

The complaint

A limited company, which I'll refer to as 'D', is unhappy that Santander UK Plc renewed its overdraft facility at a time when Santander had been made aware that D was experiencing financial difficulty. D is also unhappy that Santander allowed company liquidators to take money from the overdraft leading to an outstanding balance being owed to Santander.

What happened

In 2017, D supplied Santander with company accounts which demonstrated that D was trading in an insolvent position. Despite this, Santander approved the renewal of D's existing £20,000 overdraft facility.

Shortly afterwards, D ceased trading and entered voluntary liquidation. D is unhappy that Santander allowed significant monetary transfers to be made to the liquidators during a time that D feels Santander should have been aware of the status of the company such that the account should have been blocked.

D wasn't happy that Santander had allowed the transfers to take place, or that Santander had approved the renewal of the overdraft facility in the first instance, given the state of the company accounts which Santander had been provided with, so it raised a complaint.

Santander looked at D's complaint. It noted that it had approached D and asked about the status of the accounts, but that D had explained that a change in reporting criteria was the reason that the accounts were showing as being insolvent but that D continued to trade profitably. Santander felt that it had been reasonable, given the long-standing nature of its relationship with D and the profitable state of D's prior accounts, for it to have accepted the explanation provided by D at that time.

Santander also noted that the transactions to the liquidator that D was unhappy about had all occurred before Santander could reasonably have responded to being made aware that D had ceased trading. Because of these points, Santander didn't uphold D's complaint.

D wasn't satisfied with Santander's response, so it referred its complaint to this service. One of our investigators looked at this complaint. After a lengthy review, while they accepted that Santander couldn't reasonably have prevented the transfers to the liquidator, they did feel that Santander should have done more to confirm that D wasn't trading in an insolvent position following the receipt of the 2017 accounts.

Because of this, our investigator recommended that this complaint be upheld in D's favour on that basis only, and that Santander should reimburse to D any interest and charges that had accrued on the overdrawn balance following the overdraft facility's renewal.

D remained dissatisfied, so the matter was escalated to an ombudsman for 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.

I issued a provisional decision on this complaint on 22 November 2021 as follows:

I'm aware that D feel that Santander shouldn't have renewed its overdraft facility following the receipt by Santander of D's accounts which demonstrated that D was trading in an insolvent position.

However, it's notable that D was contacted by Santander about this, and that D provided Santander with the following detailed explanation as to why the accounts – which in previous years had been unproblematic – were now showing as insolvent:

“Regarding the Accounts, I'm not best pleased ... As you can see from the Notes it's a system issue that has raised its head this year but goes back to 2004.

The Balance Sheet is being reported differently because of changes required by the licensing authorities. In past we recognised deferred income and deferred payments and the balance sheet reflected it. We have not included these deferred amounts in the latest Accounts and it has impacted accordingly requiring a prior year adjustment.

Having said this, it's not as though £302k hasn't suddenly permeated off the bank balance. As you know, [D] is trading, the P&L is good, forward bookings are the best for some years and we are carefully managing cash flow as we always do (especially in Q4 of any year) and more so now because we are funding a new system development. ... Finally we have never breached our overdraft – nor do I expect to.”

D contend that, even having been provided with the above explanation by themselves, that Santander should have undertaken further checks to confirm the ongoing financial position of D before renewing the overdraft facility.

Conversely, Santander state that it was satisfied with the explanation provided by D – which was a business with whom Santander held a long standing and previously relatively unproblematic business relationship.

The question therefore presents itself as to whether it was fair and reasonable for Santander to have accepted the explanation provide by D regarding the state of the accounts.

In this instance, I feel that it was fair and reasonable for Santander to have accepted this explanation and to have allowed the renewal of D's overdraft facility to continue accordingly. I say this for several reasons, including the long standing nature of the business relationship between D and Santander, and also because the explanation provided by D directly addresses and explains the accounting issue and confirms that D as a business remained profitable and in good standing with a positive future outlook.

It therefore seems reasonable to me that Santander, having been presented with a detailed explanation by a long standing customer which addressed and covered all of its salient concerns, did accept the explanation provided and did allow the renewal of the already existing £20,000 overdraft facility to take place.

