

Complaint

Mr K has complained that Santander UK Plc (“Santander”) irresponsibly provided him with an overdraft which it increased the limit on when he was already in financial difficulty.

Background

One of our adjudicators looked at Mr K’s complaint and thought Santander should have realised Mr K’s overdraft had already become unsustainable by January 2014. So it needed to refund all the interest, fees and charges it added to Mr K’s overdraft from this point. Santander disagreed and so the complaint was passed to an ombudsman for a final 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.

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 from January 2014. By this point, it was evident Mr K was struggling financially.

A cursory look at Mr K’s statements during this period show that he’d been struggling to manage his finances. Santander has said Mr K stayed within his overdraft limit and so it had no reason for concern. But this was only happening as Mr K kept borrowing from a number of payday lenders to avoid going over his limit.

The sheer number of payday and other high-cost lenders Mr K was making payments to, is arguably, in itself clear evidence of his difficulties. But along with these payments it’s also clear to see that Mr K was gambling significant sums. This meant his ability to repay his overdraft was largely dependent on his success as a gambler. And I don’t think it was reasonable for Santander to believe that Mr K was in a position to repay what he owed without borrowing further or experiencing difficulty.

So I think that by January 2014 Santander should have stopped providing the overdraft on the same terms and treated Mr K with forbearance rather than adding even more interest, fees and charges on the overdraft.

All of this means that Santander should have realised that Mr K was experiencing financial difficulty and offered him help to repay what he owed. As Santander didn’t react to Mr K’s account usage and what he said, I think it failed to act fairly and reasonably.

In reaching my conclusions, I've thought about what Santander has said about the Consumer Credit Sourcebook, the terms and conditions of Mr K's account, its process and any actions it may have taken. But for the reasons I've already explained, I remain satisfied that it wasn't fair to continue adding charges to Mr K's account from January 2014.

Mr K ended up paying additional interest, fees and charges at a time when he was already experiencing difficulty. So I'm satisfied that Mr K lost out because of what Santander did wrong and that it should put things right.

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

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

- Reworking Mr K's current overdraft balance so that all interest, fees and charges applied to it from January 2014 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr K to arrange a suitable repayment plan, Mr K is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr K's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2014. Santander can also reduce Mr K's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

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 K 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 K's credit file. Santander can also reduce Mr K's overdraft limit by the amount of refund if it considers it appropriate to do so.

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

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My final decision

For the reasons I've explained, I'm upholding Mr K'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 K to accept or reject my decision before 17 February 2022.

Jeshen Narayanan
Ombudsman