

## The complaint

H, a limited company, complains Santander UK Plc unfairly removed an overdraft and later closed its business accounts. It also says Santander recorded a default marker in relation to the overdraft and overall, they provided a poor service and failed to offer it appropriate support.

## What happened

Mr H is a director of H and brings this complaint on H's behalf. At this point, I must make clear that this decision does not concern any of Mr H's personal accounts. This is because Mr H and H are separate legal persons, so their complaints would need to be considered separately.

In summary:

- H held several accounts with Santander, including a current account with an arranged overdraft, and a savings account.
- In May 2019 H exceeded its arranged overdraft and went into an unarranged overdraft. This was caused in part by fees being applied to the account that were charged under the current account terms.
- Santander wrote to H on several occasions.
  - They sent a letter in May 2019 informing H it had entered an unarranged overdraft which needed to be repaid. It said if it wasn't repaid, further charges might be incurred, and debit cards could be blocked.
  - They sent two separate letters in June 2019 saying H needed to repay the unarranged balance. Both letters said H could call them to agree a way to repay the arrears, and they provided the contact details of debt advice organizations. The letters said H's debit card and direct debits could be cancelled if the arrears weren't repaid.
  - They sent a letter in early July 2019 requesting repayment of the arrears within 14 days. It further said that if they weren't repaid, H's banking facilities and overdraft would be removed, which would mean the full overdraft balance would fall due. It also said H could call them to discuss potential solutions if H couldn't afford to repay the arrears.
- Mr H wrote a letter to Santander in early July 2019 following the receipt of the last letter. He asked Santander to put a hold on further action for 30 days. He then rang Santander in mid-July 2019 as he was unhappy his letter hadn't been acknowledged. He asked Santander to consider refunding a sizeable amount of charges.

Santander agreed to refund £170 of previous charges and waived a £50 charge that was due to debit the account. They also said they previously refunded another charge in June 2019.

- Santander sent another letter out in early August 2019, which asked H to repay the arrears as soon as possible.

No payment was made to clear the arrears, and Santander removed the overdraft in August 2019, along with H's banking facilities, which meant Mr H couldn't access the account online. Santander sent a letter out to confirm what had happened.

- Several telephone conversations took place between Santander and Mr H in August 2019. During those conversations Mr H expressed his unhappiness about the overdraft being removed and about Santander refusing to talk to another director of H who rang them previously. He found Santander's process of dealing with him bureaucratic and said he would contact the press, his MP, and the governor of the Bank of England. Santander said H's other director wasn't authorised to speak about the account over the phone, so the account permissions would need to be amended.

Importantly, Mr H said he expected H to receive a very large payment to its savings account, part of which would be used to clear the overdraft balance. He expected to clear the overdraft at the beginning of September 2019. But in a subsequent phone call, Santander agreed to Mr H's further request to extend the deadline to pay off the overdraft until the end of September 2019.

- Mr H rang Santander at the end of September 2019 and said H might not be able to repay the overdraft until the end of October 2019. Santander said that as the collections process had been put on hold for three months, they would need a specific date for the overdraft to be repaid. They asked Mr H to call back when he had a date.

Santander sent two further letters to H in October. The first letter said H had seven days to clear the balance, and the second letter said if the balance wasn't cleared they would share information with credit reference agencies which may impact on H's ability to obtain credit in the future.

- Mr H rang Santander in early November 2019. He said H was unable to repay the full balance at that time, but he expected it would be repaid by the end of December 2019. He asked if two payments, which had previously been paid towards the overdraft debt, could instead be credited to H's savings account. This was so H could pay important costs, including part payment of a former employee's salary.

Santander agreed to credit H's savings account. They also agreed to H making a token payment of £1 towards the overdraft balance each month but said that this didn't mean further collections activity wouldn't continue at some point.

- H failed to make a token payment in December 2019. Santander sent a letter in early January 2020 saying the account would be defaulted in 28 days if the overdraft debt wasn't cleared. Mr H made a payment of £3 in mid-January 2019 and wrote to Santander asking for further time. But Santander decided to record a default against H's business account in February 2020, after the 28 days had passed. They closed the account.

- Mr H contacted Santander several more times, and his MP also contacted Santander. He expressed his unhappiness about multiple matters, including the default, that he couldn't access H's accounts online, and that Santander should have responded in writing to his letters.

Santander restored access to H's other accounts and said it had been removed due to receipt of returned mail, which was caused by H changing address. Their change of address process had needed to be followed before access was restored. They

said Mr H would have always needed to call them to discuss options regarding H's outstanding debt, and they wouldn't have sent letters for this purpose. They also said Santander weren't responsible for the length of time it might have taken the postal service to deliver their letters.

