

Complaint

Mrs B is unhappy with what Santander UK Plc ("Santander") has agreed to do to put things right after she complained about the interest, fees and charges added to her overdraft.

Background

I've separately explained why I'm only able to look at the charges applied to Mrs B's account from January 2020 onwards. As this is the case, this decision is only looking whether Santander acted fairly and reasonably towards Mrs B from January 2020.

As a result of our adjudicator's assessment, Santander agreed to refund all the interest, fees and charges it added from June 2020. 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. Mrs B 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 Mrs B 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 Mrs B for her overdraft in the way that it did from January 2020. And it has agreed to refund all the interest, fees and charges added to Mrs B's overdraft from then in order to put things right. It also wants to reduce Mrs B's overdraft limit by the amount of the compensation and arrange a repayment plan for the remainder of the balance.

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, Mrs B has been left with an outstanding balance even though the credits she's made to her account have been factored in and she's been 'refunded' all of the interest, fees and charges applied from July 2020. Santander proposes to reduce Mrs B's limit by the amount of the redress and work with her to clear the overdraft completely too. So while Mrs B has been left with an outstanding balance to repay and she might be unhappy with this, Santander has done what I'd normally expect a bank to do in similar circumstances 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.

Mrs B believes that Santander should do more. As I understand it, she wants Santander to refund the charges applied to her before January 2020 and she's unhappy with the steps that Santander proposes to take in relation to her overdraft moving forward.

But I've already separately explained why we can't look at what happened on Mrs B's account prior to January 2020. And while I can understand Mrs B's disappointment, I'm afraid that Santander is perfectly entitled to rely on the time limit.

Finally, I've thought about what Mrs B has said about Santander wanting to reduce her overdraft limit. I know Mrs B is unhappy with this. But as Mrs B complained she's struggling to repay her overdraft charges, I don't think it is unfair for Santander to take this into account or put measures in place to ensure Mrs B doesn't accrue further charges she can't afford to pay going forwards. As this is the case, I don't think it would be fair and reasonable for me to say Santander should continue to provide an increased overdraft limit to Mrs B when, bearing in mind what Mrs B has said, it has concluded she can't afford it.

For the sake of completeness, I'd also add that banks have been required to put in place strategies and measures to help customers avoid using overdrafts for prolonged periods of time as this is part of the regulator's strategy to reduce repeat use of overdrafts by customers. And it's possible that Santander may well have, in any event, taken action in relation to Mrs B's overdraft usage irrespective of her having been successful in her complaint.

Bearing in mind all of this, I'm satisfied that what Santander has already done to put things right for Mrs B – reworking her account so that all the interest, fees and charges added since January 2020 are removed and arranging a repayment plan for the remaining balance to be repaid – 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 Mrs B to decide whether she wishes to accept Santander's offer.

I appreciate that this will be very disappointing for Mrs B – especially as she feels as though she's been penalised for making a successful complaint. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that Santander UK Plc has already agreed to put things right for Mrs B in a way that's fair and reasonable in the circumstances of her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 23 March 2022.

Jeshen Narayanan
Ombudsman