

Complaint

Mr B complains that Santander UK Plc (“Santander”) irresponsibly increased his overdraft limit as well as irresponsibly provided him with a loan.

Mr B is being assisted in his complaint by his father Mr B Sr who says Santander lent after he provided notification of Mr B's mental health condition.

Background and my provisional decision of 1 June 2021

Mr B had an overdraft with an initial limit of £850. On 17 July 2019, Mr B's overdraft limit was increased by £250 to £1,100.00. And two days later on 19 July 2019 the limit was then increased by a further £1,100.00 to £2,200.00. Mr B then successfully applied for a loan of £4,000.00 on 1 August 2019. This loan had an APR of 19.9% and was due to be repaid in 60 instalments of £102.20.

On 20 August 2019, Santander received a letter of complaint from Mr B Sr. Mr B Sr complained Mr B shouldn't have had his overdraft increased or provided with his loan as he was suffering from a mental health condition. Mr B Sr's August 2019 letter also enclosed a letter to Santander from himself, dated 25 July 2019, which referred to Mr B's condition and the need to bear this in mind should he request any further increases to his overdraft.

Santander didn't uphold the complaint. It said that it hadn't received Mr B Sr's letter of 25 July 2019 until it was enclosed with his 19 August 2019 letter, which was received on 20 August 2019. So this was after all the lending concerned had already been provided and as it wasn't aware of Mr B's mental health condition at the time of the applications and its checks suggested the lending was affordable, it didn't think it had done anything wrong. Mr B Sr, on behalf of Mr B, remained dissatisfied and referred the matter to our service.

Mr B's complaint was then considered by one of our adjudicators. She didn't think that Santander was aware of Mr B's condition at the respective times it agreed to lend. And as the lending appeared affordable she didn't recommend that the complaint be upheld. Mr B Sr, on behalf of Mr B, disagreed with our adjudicator and asked for an ombudsman to consider the complaint.

On 1 June 2021, I issued a provisional decision setting out my initial findings on Mr B's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And that I referred to this when deciding Mr B's complaint.

I also set out that I'd consider the sequence of events in the order that they happened and provide my findings accordingly.

Overdraft limit increases in July 2019

I started by saying that it wasn't in dispute the increases to Mr B's overdraft limit took place before any of the correspondence Mr B Sr had referred to. So I thought it fair for me to consider this part of the complaint on the basis Santander wasn't aware of Mr B's mental health condition. Although I did note that Mr B had already started receiving outpatient treatment just before the overdraft limit increases were agreed.

The first overdraft limit increase increased Mr B's limit by £250 from £850 to £1,100.00. As the limit was only increased by £250, there was an argument for saying that this wasn't a significant increase to Mr B's overdraft limit and so there wasn't a need for a further affordability assessment. I did say that I had some sympathy for this argument. But, in any event, Mr B's account was reasonably well funded and saw a credit balance for a significant part of the month in the months leading up to the application.

And there wasn't anything in Mr B's statements in the period leading up to this application to suggest that he wouldn't have been able to repay £1,100.00 within a reasonable period of time in the event he had to. So I thought that even if an affordability assessment had been required, I didn't think that it would have made much difference and it wasn't unreasonable for Santander to have provided this overdraft limit increase to Mr B.

The second limit increase was provided only a couple of days after the first increase. I thought it could be argued that a second limit increase such a short period of time after the first one might have been a warning sign – especially as the various banking and lending codes over the years referred to repeated requests for additional borrowing or frequent requests for increased overdraft limits as a sign a consumer may be in financial difficulty. But I was mindful that the first limit increase was for only £250. And so in total, Mr B was only advanced a further £1,350.00.

Bearing in mind the short period, little had changed in Mr B's financial circumstances between the two applications. His account remained well-funded and it was still the case that he'd regularly been in credit. There was more going into his account each month than going out and there didn't appear to be any funds from unsustainable sources. Equally, there wasn't anything else to suggest that Mr B wouldn't be able to repay £2,200.00 within a reasonable period of time either.

As this was the case, I found that Santander hadn't acted unfairly or unreasonably towards Mr B when it increased his overdraft on both occasions in July 2019.

Mr B Sr's letter of 25 July 2019

I then considered Mr B's letter of 25 July 2019. I started by saying that Mr B Sr accepted that he didn't inform Santander of Mr B's mental health condition prior to the overdraft limit increases being provided. But he nevertheless maintained that he did inform Santander of this matter when he sent it a letter on 25 July 2019. Santander said it never received this letter until a copy of it was enclosed with Mr B Sr's 19 August 2019 letter.

I didn't know what if anything was sent in July 2019 and more importantly what might or might not have been received. But our adjudicator explained that when considering whether correspondence was more likely than not received we'd typically look at things such as whether the correspondence in question was correctly addressed, which service was used and what proof of postage has been provided.

With this in mind, I reviewed copies of all the correspondence Mr B and Santander provided. I thought it important to note that while Mr B Sr's letter of 19 August 2019, which Santander confirmed receiving on the following day, did appear to be correctly addressed, Mr B Sr's letter of 25 July 2019 didn't include an address in the same way. And Mr B Sr hadn't been

able to provide any proof of postage either. So Mr B Sr had been unable to provide proof of postage or a copy of a correctly addressed letter from July 2019.

