

The complaint

Mr S and Mrs E have complained that Santander UK Plc continued charging them excessive amounts for their overdraft when they were in financial difficulty.

What happened

Mr S and Mrs E complained to Santander about the charges that had been applied to their account since 2007. They said they'd been experiencing financial difficulties throughout this period and the charges had made things worse. Santander didn't uphold the complaint. And as Mr S and Mrs E were dissatisfied, they referred the complaint to our service.

Mr S and Mrs E's complaint was considered by one of our adjudicators. He explained that we would only be able to consider charges applied from 2015 onwards. He also explained that he thought Santander ought to have realised that Mr S and Mrs E were experiencing financial difficulty by January 2015 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 agree with our adjudicator's findings that Santander acted unfairly when it continued charging overdraft interest and associated fees after January 2015. By this point, it ought to have been clear that Mr S and Mrs E were in no position to sustainably repay what they owed within a reasonable period of time.

I say this because Mr S and Mrs E's statements showed evidence of hardcore borrowing. In other words they hadn't seen a credit balance for an extended period of time. Santander's own literature suggests that overdrafts are for unforeseen emergency borrowing not prolonged use. I acknowledge that Mr S and Mrs E appeared not to be using this account as their main account, but given that it was receiving only small credits and had by that time been significantly overdrawn for over six months, I still think that Mr S and Mrs E's overdraft usage should have prompted Santander to have realised that they weren't using their overdraft as intended. So I think Santander shouldn't have continued offering it on the same terms. As Santander didn't react to Mr S and Mrs E's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably.

I acknowledge that Mr S and Mrs E were able to temporarily repay their overdraft in 2020. But I don't think this changes the fact that I think Santander should have taken action regarding their account five years earlier.

In reaching my conclusions, I've thought about what Santander has said about the Consumer Credit Sourcebook, the terms and conditions of Mr S and Mrs E'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 and Mrs E's account from January 2015.

Mr S and Mrs E ended up paying additional interest, fees and charges on their overdraft and this ended up exacerbating difficulties they already had in trying to clear it. So I think that Santander didn't treat Mr S and Mrs E fairly and they 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 S and Mrs E's complaint for Santander to put things right by:

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

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr S and Mrs E to arrange a suitable repayment plan, Mr S and Mrs E are 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 S and Mrs E's credit files, Santander should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2015. Santander can also reduce the overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr S and Mrs E 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 S and Mrs E 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 and Mrs E's credit files. Santander can also reduce Mr S and Mrs E's overdraft limit by the amount of the 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 and Mrs E a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr S and Mrs E'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 Mrs E and Mr S to accept or reject my decision before 8 March 2022.

Sophie Mitchell
Ombudsman