

## **Complaint**

Mr H is unhappy with what Santander UK Plc ("Santander") has agreed to do to put things right after he complained about the interest, fees and charges added to his overdraft.

## **Background**

I've separately explained why I'm only able to look at the charges applied to Mr H's account from January 2019 onwards. As this is the case, this decision is only looking whether Santander acted fairly and reasonably towards Mr H from January 2019.

As a result of our adjudicator's assessment, Santander agreed to refund all the interest, fees and charges it added from January 2019. Our adjudicator that what Santander had agreed to do to put things right was fair and reasonable in all of the circumstances of the case. Mr H disagreed and asked 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 H is fair and reasonable in all the circumstances of his 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 charging Mr H for his overdraft in the way that it did from January 2019. And it has agreed to refund all the interest, fees and charges added to Mr H's overdraft from then in order to put things right. It also wants to remove the overdraft from Mr H's account.

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.

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 H believes that Santander should do more. As I understand it, he wants Santander to refund all the charges applied to his account from January 2013. But I've already separately explained why we can't look at what happened on Mr H's account prior to January 2019. And while I can understand Mr H's disappointment, I'm afraid that Santander refunding everything from this point onwards means that there aren't any further charges I can ask it to refund.

Bearing in mind all of this, I'm satisfied that what Santander has already done to put things right for Mr H – reworking his account so that all the interest, fees and charges added since January 2019 are removed – 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 H to decide whether he wishes to accept Santander's offer and I leave it to him to let us know whether he does.

### **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 H is fair and reasonable in the circumstances of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 March 2022.

Jeshen Narayanan  
**Ombudsman**