- Santander told Mr H in July 2020 that they would remove the default as a temporary measure contingent on H making a token payment each month and the arrears being cleared within six months. But they reviewed their position at a more senior level and decided not to remove the default due to the size of the debt owed and because they recorded the default correctly. They decided they would close H's remaining accounts immediately, which they did in September 2019. They refunded a further £150 of fees charged on H's business account in June 2019 as a gesture of goodwill.
- Mr H complained about the closure of H's other accounts without notice. He also said he thought Santander were holding on to a credit balance, which needed to be repaid.

Santander confirmed there was no credit balance to repay. Although a large payment had been made towards the overdraft debt, this still left a balance to pay. They had used the remaining funds H held in another account to offset the remainder, which left a small debt which they decided to write off.

Our investigator upheld H's complaint in part. In summary, they found:

- Santander could decide to close H's accounts and our service wouldn't generally interfere with the exercise of their discretion. But Santander still needed to give the correct notice under the accounts' terms. Considering the information Santander had provided, it wasn't enough to show they acted reasonably by closing H's accounts immediately. Instead, Santander should have given H two months' notice and allowed access to the accounts during this time.
- Santander offered appropriate support in their dealings with H about repaying the overdraft. They had waited some time for H to repay its arrears and the overdraft was revocable at any time.

Santander had shown an appropriate level of forbearance before deciding to default H's business current account. They had refunded some charges and accepted token payments, as well as providing the details of debt advice organizations. But H's situation hadn't changed over a significant period, so Santander's decision to record a default was understandable – it was an accurate reflection of H's situation.

- H is a limited company, so it can't experience distress or worry. There was no reason to doubt Mr H had been impacted personally by the immediate closure of H's accounts, but this was not something for which H could be compensated.

But H was caused inconvenience by the immediate closure of its accounts and what appears to have been preventable confusion about whether H's debt had been cleared. £200 was a reasonable sum to compensate H.

Mr H responded and said he hadn't received some of Santander's letters. Our investigator sent him copies of those letters. Afterwards, he asked on H's behalf for a final decision from an ombudsman.

Santander failed to respond, and the deadline for them to do so has now passed. As a result, H's complaint has been given to me to make a final 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.

I have decided to uphold H's complaint, but I am not awarding more compensation than the £200 our investigator recommended. I'll explain why.

Ultimately, an overdraft is revocable and can be recalled at any time. So, Santander could remove the overdraft and ask H to repay what it had borrowed. But Santander still needed to consider H's individual circumstances and to act fairly before recording a default. I find on balance that Santander treated H fairly in this regard. I say this because:

- Santander refunded some of the charges H incurred on its business current account. It wasn't the amount Mr H wanted them to refund, but the charges were applicable under account's terms. And I'm satisfied that by refunding and waiving some of the charges, Santander took a reasonable measure to help H.
- Santander cancelled H's overdraft in August 2019. But before doing so, they sent multiples letters to H from May 2019, which were detailed in our investigator's view and copies of which have been sent to Mr H.

I find Santander gave H clear notice that the overdraft would be removed if it didn't pay the arrears. Mr H says he didn't receive half of Santander's letters, but I'm satisfied the letters were sent. And I don't find Santander were responsible if some of the letters didn't arrive in a timely manner after they were sent.

But whether some letters were received later than expected, Mr H was in my opinion aware that H's overdraft could be cancelled and become repayable in full if H's arrears weren't paid. He had sent Santander a letter in July 2019 in response to the receipt of a Santander letter which detailed this was a possibility. He had asked Santander to wait 30 days before taking any action.

I appreciate H couldn't afford to pay the arrears, but on balance Santander gave H reasonable notice, and they were entitled to remove the overdraft after the arrears weren't paid, meaning the full balance became due.

Mr H was left frustrated that Santander hadn't acknowledged his letter and in general he was frustrated they didn't respond in writing to some of his correspondence and contact. But I am not awarding losses for personal distress he experienced. Only H is the eligible complainant under the dispute resolution rules (DISP) for complaints about accounts it held, and it cannot experience upset or distress. I was though sorry to hear about Mr H's personal circumstances during this time, and I recognise that this was a very difficult period for him.

- After cancelling the overdraft, Santander held off from recording a default between July 2019 and November 2019. This was because Mr H said he expected H to receive very substantial funds which could pay off the overdraft. But by November 2019, the overdraft debt hadn't been substantially repaid and the funds hadn't materialized.

