular, he has told us about an account with a third party I will call "H" and he has also told us about a joint account with his wife held with a third party I will call "R".

The account held with H was in Mr B's wife's sole name. Nonetheless I accept that he was in one household with his wife and they acted as one economic unit. Further, I think the account information he provided for his wife's sole account is relevant because I can see that payments relating to their joint household expenses came out of this account. Whereas there was very little in the joint account statements that seemed to relate to his normal household living expenses. So, if I only looked at the joint account statements I'd not get a full picture of Mr B's financial situation at the time he contracted with Santander. Therefore, I

don't agree with Santander that I should not be looking at the account with H when thinking about whether Mr B could sustain his repayments to it.

That said, as Santander has pointed out, the statement for the joint account for June 2017, does indeed appear to show that Mr B could easily meet all his pre-existing monthly repayments and make his repayments to Santander. And his salary was not the £900 per month he suggests it was on average, but £2,500 for that month. I realise Mr B tells us that he was self-employed, and his salary fluctuated as a result, but the difference between £900 per month and £2,500 per month is a significant fluctuation. It is not clear to me if the £2,500 salary that month was a complete one-off or if this sum represented his normal average monthly income. I do have a letter from Mr B's accountant which suggests his average income was £900 per month at one point. But that letter does not refer to the tax period in which Mr B took out this agreement, so that has had an impact on the weight I feel able to give this. That said, I do have statements for the account with R for September and October 2017 and these show significant payments into the account, seemingly for work he'd done for customers. The size of these payments suggest in those months at least his salary was much more than £900 per month and more in the £2,500 ball park.

Moreover, also in the statements for the account with R, I can see Mr B had a number of credits coming into his account in June 2017, totalling around £3,500. It is not possible for me to tell, just by looking at the statements, where these credits were coming from. Mr B suggests these were mostly cash loans from his family. But I can't see why these loans were necessary in that month when the salary payment seemed to cover his expenses.

That said, the statements for this account for June 2017 also show that the account was being charged for an unarranged overdraft fee and unpaid transaction fee for the month before. That could indicate that Mr B was struggling financially in June 2017, but it could also be that this was a one-off event. It is hard to tell without the statements for the account in the preceding months.

In the circumstances, on the face of it, for the reasons I've gone through, Mr B could afford the repayments to Santander based on the information I have about the joint account alone.

But as I mentioned above I also need to factor in the sole account. In June 2017, this account was in a far less robust state, it had an unarranged overdraft fee, it began the month in credit but ended in overdraft. But the total income in both accounts did cover the monthly fixed costs in both accounts with sufficient over to make the repayments to Santander.

I note that the account with H shows that Mr B was receiving benefits, but that does not by itself show that Mr B could not afford to borrow from Santander when he did.

Aside from the bank accounts Mr B had two credit card accounts. I've seen some of the statements for them. I can see that in July, August and September 2017 one of Mr B's credit card accounts went over limit despite very low minimum repayments being required. Mr B also says he borrowed again from his father in September 2017 (this time £1,400). But again, when I look at the account with R for September it does not indicate that Mr B was struggling and needed this new loan.

I note that £6,000 was also paid into Mr B's joint account in June 2017. Mr B tells us, and his father confirms, this £6,000 was a cash loan from his father to pay for the deposit. Despite being described as a loan I've not seen anything that shows Mr B subsequently made repayments to his father. However, I have thought about whether the size of the loan for the

deposit masked Mr B's true situation. I think it likely that if Mr B had not paid the deposit his monthly payments would have been much higher. The question is was it only the credit from Mr B's father that made it possible for Mr B to get credit from Santander. Was he in fact obtaining credit through credit? I can't know for sure how more Mr B would have had to have paid each month to Santander without the deposit. But he did seemingly have a sufficient disposable income to make higher payments. So, on balance I can't fairly and reasonably say, but for the loan from his father Mr B would not have been able to make sustainable repayments.

Overall, when I take a look at Mr B's wider financial situation in June 2017, I don't find on balance that the finance provided by Santander was unaffordable, I realise that this will most likely disappoint Mr B, that's not my intention, far from it.

Mr B indicates that he is now in no position to pay off the outstanding finance with Santander, at least not all in one go. Mr B has asked about a repayment plan. He should contact Santander to let them know this. Santander is not obliged to agree to a repayment plan, but I remind Santander of its obligations to act fairly, with due consideration and forbearance towards consumers who are in financial difficulties.

my final decision

My final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 June 2021.

Joyce Gordon
ombudsman