It's notable that D ceased trading approximately two months after it provided this explanation to Santander, and I'm unaware of D contacting Santander subsequent to providing this explanation to update Santander as to its projected ability to continue as an ongoing concern. Indeed, it appears that Santander only became aware that D had ceased trading when it received a letter from D's liquidator advising of its appointment.

It seems apparent then that either D was aware at the time it gave the explanation to Santander that the content of the explanation wasn't accurate, or that D later became aware that the explanation it had provided to Santander wasn't accurate but didn't update Santander at that time. And, ultimately, I don't feel that I can fairly or reasonably censure Santander for either of these scenarios.

D is also unhappy that Santander allowed a series of monetary transfers to be made to its liquidator at a time when it feels Santander should have frozen the account. But it's notable that all but one of these transfers took place before the letter sent by the liquidators notifying Santander of its appointment had been posted. Additionally, the final transfer took place two days after the date on the liquidator's letter, and I don't feel that it's reasonable to expect Santander to have received and processed this letter in such time as to have been able to prevent this final transfer from taking place.

D has also expressed its dissatisfaction that Santander haven't applied to be secured creditors and are pursuing repayment of the overdrawn balance by reliance upon personal guarantees given in 2006 which D feels may be invalid.

It's outside the remit of this service to comment on the specific way in which Santander chooses to conduct its business. That would be the role of the regulator, which in this case is the Financial Conduct Authority. Additionally, it's also outside the remit of this service to make a judgement as to whether a previously given personal guarantee remains valid. Such a judgement would be better suited to a Court of Law. As such, I'm unable to comment further on either of these two points.

All of which means that I find it difficult to conclude that Santander have acted unfairly or unreasonably here, and it follows from this that my provisional decision here will be that I won't be upholding this complaint.

In my provisional decision letter, I gave both D and Santander the opportunity to provide any comments or new information they may wish me to consider before I moved to a final decision.

D did provide some further comments for my review. Several of these were reiterations of D's position and didn't constitute any new information. I can confirm that my position on these matters is unchanged from when I arrived at my provisional decision, and I will not comment on them further.

D did explain that it felt that I hadn't considered all the information that should have been available to me when arriving at my provisional decision. D acknowledged that it did assure Santander that the reason the accounts were suddenly showing as insolvent was because of a change in balance sheet reporting requirements and also that D assured Santander that it continued to remain viable as an ongoing concern. However, D stated that it updated its position with Santander shortly after providing that initial explanation, confirming that it was in fact in an untenable financial position, and that as such Santander had been aware of this when it had renewed D's overdraft.

I've conducted a thorough search of this service's records for any documents or evidence that would corroborate D's position here, I've also asked D to provide copies of any such corroborating documents which would confirm their version of events, as any such evidence may have caused me to rethink my position here.

But I've been unable to locate any such corroborating evidence in the documents previously provided to this service by either D or Santander, and while D have provided some documents for my consideration, I don't feel that any of these documents provide a tenable reason for me to consider changing my provisional decision here.

I do note that Santander emailed D in response to their assurances on 4 October 2017 as follows:

"... thank you for your comments on the Balance Sheet. I appreciate from a trading point of view there are no changes with you continuing to be profitable and the account working well. I just need to understand from your Accountant as to what is now included in the Balance Sheet and why, so that I can explain it to my credit department."

This email appears to confirm that Santander were, at that time, of the understanding that D continued to be viable as an ongoing concern – having accepted the assurances provided by D the day before – but wanted to understand the changes in Balance Sheet reporting that had led to D's accounts to suddenly show to the contrary. And, as alluded to in my provisional decision letter, given the long-standing nature of D's relationship with Santander, this doesn't seem unreasonable to me.

Ultimately, having considered D's responses to my provisional decision, I continue to feel that it was fair and reasonable for Santander to have allowed the renewal of the overdraft – which took place on 2 October 2017 – to continue following the assurances that it received from D via email on 3 October 2017. And I haven't seen any evidence to corroborate D's position that it made Santander aware that these assurances weren't in fact viable, and that it was in fact in a precarious financial position, shortly after D provided them to Santander.

All of which means that I see no reason not to issue a final decision in line with that as outlined in my provisional decision whereby I do not uphold this complaint. And I can confirm that my final decision will be that I am not upholding this complaint accordingly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 17 May 2022.

Paul Cooper
Ombudsman