

The complaint and what happened

Mr D and Miss J complain that Santander UK Plc lent to them irresponsibly and without carrying out proper affordability checks. They would like all the interest and charges associated with the loan refunded.

I've included relevant sections of my provisional decision from September 2023, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In brief that was because I thought the evidence ought to have led Santander to conclude that this loan was unaffordable for Mr D and Miss J.

I asked both parties to let me have any more information they wanted me to consider. Mr D and Miss J accepted my provisional findings. Santander came back with several final points, which I will respond to.

What I've decided – and why

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

Having done so, I'm upholding it, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

“What happened

In March 2011 Santander approved a loan of £20,000 for Mr D and Miss J, which was scheduled to be repaid at approximately £447 per month over a term of 60 months. The purpose of the loan is not clear, nor are the checks that Santander carried out before approving the lending. However, Mr D and Miss J have shown that they used at least some of the loan to consolidate other debt.

The repayments were met and the loan settled as expected.

The investigator looked at the evidence and thought Santander hadn't done anything wrong in approving the loan. Mr D and Miss J disagreed and asked an ombudsman to look at their complaint.

What I've provisionally decided – and why

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

Having done so, I'm currently planning to uphold it, and I'll explain why.

Santander is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Office of Fair Trading's Irresponsible Lending Guidance (ILG) so I won't repeat them in full here. But, briefly, it was required to carry out sufficient checks to ensure that Mr D and Miss J would be able to repay the borrowing applied for in a sustainable way, and 'without undue difficulty'. As set out in ILG 4.4 that means that they could manage the repayments:

- *“while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments”*

Essentially, they needed to be able to meet their financial commitments and not have to borrow elsewhere to repay Santander for the loan to be considered affordable and sustainable.

There are two questions I need to consider when deciding this case, which I will deal with separately below.

Did Santander carry out proportionate checks before granting this loan?

Understandably, Santander no longer has full information relating to this loan, given how long ago it was granted. So I cannot answer this question definitively, although it's clear that basic questions about their income and expenditure (I&E) were asked. However, what I am clear on is that, given the amount being borrowed and the term in question, I would have expected a responsible lender to carry out comparatively in-depth checks. The investigator also thought that in her assessment. That would mean verifying information provided by Mr D and Miss J and gaining a full understanding of their financial situation. I am unable to make a finding as to whether Santander did complete proportionate checks, but ultimately it doesn't alter the outcome of this complaint. Either it didn't, and should have. Or it did but seemingly didn't respond to the evidence it likely had.

Was Santander right to conclude that the lending was affordable and sustainable for Mr D and Miss J?

Mr D and Miss J have provided extensive evidence of their financial situation in 2010 and 2011, including current account statements; tax returns; and credit card statements. There was no obligation on Santander to request any specific evidence, or carry out prescribed checks: they only needed to be proportionate and borrower focused. But, in the absence of any evidence to the contrary, I am happy to rely on these documents in reaching my findings.

I accept that, even if its checks were sufficient and proportionate, Santander would not likely have seen all the evidence of which I have had the benefit. However, what is clear is that all the relevant information provided by Mr D and Miss J for this time period supports the same conclusion – that Santander could not fairly and reasonably have concluded that these repayments were affordable and sustainable for them. So, regardless of the precise nature and detail of proportionate checks, I comfortably conclude that it would have likely shown the same thing. I'll explain why.

Santander says that the information Mr D and Miss J gave it suggested they had a very healthy disposable income and could easily afford the monthly repayment for this loan. However, I have only been given a summary of the questions and resulting answers, meaning the I&E appears to be very high level, to say the least. I do think the I&E provided a broadly accurate amount in terms of their joint income, which was around £5,250 per month. But what Mr D and Miss were asked to include as part of their “total outgoings”, I have no idea. It's very clear from the bank statements that their mortgage; utility bills; day to day expenses; and amount needed to service debt together totalled a lot more than the £2,500 now cited by Santander.

A pounds and pence calculation of affordability is, in fact, not necessary in this case. And that is because the available evidence shows that Mr D and Miss J were entirely dependent upon borrowing just to survive. There is evidence of financial difficulties in the form of arrears and default notices on credit accounts in the 12 months preceding this application. I have thought about the fact that Mr D and Miss J have evidenced that they used some of this borrowing to consolidate other debts, so considered whether this loan was actually a step forward in improving their overall situation.

But the extent of the overdrafts they both had on their current accounts fatally undermines any logic on that basis. Whilst the investigator noted that the accounts were well run, presumably meaning they stayed within their agreed overdraft limits, the fact that together they were persistently in overdrafts totalling more than three times their joint income is a significant concern. It doesn't look like either of them was ever in credit, and were overdrawn to the extent that they had no reasonable prospect of being so. Again, it is abundantly clear that they were fully reliant on borrowing to make ends meet.

Finally, I want to reiterate that it would not have been necessary for Santander to gather anything like the volume of information now provided by Mr D and Miss J. It is simply not possible to conclude that any evidence gathered by Santander could possibly have demonstrated that this loan would be affordable and sustainable for Mr D and Miss J, bearing in mind the regulations in force at the time. So it follows that I plan to uphold this complaint."

Santander has raised several points, which I will deal with in turn.

Firstly, it says that, due to the passage of time, it no longer holds full lending information. I accept that and indeed acknowledged that in my provisional decision, before going on to explain about the evidence I had seen and why I was satisfied as to what proportionate checks were likely to have shown Santander back in 2011. So this issue has been dealt with.

Santander has also reiterated that the repayments were made on time and there were no signs of financial difficulties, which they would expect to see had this loan been unaffordable. However, this point proves nothing as it does not address the question of whether Mr D and Miss J were borrowing elsewhere to meet the repayments, which would clearly make the loan unaffordable under the regulations in force at the time. Given the evidence I have seen about their financial circumstances back in 2011, that possibility seems highly plausible to me.

Finally, Santander highlights that an Ombudsman colleague reached a different outcome on a similar complaint raised by Mr D concerning borrowing from 2007. It asks me to review that other case, presumably in a bid to find evidence to lead me to a different conclusion on this one. I have no need to do so, given the overwhelming nature of the evidence in this case, from a range of different sources, all showing the same thing, as described in my provisional decision. And, of course, the difference in timeframe – that is, four years between lending decisions – would significantly undermine the relevance of any evidence between the cases, even were there a lack of evidence in this one. As I've said, there is not.

Therefore I have seen nothing which alters my findings as set out in my provisional decision. And so it follows that I uphold this complaint

Putting things right

I direct Santander to do the following in order to put things right:

A) Santander must rework the account and remove all interest, fees and charges from it, and treat any repayments made by Mr D and Miss J as though they had been repayments of the principal on the outstanding loan.

B) If this results in Mr D and Miss J having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) Although I don't believe there is any, it must remove any adverse information recorded on Mr D and Miss J's credit file in relation to this loan.

*HM Revenue & Customs requires Santander to deduct tax from this interest. It should give Mr D and Miss J a certificate showing how much tax it's deducted, if they ask for one.

My final decision

For the reasons I've explained, I uphold this complaint and direct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Miss J to accept or reject my decision before 1 November 2023.

Siobhan McBride
Ombudsman