As this was the case, I thought that I couldn't reasonably make the finding that Mr B Sr did send a correctly addressed letter to Santander on 25 July 2019. It was my view that I'd simply not been provided with enough to support making such a finding. As this was the case, I found that Santander hadn't received any notification of Mr B's mental health condition prior to 20 August 2019 and therefore it wasn't aware of this when Mr B applied for a loan of £4,000.00 on 1 August 2019.

Was it fair and reasonable for Santander to provide Mr B with a loan for £4,000 on 1 August 2019?

I then considered Mr B's August 2019 loan application. I started by explaining that even though Santander might not have been aware of Mr B's mental health condition when it considered Mr B's loan application, this in itself didn't automatically mean it was fair and reasonable for it to lend. I said this because the rules and regulations when Santander provided Mr B with his loan required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner.

By this stage, I'd already gone through the typical things I'd expect a lender to consider when providing credit when I was deciding whether it was fair and reasonable for Santander to have concluded that Mr B could sustainably repay the overdraft limit increases.

Essentially, I'd expect a firm to consider factors such as the prospective borrower's income, expenditure and existing indebtedness when deciding whether to advance further credit.

In Mr B's case, I thought it was clear that Mr B was approaching Santander for credit for the third time in a mere matter of weeks. And as this was a branch application, I was satisfied that Santander ought to have been aware that pretty much all of the additional overdraft funds granted had been spent in the two weeks between the second limit increase and this loan application. I was also particularly mindful that Santander's branch representative noted that Mr B appeared agitated at the time of this application.

It wasn't my suggestion that this in itself ought to have alerted Santander to Mr B's mental health condition. But I was satisfied that this coupled with Mr B's rapidly increasing indebtedness and lack of plausible reason for this loan – home improvements when there wasn't anything to suggest he owned a home – meant Santander ought to have been alert to the fact that everything might not have been as it seemed. In reaching this conclusion, I was mindful that there was an argument for suggesting that Mr B's loan was affordable on a strict pounds and pence calculation. But I also thought that given the circumstances, Santander ought to have been aware that it may well have been increasing Mr B's indebtedness in a way that was harmful.

So I thought that there was enough to suggest providing Mr B with this loan was irresponsible and I was minded to find that Santander didn't act fairly and reasonably towards Mr B when it provided him with a loan of £4,000.00 in August 2019.

I then went on to consider whether Mr B had lost out because of Santander's failure to treat him fairly and reasonably. Mr B ended up paying interest and charges on a loan which I was minded to find Santander shouldn't have provided him with. I considered Mr B Sr's argument that Mr B shouldn't be required to pay back this loan. But I was mindful the vast majority of the funds went towards repaying the overdraft which I found Santander had fairly and reasonably provided Mr B with. I also thought that Mr B had received the rest of the funds advanced as a result of the loan too.

As this was the case, I was satisfied that Mr B's loss was the interest and charges paid on this loan and that was what Santander needed to put things right for. I then finally set out a method of putting things right for Mr B, which I found addressed Santander's failings and Mr B's resulting loss.

Santander's response to my provisional decision

Santander confirmed that it accepted my provisional decision and agreed to put things right in the way I'd suggested.

Mr B Sr's response to my provisional decision

Mr B Sr responded to confirm that receipt of my provisional decision. He made no further points in relation to my overall conclusions but wanted it recognised July 2019 wasn't a complaint. It was sent to inform Santander of Mr B's mental health condition and a request not to advance him further funds in the circumstances.

He addressed his letter to the address provided on Mr B's bank statement and he finds it difficult to understand why this letter did not reach the appropriate section. His complaint, on behalf of Mr B, began when the loan was advanced despite what he'd said in his letter.

My findings

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

I want to start by thanking the parties for their responses to my provisional decision. I was pleased to receive broad acceptances of the findings I reached and to learn that Santander was prepared to pay redress to Mr B.

That said, I do want to say that I didn't consider Mr B Sr's letter to Santander of 25 July 2019 to be a complaint. And I'm sorry if Mr B Sr felt that I'd referred to his letter in this way, or if he felt that I'd inferred he'd made this argument. That certainly wasn't my intention. In my view, the contents of the July 2019 letter were written with the purpose of notifying Santander of Mr B's mental health condition, rather than to make a complaint about Santander having increased Mr B's overdraft limit.

I can also understand why Mr B isn't persuaded that this letter didn't reach the relevant section at Santander. But I already explained in my provisional decision, why I couldn't reasonably make the finding that Mr B's letter of 25 July 2019 was most likely received. And while I understand Mr B Sr's disappointment regarding this, I haven't been persuaded to depart from the findings I reached, about Mr B Sr's letter of 25 July 2019, in my provisional decision of 1 June 2021.

Overall and having considered everything, I find that Santander didn't treat Mr B unfairly when it increased his overdraft limit in July 2019. However, I also find that Santander didn't act fairly and reasonably towards Mr B when it provided him with a loan for £4,000.00 in August 2019. So this means that I'm partially upholding Mr B's complaint and Santander needs to put things right.

Fair compensation – what Santander needs to do to put things right for Mr B

Having considered everything, I'm satisfied that Santander should put things right for Mr B in the following way:

- refund all the interest, fees and charges Mr B paid on his August 2019 loan;
- add interest at 8% per year simple on any interest, fees and charges paid from the date they were paid by Mr B to the date of settlement†;
- remove any adverse information recorded on Mr B's credit file as a result of this loan.

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr B a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons explained, I'm partially upholding Mr B's complaint. Santander UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 July 2021.

Jeshen Narayanan
Ombudsman