

Complaint

Mr S and Ms S 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 S and Ms S’ overdraft from January 2020 and it proposed to reduce what Mr S and Ms S owed by this amount as well as set up a repayment plan to repay the remaining amount.

One of our adjudicators looked at Mr S and Ms S’ complaint and he 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 S and Ms S 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 S and Ms S 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 S and Ms S’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 S and Ms 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 S and Ms S 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 S and Ms S 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 S and Ms S believe that Santander should do more. As I understand it, they're unhappy that any fees at all were added to their overdraft because Santander failed to send them text message alerts between February 2018 and December 2019.

I've considered what Mr S and Ms S have said.

The first thing for me to say is that any failure to send text messages doesn't somehow make the charges Santander added illegal as Mr and Ms S appear to be suggesting, as the terms and conditions of Mr S and Ms S' account did permit these charges. Secondly, and most importantly, the period Mr S and Ms S have referred to – February 2018 to December 2019 – was when it was mandatory for a bank to send text message alerts regarding unarranged or unplanned overdraft usage to customers. Prior to this while some banks did send text messages, for arranged overdraft usage, where mobile phone numbers were available, it wasn't a mandatory requirement to send them.

I've seen that Mr S and Ms S now say that they didn't have an arranged overdraft during the period concerned. But the information I've seen suggests that they've had an arranged overdraft with a limit of £650 for a number of years. Furthermore, it's clear that they've been charged arranged overdraft fees during this period too. Finally, I'd also question how and why Mr S and Ms S allowed their account balance to be overdrawn as long and for the amount they did, if they genuinely believed that they didn't have an arranged overdraft.

So overall I'm satisfied the available evidence demonstrates that Mr S and Ms S did have an arranged overdraft with a limit of £650 between February 2018 and December 2019. And this means that Santander didn't fail to do something it was supposed to when it didn't send Mr S and Ms S text message alerts about their overdraft usage prior to January 2020.

Bearing in mind all of this, I'm satisfied that what Santander has already agreed to do to put things right for Mr S and Ms S – reworking their account so that all the interest, fees and charges added since January 2020 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 S and Ms S to decide whether they wish to 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 Mr S and Ms S is fair and reasonable in the circumstances of their 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 S and Ms S to accept or reject my decision before 18 April 2022.

Jeshen Narayanan
Ombudsman