

complaint

Mrs M complains that a conditional sale agreement (CSA) she got from Santander Consumer (UK) plc (trading as Santander Consumer Finance) (SCF) was mis-sold and it was irresponsible of SCF to lend her the money.

Mrs M is represented by a relative but I'll refer to anything that's been said on her behalf as if Mrs M had said it herself - to keep things simple.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 14 October 2019. A copy of this is attached and it forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Mrs M has accepted my provisional decision and SCF has agreed to the outcome proposed.

my findings

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

In light of the responses received from both parties I see no reason to depart from my provisional conclusions.

my final decision

My decision is I uphold this complaint. For the reasons I've given, I require Santander Consumer (UK) plc (trading as Santander Consumer Finance) (SCF) to

1. cancel the finance agreement with nothing further to pay;
2. arrange to take the caravan back at no cost to Mrs M;
3. remove any information recorded about the finance from Mrs M's credit file;
4. refund the deposit of £6,000 along with the last two payments Mrs M made towards the finance;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement; and
6. pay Mrs M £200 compensation for distress and inconvenience.

If SCF considers that it's required by HM Revenue & Customs to withhold income tax from the interest referred to above, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate, if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 December 2019.

Claire Jackson
ombudsman

copy provisional decision complaint

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Mrs M is represented by a relative but I'll refer to anything that's been said on her behalf as if Mrs M had said it herself, to keep things simple.

background

Mrs M took out this CSA in October 2017 to fund the purchase of a used caravan. She is elderly and has trouble with her eyes so she couldn't read the paperwork and relied on the salesman to read it aloud. She says she understood the caravan cost about £40,000 and she had to pay about £350 a month under the terms of the finance.

A few months later a relative checked the documents and Mrs M discovered this wasn't right. - the cash price for the caravan was £55,000 and she had to repay over £76,000 at just under £600 a month for ten years. Mrs M feels she was mis-led by the salesman. She can't afford the repayments and thinks SCF would have known this if proper checks had been done at the outset. She wants SCF to cancel the CSA and provide a refund.

SCF says it checked Mrs M's credit file before accepting her application. She had no outstanding credit card balances and no payday loans or defaults. Her only commitment was the monthly payment for an existing caravan of £354 - which would be replaced by this new CSA. SCF says Mrs M met its lending criteria and no further checks were needed.

Our adjudicator recommends this complaint should be upheld. He doesn't think SCF did enough affordability checks - in view of Mrs M's age and the length and cost of the CSA. He says it should have done more to ensure that Mrs M had enough disposable income to be able to pay back the money she borrowed sustainably. He's satisfied Mrs M was unable to do so and he thinks SCF would have realised this if it had done appropriate checks. To put things right, he says SCF should

- end the CSA with nothing further to pay and record the agreement as settled on Mrs M's credit file;
- collect the caravan at no cost to Mrs M;
- refund the deposit and 20% of each monthly payment that Mrs M has made plus interest
- pay Mrs M £200 for distress and inconvenience.

SCF disagrees. It asked for an ombudsman to review the matter and says (in summary)

- it can't discriminate against customers on the basis of age;
- it's not required to check income and expenditure specifically, the checks it did were appropriate and it had no reason to undertake additional checks based on the information it had at the time;
- Mrs M paid a deposit of £6,000 which shows she had funds at her disposal;
- Mrs M completed a declaration confirming that the finance was affordable and should take responsibility for this financial decision;
- Mrs M didn't complain about affordability initially - she just said the paperwork was wrong and the agreement was mis-sold;
- if it removes information about this CSA from Mrs M's credit file other lenders won't be able to see that she had problems making the payments and may provide further unaffordable lending.

my provisional findings

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

SCF provided this finance in October 2017. In reaching my provisional decision I have taken into account relevant law, regulations, guidance, standards, codes of practice and good industry practice in place at the relevant time. In particular, I have considered the Consumer Credit sourcebook (CONC) provisions in relation to responsible lending at CONC 5.

I'm satisfied that SCF was required to undertake an assessment of Mrs M's creditworthiness before lending here. This means it had to consider the potential for the CSA to adversely impact her financial situation - taking into account the information it was aware of at the time. And this assessment should have been based on *sufficient* information obtained from Mrs M where appropriate and a credit reference agency as necessary.

I accept SCF wasn't obliged to undertake any one specific check in particular - lenders should consider what's appropriate in any particular circumstance. But CONC 5 says the risk of credit not being sustainable directly relates to the amount granted and total charge relative to the customer's financial situation. And the extent and scope of the creditworthiness assessment is dependent on and proportionate to factors which might include

- the type, amount and cost of credit,
- Mrs M's financial situation at the time, her credit history, existing credit commitments and other essential outgoings
- any future financial commitments
- any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on Mrs M
- known vulnerability.

I am satisfied that SCF was obliged to do more than just look at Mrs M's ability to repay this money. SCF was required take reasonable and proportionate steps to assess whether Mrs M was likely to be able to do so in a *sustainable* way. And *sustainable* here means repayments can be made without undue difficulty or significant adverse consequences for Mrs M - she should be able to meet repayments on time over the life of this CSA, without having to borrow or sell assets.

SCF says it carried out an appropriate assessment by checking Mrs M's credit file. I haven't seen the results of that check but I have seen SCF's notes which say

"the agreement didn't have an affordability check as the CF was higher than required, good Delphi score and really low CII... it replaced an existing agreement for £354 and affordability is blank but manually underwritten and manually funded, no reason to decline... as the scores are really good"

I accept it might sometimes be reasonable and proportionate to lend based on a credit check alone. But I think that's probably only going be appropriate when the amount borrowed is relatively small and the repayment period isn't too long.

