

Complaint

Mr S has complained that Santander UK Plc (“Santander”) unfairly withdrew his overdraft after him having paid all the charges for a number of years. He’s also complained about the impact of the charges.

Background

One of our adjudicators looked at Mr S’ complaint and thought Santander should have realised Mr S’ overdraft had already become unsustainable for him by December 2015. So it needed to refund all the interest, fees and charges it added to Mr 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 December 2015. By this point, it was evident Mr S was struggling financially.

A cursory look at his transactions leading up to this period shows that Mr S hadn’t seen a credit balance for a significant period of time. Mr S has spent most of 2015 with an overdrawn balance towards the top of his limit even exceeding it on occasion. Equally, while I’ve seen what Santander has said about Mr S choosing to operate an overdrawn balance, I’m mindful that it ought to have realised that Mr S’ income was made up of benefits.

I’m not saying that this in itself means Santander shouldn’t have lent. But I do think that it ought to have been on notice Mr S was on a fixed income. And, in these circumstances, I think that Santander ought to have been particularly mindful that Mr S could ill afford to develop a dependency on credit. I say this because I think there was a greatly reduced prospect of a consumer, in Mr S’ position, being able to come into increased funds and use them to completely clear a persistent cycle of borrowing – in the way an employed individual might’ve been able to. For example, as a result of working overtime or maybe getting a bonus.

Bearing all of this in mind, I think that by December 2015 Santander should have realised that Mr S had reached a position where he wasn’t going to be able to clear his indebtedness without help. So I think that it should have stopped providing the overdraft on the same terms and treated Mr S 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 S was experiencing financial difficulty and offered him help to repay what he owed. As Santander didn't react to Mr 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 S'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 S's account from December 2015.

I know that Mr S is unhappy with Santander having reduced and then removed his overdraft in the period between 2019 and 2021. But as I've found that Santander already ought to have taken corrective action in relation to Mr S' overdraft some four years earlier, it follows that I don't think it acted unfairly or unreasonably when it did, albeit belatedly, eventually take this course of action. And therefore, I'm not upholding this part of Mr S' complaint.

Mr S ended up paying additional interest, fees and charges at a time when he was already experiencing difficulty. So I'm satisfied that Mr S 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 S

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

- Reworking Mr S's current overdraft balance so that all interest, fees and charges applied to it from December 2015 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr S to arrange a suitable repayment plan, Mr S 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 S's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in December 2015. Santander can also reduce Mr 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 S 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 S' credit file. Santander can also reduce Mr 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 S 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 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 S to accept or reject my decision before 17 February 2022.

Jeshen Narayanan
Ombudsman