

Complaint

Mr D has complained that Santander UK Plc (“Santander”) unfairly continued applying charges on his overdraft which added to his financial problems.

Background

One of our investigators looked at Mr D’s complaint and thought Santander should have realised Mr D’s overdraft had already become unsustainable when it agreed to increase his limit in October 2020. So it needed to refund all the interest, fees and charges it added to Mr D’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. We’ve also explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr D’s complaint.

Santander needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Santander needed to carry out proportionate checks to be able to understand whether Mr D could afford to repay before advancing any credit. Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t *continue* to lend to a customer irresponsibly.

Having carefully considered everything provided, I think Santander acted unfairly when it continued lending to Mr D from October 2020 onwards. By this point, it was evident Mr D was already struggling to meet his existing credit commitments.

Santander says it carried out credit checks. But it hasn’t provided the results of any of these. In any event, a cursory look at Mr D’s statements leading up to October 2020 shows that Mr D had been borrowing from a number of high-cost credit providers in addition to having large commitments with more mainstream ones.

It's also worth noting that given it also provided a loan for a significant amount at this stage, presumably to refinance some of Mr D's existing commitments, Santander could quite easily have removed Mr D's overdraft at this stage. This is especially the case as a closer look at Mr D's statement suggest a possible reason for the extent of Mr D's existing credit commitments was because he was gambling significant sums. And this in, itself, ought to have called into question whether Mr D was in a position to repay what Santander was agreeing to lend without borrowing further or suffering significant adverse consequences.

So I think that by October 2020, Santander should not only have refused to increase Mr D's overdraft limit, but it ought fairly and reasonably to have realised that he was also unlikely to be able to sustainably repay what he already owed. So at this point Santander shouldn't have continued providing the overdraft on the same terms and instead treated Mr D with forbearance rather than adding even more interest, fees and charges on the overdraft.

After all, the available information at the time of the application for the limit increase suggested that there was a significantly increased risk of Mr D being unable to fulfil his obligation to repay what he owed. And this was an objectively justified reason to terminate or suspend Mr D's right to draw on further credit.

All of this means that Santander should have realised that Mr D was in a cycle of debt and offered him help to repay what he already owed it. As Santander didn't react to Mr D'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 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 October 2020.

Mr D ended up paying additional interest, fees and charges when he shouldn't have. So I'm satisfied that Mr D 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 D

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 from October 2020 onwards 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 for this. If it considers it appropriate to record negative information on Mr D's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in October 2020. Santander can also reduce Mr D'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 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 17 February 2022.

Jeshen Narayanan
Ombudsman