In this case, Mrs M - who is over 80 years old - had to pay back around £76,000 over ten years. I consider that's likely to be a substantial commitment for most people - and I think it was a significant and lengthy commitment for Mrs M. As such, I think SCF should have done enough checks to ensure that she was likely to be able to meet the repayments due without too much trouble.

I appreciate a credit check may well have told SCF that Mrs M had no defaults or other adverse information on her credit file. And I acknowledge this shows how she'd handled past borrowing. But, I think it's unlikely to have indicated that Mrs M was replacing an existing monthly credit commitment of £354 relating to other caravan finance.

I have seen a copy of the earlier caravan finance agreement. This is a hire purchase agreement taken out with a third party lender in Mr M's sole name - so it shouldn't have appeared in Mrs M's credit history. I'm not certain where SCF obtained information about this finance - it may have come from the credit broker. But I think it would have been reasonable for SCF to check that this information was correct, if it was taken into account in Mrs M's creditworthiness assessment.

From the information I've seen so far, I don't think the checks SCF did told it much - if anything - about Mrs M's ability to meet these repayments sustainably. SCF didn't, for example, know how much income Mrs M had - let alone how much of this was disposable. Given Mrs M's situation and the size and term of this borrowing, I think it would have been reasonable to carry out further checks.

I've thought about what's likely to have happened if SCF had done more appropriate checks. I can see from the paperwork that the credit broker already had information about Mrs M's income and regular outgoings. And I don't think it would have been too difficult or disproportionate for SCF to obtain this.

I'm satisfied if it had done so SCF would have realised that Mrs M received a fairly fixed income of about £5,000 a year made up of state pension and benefits. The annual cost of the CSA was over £7,000 so it's difficult to see how any responsible lender would have considered she was able to afford this credit - even if she had no other outgoings.

SCF says Mrs M signed to say she *could* afford the finance so she should take responsibility for that. It's not clear to me that Mrs M was necessarily aware of every document she signed - given her eye problems. But, even if I were to accept that Mrs M signed this declaration I am not persuaded this relieves SCF of its obligations to lend responsibly.

If I understand SCF correctly it also seems to suggest that the CSA was affordable if Mr M's income is taken into account. I find this reasoning difficult to follow. On the one hand, SCF told us it only lends to individuals - not jointly. But, I can see it has also referred to the finance as being affordable for "*them*" more than once in correspondence.

I am satisfied that Mrs M was the sole borrower here. This means she's responsible for repaying the finance. And I think it would have been reasonable for SCF to check that Mrs M - not her husband - had enough disposable income to do so, before it agreed to lend.

I accept Mrs M managed to keep up with the CSA repayments for about a year after she took it out. SCF says this shows the finance was affordable but I don't agree. Mrs M has told us that she had to use savings and get help from family to meet repayments. I have seen copies of bank statements for the relevant time and I'm satisfied, on balance, that she's not likely to have been in a position to pay back this money in a sustainable way.

For the reasons I've set out above, I don't think any responsible lender undertaking proper checks here would have agreed to lend Mrs M this money and I am minded to find it was wrong of SCF to do so. Usually, where a business has done something wrong we will require it to put the consumer back in the position they would have been in but for that error. I've given some thought to what that means in these particular circumstances.

I am inclined to agree with our adjudicator that SCF should cancel the CSA and take the caravan back at no cost to Mrs M. I think SCF should also rectify her credit file. I appreciate SCF is obliged to report accurately when it records information with credit reference agencies. And I understand SCF is concerned that amending the information recorded about this agreement on Mrs M's credit file might mean other lenders may provide unaffordable finance in the future.

I am satisfied that it's for any prospective lender to carry out its own reasonable and proportionate checks to ensure that borrowing is affordable. I am satisfied that SCF didn't do that here and I don't think it's fair for Mrs M's credit status to be adversely affected because of SCF's mistake. So I'm minded to find SCF should remove any information recorded about this CSA from her credit file.

As far as I can see Mrs M paid £1,000 cash and £5,000 by way of the part exchange value of a previous caravan (once related finance was settled). If that's correct - and I would be obliged if the parties would please let me know if it's not - then I think SCF should refund the deposit of £6,000 plus interest at 8% simple a year from the date that each payment was made to the date of settlement.

I understand Mrs M would like to have all of the payments she's made towards the finance refunded - it looks as if she made twelve in all from October 2017 until October 2018. But, I'm satisfied that Mrs M had some use of the caravan during this time and I think it is reasonable she should pay for that.

Working out what's fair in this sort of situation isn't an exact science. It looks as if Mrs M probably didn't use the caravan much (if at all) after the summer of 2018 - when she raised this complaint with SCF. And I'm minded to find it fair and reasonable for SCF to refund her last two payments (made in September and October 2018) plus interest - on balance overall.

I am satisfied that Mrs M is likely to have experienced distress and inconvenience as a result of being provided with this unaffordable credit. I agree with our adjudicator it is fair and reasonable for SCF to pay her £200 compensation to reflect that.

I now invite both parties to consider my provisional findings and let me have any further comments or information by the date below. After that I'll look at all of the available evidence and make my final decision.

my provisional decision

Subject to any further submissions that I may receive from the parties by 28 October 2019, my provisional decision is I intend to uphold this complaint. I am minded to require Santander Consumer (UK) plc (trading as Santander Consumer Finance) to

1. cancel the finance agreement with nothing further to pay;
2. arrange to take the caravan back at no cost to Mrs M;
3. remove any information recorded about the finance from Mrs M's credit file;
4. refund the deposit of £6,000 along with the last two payments Mrs M made towards the finance;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
6. pay Mrs M £200 compensation for distress and inconvenience.