

Complaint

Ms G is unhappy Santander UK Plc (“Santander”) is refusing to remove adverse information it recorded about an overdraft and a personal loan on her credit file.

Background

In July 2020, Ms G asked Santander to write off the outstanding balances on her overdraft and personal loan and reflect these debts as settled on her credit file, due to her personal circumstances. She referred to another bank having taken similar action on other accounts. Santander declined to write off the balances or amend Ms G’s credit file.

When Ms G referred her complaint to her service, Santander said that it wouldn’t pursue the outstanding balances on the account unless Ms G’s circumstances changed for the better. One of our adjudicators looked at this complaint and thought that Santander should write off the balance as having considered all the information provided she thought it unlikely that Ms G’s circumstances would change for the better. However, she didn’t recommend any adverse information be removed from Ms G’s credit file.

Santander accepted our adjudicator’s view. It said it wouldn’t look to recover the outstanding balances from Ms G, even if her circumstances changed, which it, in any event, didn’t consider would happen.

Ms G disagreed, as she still wanted her credit file amended, and asked for an ombudsman’s decision.

My findings

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

Having carefully considered everything, I’m satisfied that what Santander has already agreed to do for Ms G is fair and reasonable in all the circumstances of her complaint. I’ll explain why I think this is the case in a bit more detail.

I’m mindful of the concerns Ms G has regarding the impact any adverse information recorded on her credit file may have on her. But it might help for me to start by explaining that where a business accepts it (such as here), or I find that a business, has done something wrong, I’d normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn’t taken place.

However, in this case Ms G was given the funds in question and she used them. So, in these circumstances, I can’t undo what’s already been done. And even if I were to have reached the conclusion she shouldn’t have been given the funds in the first place, which I haven’t here as this matter wasn’t considered as part of this complaint, it, in any event, simply wouldn’t be possible to put Ms G back in the actual position she would be in if he hadn’t been given these funds,. And to reflect this, in most instances, where we uphold a complaint about lending being provided in circumstances where it shouldn’t have been, we’d usually say that

it's fair for the borrower to pay back any funds they actually received, while it's fair for the lender to refund any interest and charges they received for any credit unfairly provided.

In these circumstances, any adverse information we'd tell a lender to remove would typically be to reflect the impact of the interest and charges added to the account – as that's what we'd ask the lender to repay or remove the effect of. In Ms G's case, we haven't gone as far as saying the funds lent shouldn't have been provided in the first place. Instead we've looked at what happened after the credit was advanced and we told Santander (and it agrees) that it shouldn't pursue Ms G to recover these funds because there's no reasonable prospect of her repaying them and this is unlikely to change going forward.

As we've asked Santander to do this, removing any adverse information here would require it to record that Ms G's loan was settled in full and on time. And I think that it would be unfair to Santander and Ms G, unreasonable its logic and inaccurate if I asked Santander to amend Ms G's credit file in this way – as that doesn't reflect what actually happened, or will happen here.

By asking Santander to remove any adverse information here, I'd be asking it to record inaccurate information and telling it to record that this loan was paid in full and on time. I think that this wholly inaccurate information may well place Ms G in a more advantageous position as it would make it look like she settled the loan early and so place her in a better position than if she'd made the scheduled payments. And I think that this would increase the chances of Ms G being able to access further funds.

In making my decision, I've considered what another bank and other lenders have done in relation to outstanding balances and owed by Ms G and how these have been reflected on her credit file. I don't know the circumstances behind or the reasons for those decisions. But these are matters for that bank and the other lenders. And my role here is limited to determining whether what Santander has agreed to do for Ms G is fair and reasonable in all the circumstances of this case.

In deciding this matter, I've accepted that Santander shouldn't pursue Ms G for the funds owing because she now can't afford to repay them and this is unlikely to change in the future. I think it would be unreasonable and irrational for me to reach this finding in relation to what should happen with the current balances outstanding yet depart from it in relation to any direction with regard to Ms G's credit file going forward.

I think that reaching such findings would be counterproductive and arguably not in Ms G's best interests, or those of any potential lender. So having carefully thought about everything, including everything Ms G has told us, I'm not going to ask Santander to amend Ms G's credit file to remove any adverse information. This means that Santander can and should record that it has written off, or taken the decision not to pursue, outstanding balances on Ms G's overdraft and loan.

Bearing in mind all of this, I'm satisfied that what Santander has already agreed for Ms G is fair and reasonable in all the circumstances of her case and I'm not requiring it to do anything more.

As this is the case, I leave it up to Ms G to decide whether she wishes to accept Santander's resolution. I appreciate that Ms G will find my decision disappointing. I want to say that this isn't a decision that I've taken lightly. And I really hope she will understand the reasons I've reached the conclusion I have.

My final decision

For the reasons I've explained, I'm satisfied that what Santander UK Plc has already agreed to do to put things right for Ms G is fair and reasonable in the circumstances of her complaint. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 21 September 2021.

Jeshen Narayanan
Ombudsman