

The complaint

Miss H has complained that Santander UK Plc (“Santander”) acted unfairly by continuing to apply charges to her account when she was in financial difficulty and that her credit file has been badly affected by what Santander has reported to credit reference agencies.

What happened

In January 2020 Miss H’s account changed from a graduate account to an everyday account – this meant Miss H started incurring overdraft fees on her account for the continued use of her overdraft facility. Miss H complained to Santander that the fees applied to her overdraft caused her financial difficulty. Santander said all charges were applied in line with the terms and conditions of the account. Santander says it assisted Miss H when she contacted it by refunding fees and setting up a repayment plan.

Miss H was dis-satisfied with this and referred her complaint to us. One of our adjudicators looked at this complaint and thought that Santander should have stopped charging overdraft fees from 1 January 2021 as by this point it was clear Miss H was in financial difficulty and hadn’t seen a credit balance in a significant period of time.

Santander agreed to make an offer in-line with our adjudicators view. It said that it would:

- Re-work Miss H’s overdraft balance so that all interest, fees and charges applied to it from 1 January 2021 onwards are removed.
- That the refund totaled £223.66 and that 8% simple interest would be added to that on the settlement date.
- That the balance that Miss H owes Santander is £1,261.25 and that the refund would be applied to this and her credit file would be adjusted as appropriate.

Miss H didn’t accept the offer and asked for an ombudsman’s decision.

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.

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

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 charged the fees and given the credit they shouldn’t have.

So where a business continues 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 in this case I'm in agreement with our adjudicator here that by 1 January 2021 Santander should've done more for Miss H as by this point it ought to have been apparent that Miss H was in financial difficulty – a cursory look at her bank statements showed she hadn't seen or maintained a credit balance for an extended period of time, she had exceeded her overdraft limit on more than one occasion and there was very little money coming into the account.

Santander have told us that Miss H would've still been left with an outstanding debt, once all adjustments had been made, and she's been 'refunded' all of the interest, fees and charges caused by her overdraft from 1 January 2021 and that it would amend her credit file as appropriate to reflect this.

So while Miss H has been left with a balance and she might be unhappy with this, Santander has done what I'd normally expect it to do here. What Miss H was left with to repay are the funds which she used and benefitted from and I don't agree that the interest, fees and charges left her with a debt that she wouldn't otherwise have been left with.

I understand that Miss H is concerned about the information that Santander has reported about the management of her account to the credit reference agencies it subscribes to and the impact this has had on her credit report. But Santander has a duty to make sure the information it reports on its customers affairs to the credit reference agencies ("CRA's") it subscribes to is factually accurate and it has no control over the way the CRA's present that information. Santander has already confirmed it would adjust Miss H's credit file as appropriate if she decides to accept the settlement and providing the information it reports is factually accurate I don't think Santander has done anything wrong.

So bearing in mind all of this, I'm satisfied that what Santander has already agreed to do to put things right for Miss H is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Miss H to decide whether she wishes to now accept Santander's offer.

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 Miss H is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

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

Caroline Davies
Ombudsman