

## The complaint

Mr M is unhappy that Santander UK Plc defaulted his account and passed his overdraft over to a debt collection agency.

## What happened

Mr M had a current account with Santander, which had an arranged overdraft facility. In April 2020, Santander wrote to Mr M to let him know that he'd exceeded his overdraft limit. And they asked him to bring his account back within the overdraft limit.

Mr M didn't do this, and Santander followed up their request with a number of letters during May 2020. And they told Mr M that, if he didn't bring his account within the overdraft limit within 14-days, the overdraft facility would be removed. No payments were made, and, on 20 June 2020, Mr M was advised that the overdraft limit had now been removed.

On 25 July 2020, Santander told Mr M that, if he didn't arrange to repay the overdraft, a default may be recorded. Mr M contacted Santander on 18 August 2020, and they agreed a £100 a month payment arrangement on 26 October 2020. And Mr M was asked to contact Santander on 26 November 2020 to confirm ongoing affordability. Which he did.

Mr M spoke to Santander again on 24 March 2021, confirming his affordability. However, on 14 July 2021, Santander defaulted Mr M's account and passed the remaining overdraft debt to a third-party debt collection agency.

Mr M wasn't happy with this and complained to Santander. Santander said that, because Mr M hadn't contacted them on 26 May 2021 – six months after his conversation on 26 November 2020 - he was in breach of the agreement they'd made. So, they didn't think they'd done anything wrong. Mr M wasn't happy with this, and he brought his complaint to us for investigation.

Our investigator said that Mr M was asked to originally call Santander within six months of the agreement being set up on 26 October 2020. Which he did – on 24 March 2021. And the call notes from 24 March 2021 show that Santander checked Mr M's affordability, and there was nothing in this call that indicated Mr M would need to go through this process again two months later.

As such, the investigator didn't think that Santander had treated Mr M fairly by defaulting the account and transferring the debt to a debt collection agency – there was a payment arrangement in place which Mr M was adhering to. So, the investigator said that Santander should recall the debt from the debt collection agency, remove the default from Mr M's credit file, remove any interest or charges applied to Mr M's account as a result of what had happened, and arrange a new payment arrangement with Mr M.

Mr M agreed with the investigator but thought that Santander should also write off the remaining debt *"as [Santander] don't deserve anymore of my hard earned money after this fiasco."* Santander said they'd referred the investigator's view to a specialist team, for them to respond. But no response has been received.

Because Santander haven't responded, this matter has been passed 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.

Having reviewed the evidence, I agree with the investigator's findings on this complaint for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The circumstances of Mr M exceeding his arranged overdraft, and having his overdraft limit removed, aren't disputed. And I'm satisfied that, after giving Mr M the appropriate notice, Santander acted reasonably by removing the overdraft.

As part of his comments, Mr M has raised the issue that Santander have been reporting missed payments on his account, when he hasn't been missing payments. While I haven't seen a copy of Mr M's credit file to show exactly what has been reported, Mr M exceeded his overdraft limit, and that limit was removed. As such, even though Mr M is making payments towards his outstanding overdraft balance, while a balance remains outstanding, I'm satisfied that it's reasonable for Santander to report this overlimit to the credit reference agencies.

Turning now to the conversations Mr M had with Santander. Santander's case notes show that Mr M contacted them about the situation on his account on 18 August 2020, where he explained that his income had been affected by the coronavirus (Covid-19) pandemic. On 16 September 2020 he completed an income and expenditure assessment and, as a result of this, on 26 October 2020, a £100 a month payment arrangement was put in place.

The case notes for 26 October 2020 say that *"cust needs to call us 26/11 to review."* Which he did. Santander recorded there were no changes to Mr M's circumstances, which allowed the payment arrangement to continue. The case notes for 26 November 2020 say that Mr M was *"advised to call back May 26<sup>th</sup>."*

The next contact was on 24 March 2021, when Mr M completed another income and affordability assessment. Santander confirmed that the arrangement was still affordable, allowing it to continue. And the case notes show that Mr M was told *"to call back in case of any change."* What he wasn't told was that he needed to call back at any specific point in time, nor was he told that he still needed to call Santander on 26 May 2021. Based on this conversation, I'm satisfied that Mr M was of the understanding that he only needed to call Santander if there was a change in his circumstances.

However, because Mr M failed to call Santander on 26 May 2021, even though on the last conversation they'd had with him Santander made it clear that he only needed to call them if there was any change, they defaulted his account and transferred the outstanding balance to a debt collection agency. Given these circumstances, I don't think that Santander have treated Mr M fairly or reasonably, and I think they need to put things right.

### **Putting things right**

When considering what remedy to direct I'm guided by the principle that the purpose of any remedy should be, as far as possible, to put Mr M back in the position in which he would've been had Santander treated him fairly. In these circumstances, Mr M wouldn't have had a

default registered against him, nor would any fees or charges associated with either the default or the transfer to the debt collection agency have been applied to his account.

However, Mr M would still have owed the same amount on his overdraft. Given this, I don't think it's reasonable for Santander to write this amount off. So, Santander should:

- remove the default from Mr M's credit file;
- recover the debt from the debt collection agency;
- remove any fees and charges associated with the default or the transfer to the debt collection agency; and
- contact Mr M to arrange a suitable repayment plan to repay any outstanding balance.

### **My final decision**

For the reasons explained above I uphold Mr M's complaint. And Santander UK Plc must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 November 2022.

Andrew Burford  
**Ombudsman**