

The complaint

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

What happened

Mr D complained to Santander about the charges that had been applied to his account from around April 2019 onwards. He said he'd been experiencing financial difficulties throughout this period and the charges had made things worse. Santander didn't uphold the complaint. And as Mr D was dissatisfied, he referred the complaint to our service.

Mr D's complaint was considered by one of our adjudicators. She explained that she thought that Santander ought to have realised that Mr D was experiencing difficulties by 25 April 2019 and so shouldn't have added any more interest, fees and charges from this point onwards. Santander didn't agree so the case was passed to an ombudsman.

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'm intending to find that Santander acted unfairly when it continued charging overdraft interest and associated fees after 25 April 2019. By this point, it ought to have been clear that Mr D was at significant risk of financial difficulties and so might struggle to repay his overdraft.

I say this because by this point, Santander ought to have realised that Mr D's use of his overdraft was unsustainable. Mr D's statements show significant gambling – in fact it was gambling transaction that had been flagged on Santander's systems as potentially of concern regarding 'rapid spending'. But other than a short term block on the account until it was bought back into credit, and the refund/waiving of some charges, Santander doesn't appear to have done anything else at this time to address what appeared to be an ongoing problem. In these circumstances, I think Santander ought to have realised that Mr D was at a significant risk of being unable to repay what he owed. So Santander 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.

I acknowledge that Santander doesn't feel there were any clear signs of financial difficulties on Mr D's account. But I'd argue that the number and frequency of gambling transactions were a clear indicator that something was wrong, and continuing to lend to Mr D on the same terms when there were clear signs he may have a problem with gambling was not appropriate.

In reaching my conclusions, I've thought about what Santander has said about the Consumer Credit Sourcebook, the terms and conditions of Mr D'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 D's account from 25 April 2019.

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 to put things right by:

- Reworking Mr D's current overdraft balance so that all interest, fees and charges applied to it after 25 April 2019 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, Mr D is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement. If it considers it appropriate to record negative information on Mr D's credit file, Santander should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in April 2019. Santander can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr D over their 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 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. Santander can also reduce Mr D'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 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 21 February 2022.

Sophie Mitchell

Ombudsman