

The complaint

Miss B's complaint is about a secured personal loan that was taken out in her and her ex-partner's names in 2007. She is unhappy that Santander UK Plc is holding her liable for the debt, even though she told Santander she was coerced into signing the application. In addition, Miss B has raised concerns about the decision to lend being irresponsible due to affordability, the value of the property and because her ex-partner had a gambling problem.

What happened

On 14 December 2023 I issued a decision setting out our jurisdiction in relation to this complaint. I concluded the part of the complaint regarding Miss B being a party to the loan and Santander holding her responsible for the debt did not fall within our jurisdiction. However, we could consider the complaint about the lending decision and whether it was irresponsible. As such, I have only documented below the evidence relating to that issue.

In 2007 Miss B was added to the title of the property she and her ex-partner had bought in his sole name in 2001. As this transfer of equity was completed without Miss B paying her ex-partner any money, it was recorded in the documentation from 2007 as having been bought at the price of '*Love, Favour and Affection*'. However, as the property title was now in joint names, the mortgage had to be reissued in joint names too. When the new mortgage was arranged, Miss B and her ex-partner took some additional borrowing, which Miss B has said was intended to be used for a new kitchen but was not. The total borrowing was around £67,000 which cost just over £530 each month. The property was recorded as having an estimated value of just over £95,000.

In the autumn of 2007, a secured loan was applied for with Santander (formerly Alliance & Leicester), which was secured on the property. Miss B's ex-partner applied in his sole name originally, but as she was named on the property title Santander would not agree the borrowing on that basis. A new application in joint names was made the following month. The loan was for £45,000 over a term of 16 years and arranged on a repayment basis. The monthly payment was slightly over £400. Just over £32,000 of the loan was used to clear unsecured debts in the ex-partner's name and was paid directly to the creditors. It was recorded that the remainder of the money would be used to clear credit card debt in the ex-partner's name. Miss B has said at least some of these debts came about because of her ex-partner's gambling problem.

At the time the loan was approved, Santander was provided with evidence that Miss B's self-employed income for the previous tax year had been slightly over £36,000 and her ex-partner had an employed income of just over £26,000. Bank statements were provided for the ex-partner, which showed transactions for October 2007. These detailed a single transaction to a casino for £1,000. There were no other payments to businesses involved in gambling and very few cash withdrawals.

Miss B complained to Santander about the irresponsible lending alongside her other concerns. This issue was not specifically addressed, and as Miss B was not happy with the responses to the other matters, she referred all of her concerns to this service. I then considered out jurisdiction, and reached the conclusions I have repeated above.

An Investigator considered the merits of the part of the complaint that fell within our remit. He was satisfied that the evidence showed Santander had completed an assessment of affordability. As the loan was granted, he was also satisfied the loan met Santander's affordability criteria at the time. He was not persuaded, in relation to affordability, the value of the property or the reported gambling issue, that the lending was irresponsible.

Miss B didn't accept the Investigator's conclusions. She reiterated comments about complaint points I had determined we could not consider. Miss B speculated at Santander's higher-level motivation for why it agreed the loan, despite in her view it being obvious it would be defaulted on. She provided media information about the business Santander had used to assess and process the application. Miss B went on to highlight again the errors in the documentation from the time of the sale and that she had been added to the application after it had originally been made.

Miss B provided a screenshot of an email from the police which said that the officer involved had concluded money (not specified) had been obtained to pay off the ex-partner's gambling debts. She also provided an excerpt from Santander's eligibility criteria showing borrowing for that purpose was not acceptable to it. In addition, Miss B set out her view of the affordability of the loan. This included providing bank statements from 2003 for an account for the ex-partner in which she highlighted that the salary was considerably lower than that on the payslips that Santander relied on when assessing the application four years later. Miss B ultimately asked that the complaint be referred to an Ombudsman.

What I've decided – and why

We consider our jurisdiction at each stage of our process. Having reviewed it again, I remain satisfied my previous conclusions about our jurisdiction were correct. As such, this decision only considers the matter whether the decision to lend was irresponsible and I cannot be influenced when doing so by Miss B's comments about the circumstances of the application.

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

Initially, I would confirm to Miss B that while there was another financial business, which was a lender in its own right, involved in the application for the loan in 2007, that financial business was not the lender in this case. Santander used it to complete the administration processes associated with assessing the application based on Santander's lending criteria. As such, the information Miss B provided and comments made about the administrator's own lending practices, are not relevant to this complaint and I won't be commenting on those matters.

Miss B has commented that the documentation provided alongside the application is incomplete and in some cases damaged. This documentation was transferred between businesses and moved between computer systems too. Given this and the amount of time that has passed since the application was assessed, it is not surprising that the documentation is incomplete. In the circumstances where the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to be the case and happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

Miss B has raised concerns about the value of the property and the total amount of borrowing that was secured on it after the Santander loan was paid out. I can't know for certain how much the property was worth at the time and I don't consider I need to for the purposes of this complaint. Based on the information contained in the papers from the mortgage lender, it would appear the amount of lending was around the same as the value

of the property or possibly slightly more. That doesn't mean the loan was mis-sold or lent irresponsibly. It was arranged on a repayment basis and was meant to be paid off on a month-by-month basis. The mortgage and loan were not meant to be paid off using the value of the property as the repayment vehicle, so the only implication of the value initially being lower than the total borrowing was there was a risk to Santander in the event the property had to be repossessed.

Santander had a duty to lend responsibly to its customers. Within this it was required to carry out an assessment of affordability. That assessment is no longer available for the reasons detailed above. However, Santander asked for evidence of Miss B and her ex-partner's income and committed expenditure in the form of the mortgage – the remaining commitments being paid off by the loan. It would also have taken the cost of basic essential cost-of-living expenses. So Santander had all the information it needed to complete an affordability assessment. The fact that it agreed to the lending, would indicate the assessment determined that the loan fell within its lending criteria, as had it not, the loan would not have been agreed. This is also supported by the fact the loan was paid for many years after it was advanced.

That said, while the lending appears to have been affordable, I need to decide whether in my opinion the decision to lend was reasonable, looking at all of the information we know was available to the Santander. At this point I would highlight that it is not for me to interfere in the legitimate lending decisions that Santander makes, but I can consider whether it reached its decision fairly and reasonably.

When a lender considers an application it should have regard for wider circumstances. Examples of this would be payment histories with creditors, the amount of credit taken and whether there had been a lot of credit taken in a short period of time. The existence of loans as of themselves would not be enough for a lender to decline an application for borrowing or for it to conclude there was an underlying problem.

Miss B has said Santander should have identified that her ex-partner had a gambling problem and should have declined the application. As she has highlighted, only two of the three pages of the bank statement provided to Santander are available at this time. However, I have assessed this document to establish if its contents should, without the benefit of Miss B's information about her ex-partner's spending habits, have raised concerns for Santander. There is one payment to a gambling institution, and no other pattern of spending that might indicate there was a problem. Consumers are allowed to gamble and still have credit, it is only where it appears from their financial history that gambling is out of control, usually causing financial difficulties, that a lender would be expected to have concerns. I don't consider that the information we have that is contemporaneous to the assessment of the loan application should reasonably have caused Santander to have concerns that Miss B's ex-partner had a gambling problem.

Santander didn't give advice in relation to the loan in question and I don't consider there was reason why it should have determined that it should not accept the application that was made.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss B to accept or reject my decision before 12 April 2024.

Derry Baxter
Ombudsman