

The complaint

Ms T is unhappy that Santander continued to apply charges to her account after she told them she was in financial difficulty.

What happened

Ms T had a current account with Santander and an arranged overdraft facility of £300. In 2017, Ms T told Santander that she was having financial difficulty as she was in ill health, and her income had reduced as a result of not being able to work. Santander agreed to refund some of the charges.

Ms T's financial difficulties continued, and she went over her arranged overdraft limit and into an unarranged amount. And Santander had added their unarranged overdraft fees to her account. Santander regularly sent notifications to Ms T to show her account balance and the charges that would be applied. And in July 2018, Ms T again told them about her financial difficulties, and again Santander waived some of their overdraft charges. After another notification was sent by Santander, in December 2018, Ms T wrote to them explaining her difficulties and a repayment plan was agreed.

But Ms T didn't make the agreed repayment and she said her situation worsened, as Santander kept adding charges for her going over her overdraft limit. Ms T said it was the charges that caused her to keep exceeding her limit and putting her into a continuous cycle of debt. And Ms T said Santander passed her account to debt collectors even though she'd managed to get back within her arranged overdraft limit. She complained to Santander.

Santander said they'd treated Ms T positively and sensitively as she was in financial difficulties. And had refunded £862 in fees and charges since 2017. They said her statement was generated giving her 22 days' notice prior to any charges being applied. And as this was an automatic process, they wouldn't be able to adjust for funds paid in shortly after the charges were applied. And they'd regularly spoken to her and had agreed a repayment plan, which she'd broken.

Ms T wasn't happy with their response and referred her complaint to us.

Our investigator said Ms T had shown she'd been experiencing financial difficulty since 2017. And from July 2018 said Santander should have done more to help Ms T with her financial difficulties. She said Santander should refund Ms T any charges and fees applied to her account since July 2018. She also said to pay her a further £100 for the trouble and upset she'd experienced, and to remove the default that had been added to Ms T's credit file.

Santander agreed to some aspects of the investigator's findings. And refunded all the charges from July 2018. But said the removal of the default would have a detrimental effect on Ms T's credit file. And that they had an obligation to accurately report her circumstances. They've asked for an ombudsman to review.

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 this complaint.

It isn't our role to say that any interest, fees or charges attached to an overdraft facility are disproportionate. But I can look to see whether or not it was fair for Santander to apply charges based on Ms T's straightened circumstances. And whether Santander have been fair and reasonable in their actions with Ms T.

The Consumer Credit Sourcebook (CONC7.3) says the lender should treat any consumer in financial difficulty with forbearance and due consideration. What is fair will vary for each consumer, but I'd expect Santander to look to understand the situation Ms T was in and to take reasonable steps to help her. And I'm pleased to see that Santander has taken steps to refund or reverse the overdraft charges applied to Ms T's account. And they have agreed to pay her £100 for the trouble and upset that she's experienced. So, what I need to determine is how Ms T's account should be recorded on her credit file.

Santander said they'd refunded some charges from 2017 when they were applied. So it's clear I think that Ms T has been in financial difficulty for some time. I've looked at her statements, and I can see she'd regularly been exceeding her overdraft limit. And this would have been visible to Santander as well. I can see Santander tried several times and by various methods to contact Ms T to discuss her account. Although on the phone calls I can see it was Santander's policy not to leave any voicemail message, so I don't think Ms T would have always known when Santander were trying to contact her.

Ms T did speak to Santander in October 2017 and explained she was suffering a long-term illness and that her income had reduced, so she now only had income from her pension. She made a payment of £20 followed by another payment of £25.38, and she was told about maintaining her accounts as any unarranged overdraft would incur charges. And I can see Santander waived some of the charges that had been applied to her account as they recognised the financial difficulty Ms T was in.

But Ms T's financial difficulties continued, and she was consistently using her arranged overdraft on which daily arranged overdraft charges were added. And from March 2019, she consistently went over her overdraft limit and accrued the higher unarranged overdraft charges.

In July 2018 Ms T spoke again with Santander and from Santander's notes I can see Ms T's situation had "*drastically*" worsened. She still only had her pension and said she'd been living off savings and these were now used up. And I think it was clear she was struggling to keep up with her household commitments. Santander again agreed to refund some of the overdraft charges that had been applied. But I think it is here that Santander could have done more to help Ms T. As after refunding the charges Ms T still had an outstanding overdraft balance of £123.90, so she was still in debt and would continue to accrue arranged overdraft fees. So, I agree with our investigator its at this point Santander should have frozen any further overdraft charges being applied to Ms T's account and looked at how they could help her clear her debt. As by December 2018, Ms T's overdraft balance had increased to £350.65, and charges of £267 had accrued in the intervening period.

In December 2018, Ms T asked Santander to freeze her charges as she could see the charges were increasing her overall debt. And she suggested a weekly repayment plan.

When Santander spoke to Ms T she said her health had worsened and she had been in and out of hospital. She confirmed she was still struggling with her household bills and now needed the help of her son financially. Santander did advise Ms T that there were several ways they could help, and an agreement for Ms T to pay £20 a month was made. I'm pleased to see that Santander also agreed to freeze any further charges during the repayment period. But I can't see that Santander looked to see whether the agreed repayment was sustainable for Ms T.

I can understand that Santander considered the repayment only in the context of clearing the amount that was over the arranged overdraft limit, and this payment, if Ms T had been able to maintain it would have put her back within her agreed limit in a short time. But I think it's clear that Ms T was in a very difficult financial situation, and Santander should have looked at her overall debt rather than confining it to the smaller amount. I'd have expected Santander to have, at this time to have carried out an income and expenditure assessment to consider the best way to help Ms T in clearing her overdraft balance and escaping her cycle of debt.

And I think it's clear the agreed amount was unsustainable as after only making one payment in January 2019, Ms T couldn't meet the ongoing commitment. And as Santander saw this as Ms T breaking her agreement, they again started to apply their overdraft charges. And subsequently defaulted Ms T's account and passed it over to a debt collector.

Ms T says she'd made repayments and her overdraft was within the agreed limit when Santander passed her account to debt collectors. An overdraft is a debt; but it doesn't operate in the same way as for example a loan as it doesn't require regular fixed or minimum payments. An overdraft is payable on demand; that is, Santander would have been entitled to ask Mrs T to repay it in full simply by giving notice to her. And Santander did ask Ms T about repaying the overdraft on several occasions and had agreed a repayment plan which she'd broken. They also had an obligation to record Ms T financial history accurately with the credit reference agency.

But if Santander had acted as outlined above in July 2018, I don't think Ms T would have been in the position where she agreed to making payments she couldn't keep up, and so she wouldn't have missed making those payments. And her account might not have been defaulted. I think this is supported as Ms T went on to clear her overdraft balance by December 2019. So, I don't think it's fair for her credit file to reflect missed payments and a default as I think Santander should have done more to have prevented this happening.

Putting things right

Santander has already put some things right by refunding the charges from July 2018 and paying Ms T £100 for trouble and upset. But I think they also need to remove the adverse information about her account including the default and missed payments.

My final decision

I'm upholding this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 15 October 2020.

Anne Scarr
Ombudsman