Mr H rang Santander in November 2019 and said he hoped the overdraft debt would be repaid by the end of December 2019. He offered to pay a token payment of £1 per month in the interim, which Santander accepted. Santander did tell him the token payments wouldn't mean that further action couldn't be taken if the debt remained unpaid.

Santander also allowed Mr H to transfer payments that were previously made to reduce the overdraft balance in November 2019 to H's savings account so that H could pay other pressing liabilities.

I'm satisfied Santander exercised reasonable forbearance on these occasions, particularly considering the size of debt they were owed and the length of time it had remained unpaid. Neither would I have found it unreasonable if Santander had decided not to hold off taking further action at that time.

- H missed a token payment in December 2019. Santander decided to send a default notice on 9 January 2020. They gave H 28 days to pay off the overdraft debt, which Mr H thinks was unfair. He says the missed payment was an oversight and he made a £3 payment later that January. But I find Santander's decision was understandable. By the time Santander had sent its default notice, the overdraft debt had remained substantially unpaid for a significant amount of time, and the large payment H hoped to receive hadn't materialized in December 2019.

H was going through a very difficult time financially. But Santander weren't obliged to suspend action until such time that H had recovered. Instead, Santander had given H a reasonable time to repay the overdraft debt and H hadn't been able to do this. I'm satisfied in this context that Santander's decision to record a default was understandable. The default represented an accurate indication that H was unable to repay the overdraft under the terms of the account.

- I am satisfied Santander acted reasonably by requiring H to follow its change of address process, and that this explained why online access to H's other accounts was removed after Santander received correspondence back as return to sender. I'm also satisfied that Santander was following a reasonable process by not speaking to the other director of H over the phone when they didn't have the appropriate authority in place. I appreciate these obstacles would have been frustrating, but it's important for Santander to have security measures in place to protect customer's accounts and information.
- I understand why Santander wanted to only speak to Mr H over the phone when discussing H's overdraft debt. Speaking on the phone offers a flexible way to come to an arrangement, whereas written exchanges can prolong matters. So, while I understand Mr H wanted to communicate in writing, I find Santander communicated with him reasonably in this regard.

#### *What Santander ought to have done better*

- In July 2020 Santander communicated that it would temporarily remove the default marker on the condition that H made a token payment each month and that the overdraft was cleared within six months. They reviewed their decision shortly afterwards and decided not to proceed any further because the sum owed was too large, and the default had been correctly recorded. I find Santander could change their position, so I am not recommending that they remove the default. But I find them changing their decision does represent poor service which may have inconvenienced H.
- Santander has the discretion to close accounts and terminate a relationship with a customer. And I haven't seen a good reason to interfere with the exercise of their commercial discretion on this occasion. But Santander still need to give reasonable notice to H and give the correct notice period under their terms and conditions.

The closure of the business current account to which the overdraft was attached was fair. H hadn't paid back a significant debt and had breached a contractual term. And, even if Santander had given H a longer notice period, the account was unlikely to be utilized in any meaningful given it couldn't be used until the overdraft was repaid.

I am not persuaded, however, that Santander has provided sufficient evidence to demonstrate that immediately closing H's other accounts in September 2020 was fair. So, like our investigator, I'm satisfied that they should have given H two months' notice before the accounts closed and allowed H access to those accounts during this time. H was likely caused inconvenience in terms of having to quickly make alternative arrangements.

- H was not owed funds by Santander. The large payment made towards the overdraft

debt was not enough to clear the debt entirely. So, Santander used the remaining balance held in another of H's accounts to offset much of the remainder, and they wrote off the small amount which was still left. But it does seem that Santander could have clarified the situation on whether H was owed any funds earlier, given H couldn't clarify this itself as access to the accounts had been removed. I find this likely caused H some inconvenience.

### **Putting things right**

I'm satisfied £200 is reasonable compensation to make up for the avoidable inconvenience H experienced as a result of Santander's errors. I understand Mr H believes H should receive a larger sum. But I have borne in mind that my role is not to award compensation to penalise Santander, but instead it's to award compensation for the impact their errors had on H.

I don't find the errors Santander made warrant a greater sum, and ultimately I'm satisfied Santander acted reasonably when deciding to revoke the overdraft and later to record a default. Mr H was impacted personally by Santander's actions, but as I explained previously this is not something I can compensate H for.

Subject to H accepting my final decision, I direct Santander UK Plc to pay H £200.

### **My final decision**

I have decided to uphold H's complaint. Santander UK Plc should pay H compensation in accordance with my direction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 21 July 2022.

Liam King  
**Ombudsman**