

Complaint

Mr B and Mrs B are unhappy with what Santander UK Plc ("Santander") has agreed to do to put things right after they complained about unfair charges on their overdraft.

Background

As a result of our adjudicator's involvement, Santander agreed that it should refund all the interest, fees and charges it added to Mr B and Mrs B's overdraft from April 2015 and it proposed to reduce what Mr B and Mrs B owed by this amount as well as set up a repayment plan to repay the remaining amount. One of our adjudicators looked at Mr B and Mrs B's complaint and she thought that what Santander had agreed to do to put things right was fair and reasonable in all of the circumstances of the case. Mr B and Mrs B didn't agree so the complaint was passed for an ombudsman's 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.

Having carefully considered everything, I think that what Santander has already agreed to do to put things right for Mr B and Mrs B is fair and reasonable in all the circumstances of their complaint. I'll explain why I think this is the case.

Santander has agreed that it ought to have realised that it was unfair to continue adding interest, fees and charges to Mr B and Mrs B's account as it ought to have realised the overdraft was unsustainable at this stage. And it has agreed to refund all the interest, fees and charges added to Mr B and Mrs B's overdraft from then in order to put things right.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued to allow a consumer to use, a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. That's what Santander has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances.

In this case, Mr B and Mrs B will be left with an outstanding balance to repay even after the credits they've made and they will now be 'refunded' all of the interest, fees and charges applied. But while Mr B and Mrs B will be left with an outstanding balance to repay and they might be unhappy with this, Santander has done what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr B and Mrs B believes that Santander should do more. As I understand it, they're unhappy with the remaining balance. I've carefully thought about what Mr B and Mrs B has said. But all the interest, fees and charges Santander shouldn't have added will be removed from the overdraft. And what Mr B and Mrs B will be left with to repay are the funds which they used and benefitted from. Ultimately, the amount they've paid since 2015 isn't enough to cover the funds they borrowed and crucially I don't agree that the interest, fees and charges have left them with a debt that they wouldn't otherwise have been left with. In other words, the total amount they owe (including the interest fees and charges in question) hasn't been paid yet and the interest part of that will be deducted as part of their successful complaint.

Bearing in mind all of this, I'm satisfied that what Santander has already agreed to do to put things right for Mr B and Mrs B – reworking their account so that all the interest, fees and charges added since April 2015 are removed and setting up a repayment plan for the remaining balance – is fair and reasonable in the circumstances of this case. And I'm not requiring it to do anything more. As this is the case, it's up to Mr B and Mrs B to decide whether they wish to accept Santander's offer and leave it up to them to do so.

My final decision

For the reasons I've explained, I'm satisfied that what Santander UK Plc has already agreed to do to put things right for Mr B and Mrs B is fair and reasonable in the circumstances of her complaint. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 21 March 2022.

Jeshen Narayanan
Ombudsman