

The complaint

Mr D has complained that Santander UK Plc (“Santander”) continued charging him excessive amounts for his overdraft when he was in financial difficulty.

What happened

Mr D complained to Santander about his overdraft. Santander didn’t respond to him and as Mr D was dissatisfied he referred the complaint to our service.

Mr D’s complaint was considered by one of our adjudicators. He thought that Santander ought to have realised that Mr D was experiencing financial difficulty by 19 July 2018 and so shouldn’t have added any more interest, fees and charges from this point onwards.

Santander didn’t agree. They explained that Mr D had only been using his arranged overdraft and hadn’t been using all of that. They said that when they completed their three-monthly review of the overdraft they would have considered his credit file afresh to check affordability. They went on to explain they’d had very little contact from Mr D and were only told about his financial difficulty in October 2018. As Santander didn’t agree with the adjudicator’s assessment the complaint was referred for an ombudsman to make a final decision.

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.

Santander will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So, I don’t consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I think Santander acted unfairly when it continued charging overdraft interest and associated fees after it renewed Mr D’s overdraft on 19 July 2018. By this point, it ought to have been clear that Mr D was in no position to sustainably repay what he owed within a reasonable period of time.

Mr D was hardcore borrowing. In other, words he hadn’t maintained a credit balance for an extended period of time. By the time of the July 2018 review he had been in credit on his account for only 13 days that year and he was regularly using almost all of his overdraft limit. Good industry practice as well as various industry codes in place for well over a decade all suggest that overdrafts are supposed to be for unforeseen emergency borrowing not prolonged day-to-day expenditure. So, I think that Mr D’s overdraft usage should have prompted Santander to have realised that Mr D wasn’t using his overdraft as intended and they shouldn’t have continued offering it on the same terms. As Santander didn’t react to Mr D’s overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably.

I also think that by the review date of 19 July 2018, Santander should also have noted that Mr D's statements showed that large parts of Mr D's income were going towards unsustainable sources. There were frequent payments to betting companies and to pay day lenders. Whilst Mr D may not have told Santander about his financial difficulties at that point I think it should have been clear to them that he was struggling. Santander ought to have realised that Mr D was at a significant risk of being unable to repay what he already owed. They should have stopped providing the overdraft on the same terms and treated Mr D with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mr D ended up paying additional interest, fees and charges on his overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So, I think that Santander didn't treat Mr D fairly and he lost out because of what Santander did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr D's complaint for Santander UK Plc to put things right by:

- Reworking Mr D's current overdraft balance so that all interest, fees and charges applied to it after the renewal on 19 July 2018 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr D to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr D's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft on 19 July 2018.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr D along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Santander should remove any adverse information from Mr D's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Mr D'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 D to accept or reject my decision before 4 November 2021.

Phillip McMahon
Ombudsman