

The complaint

Mrs H and Mr H (Mr and Mrs H) complain that Santander UK Plc were wrong to keep them in an overdraft situation in which they continually paid charges and suffered loss.

Mr and Mrs H say that they have been in overdraft for many years and they were in financial difficulties and the 'extortionate' charges from Santander kept them in financial difficulties.

Mr and Mrs H say that they have been affected mentally over the years.

What happened

Mr and Mrs H have a joint bank account with Santander. Mrs H telephoned and spoke to a Santander employee on 21 June 2021 to complain. The complaint account notes of that telephone call have been sent to us by Santander which indicate that Mrs H had said she was struggling financially during the period she had the overdraft and feels the fees didn't help her situation. As a result, she was not happy with Santander's service and that there was no support.

Mrs H accepted that she probably did – but was not sure – contact the bank in the past to explain about the financial issues she and her husband were having.

The Santander explanation on the telephone as to why it was not going to uphold her complaint was that the overdraft facility was not a free service, and it had to be paid for when it was used. This was stated in the terms and conditions that Santander said Mrs H would have read and agreed to prior to the account being opened and when the overdraft facility was set up. Santander pointed out that the last overdraft interest or fee charges to the account were in February 2018. Since then the account had been in credit.

Mrs H was sent a resolution letter on 22 June 2021 saying that her complaint had been resolved and providing her with referral rights to the Financial Ombudsman Service. Mrs H telephoned the Financial Ombudsman to refer her complaint to us on 11 December 2021. Santander sent to us information relating to the complaint and the account.

One of our adjudicators looked at the complaint and issued a letter of opinion which had two parts to it. The first part dealt with the jurisdiction element which meant that our adjudicator gave her opinion about how much of the complaint we could look at. She felt that we could look at the issues surrounding her complaint from June 2015 to June 2021 being six years. This part has been the subject of a decision I did earlier and was sent to the parties on 10 May 2022. In that jurisdiction decision I said that I can only consider the charges that Santander has added to Mr and Mrs H's account after 21 June 2015.

The second part of our adjudicator's view related to the merits of the complaint and she said that Santander had acted unfairly continuing to charge overdraft fees from 21 June 2016. By this point, Mr and Mrs H hadn't maintained a credit balance for an extended period – around 12 months. Santander's own literature suggests that overdrafts were supposed to be for unforeseen emergency borrowing not prolonged day-to-day expenditure. Santander should have realised that Mr and Mrs H weren't using their overdraft as intended and shouldn't have

continued offering it on the same terms.

Santander agreed with our adjudicator about the merits of the complaint but Mr and Mrs H did not. So, the unresolved complaint was passed to me to decide.

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.

Santander will be familiar with all the rules, regulations, and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So, I don't consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I think that Santander acted unfairly when it continued charging overdraft interest and associated fees after June 2016. At this point, it ought to have been clear that Mr and Mrs H had never been out of their overdraft for at least 12 months and were finding it difficult sustainably to repay what they owed or able to repay it within a reasonable period.

Santander agreed to this – it said it would *'...agree to refund fees and interest between 21/6/2016 to 3/2/2018 and apply 8% to that amount.'*

In the circumstances I have reviewed it and decided that Santander's offer is fair and reasonable and in line with my own view.

I'm sorry to hear that the stress of the situation has affected Mr and Mrs H's mental health but feel that Santander's offer is fair in the circumstances.

I asked Santander to check its records to see if it had received any information from Mr or Mrs H in the past about troubles with Mr H's business and/or his employment but it has responded to say it has no records of that.

I uphold Mr and Mrs H's complaint in part.

Putting things right

Having thought about everything, I currently think that it would be fair and reasonable in all the circumstances of Mr and Mrs H's complaint for Santander to put things right by reworking Mr and Mrs H's current overdraft balance so that all interest, fees and charges applied to it after June 2015 are removed. And:

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr and Mrs H to arrange a suitable repayment plan, Mr and Mrs H is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement. If it considers it appropriate to record negative information on Mr and Mrs H's credit file,

Santander should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in 28 April 2020. Santander can also reduce Mr and Mrs H's overdraft limit by the amount of refund if it considers it appropriate to do so, if doing so wouldn't leave Mr and Mrs H over their limit.

or

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr and Mrs H along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Santander should remove any adverse information from Mr and Mrs H's credit file. Santander can also reduce Mr and Mrs H's overdraft limit by the amount of refund if it considers it appropriate to do so.

†HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr and Mrs H a certificate showing how much tax it has taken off if they ask for one.

My final decision

My final decision is that I uphold Mr and Mrs H's complaint in part and I direct that Santander UK Plc does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 8 June 2022.

Rachael Williams
Ombudsman