

The complaint

Mr B complains that Santander UK Plc lent to him irresponsibly.

What happened

Mr B opened a credit card account with Santander in November 2010. His account limit was set at £3,400 and was never increased.

Mr B says he couldn't afford the credit. He says he had lots of debt elsewhere and had a gambling problem. Mr B says that if Santander had done proper checks it had would have known the credit was unaffordable for him.

Sainsburys says it did all the necessary checks before it lent to Mr B and it didn't see anything which might make it think he couldn't afford the credit. It also said that it sent Mr B regular letters to inform him that he wasn't paying enough off his credit card to repay his debt in a reasonable period of time.

Our adjudicator didn't think Santander had done anything wrong in relation to the initial lending. Our adjudicator thought that Santander ought to have done more to assist Mr B when he experienced financial difficulties, although they did not identify a point at which Santander ought to have intervened. Our adjudicator thought Santander should pay Mr B £200 to recognise the distress and inconvenience caused to him.

Santander agreed with this resolution but Mr B disagreed, so the complaint was passed to me to make a decision.

I came to a different decision to the adjudicator. I essentially agreed with them that Santander should have shown greater forbearance to Mr B when he was in difficulty but I more clearly identified the point at which I considered Santander should have shown that forbearance. I also said that I would direct compensation in line with our usual redress for such cases, rather than the flat £200 recommended by our adjudicator. This compensation would put Mr B more closely back into the position he would have been in had Santander shown forbearance at the point I considered it should reasonably do so.

Mr B agreed with my provisional decision; Santander did not. Santander provided more information about why it felt it had done everything it should have done. It said it would agree to pay the previously suggested £200.

As Santander did not agree I have reviewed my provisional decision again and taken into account the further information and representations made by it. Having done so, I do not consider it materially changes my decision. I explain this further below.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considering Mr B's complaint.

Having done so, I came to a different conclusion to our adjudicator and explained this in my provisional decision. I have no evidence to support a finding that the initial lending was unaffordable for Mr B, but I think that there were clear indications that the lending had become unaffordable for Mr B by 2019. And at this point I think Santander should have done more to show forbearance to Mr B. I will explain why I have come to this provisional decision.

Santander needed to take reasonable steps to make sure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr B could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr B's income and expenditure.

Certain factors might point to the fact that Santander should fairly and reasonably have done more to establish that any lending was sustainable for Mr B. These factors might include:

- Mr B's income, reflecting that it could be more difficult to make any repayments to a given credit amount from a lower level of income;
- The amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- The frequency of borrowing and the length of time Mr B had been indebted, reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming unsustainable.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Santander says that it conducted checks to ensure that the credit would be affordable for Mr B when he opened the account. Given the time that has passed since then it hasn't been able to provide the results of these checks, which isn't unsurprising.

Mr B says that he was in trouble financially and had borrowed heavily elsewhere. In the absence of evidence from Santander about the credit checks our adjudicator asked for Mr B's bank statements from around the time he opened the account. Mr B was able to provide these. They showed that his account was often overdrawn but that essential expenditure - including payments to loans and other credit cards - was around £850 a month with a net salary each month averaging around £1,700. There was also a regular cheque payment for £200 each month, but Mr B was not able to identify what this was for. Mr B told our adjudicator that he lived with his mother and that he contributed in the region of £600 a month to the household. However, this wasn't apparent from Mr B's statements and he indicated that the arrangement was rather more informal, with him paying for things like flights and dinners on an ad hoc basis.

Santander set Mr B's credit limit at £3,400. If Mr B was to pay this full balance off in a sustainable way he needed to pay about 5% of the balance each month. At full usage this would have been about £170 a month. I think that from Mr B's bank statements - the only evidence I have of his financial situation in 2010 - that this would have been affordable for Mr B.

Although Mr B says that he was gambling in a problematic way, this wouldn't have been directly apparent to Santander when it ran its checks.

So, on the information available to me I don't think Santander did anything wrong when it gave Mr B the credit in November 2010.

I have also looked at the conduct of Mr B's account over the course of the agreement to date. On opening the account Mr B immediately made a balance transfer almost to his credit limit. He made small repayments to the account each month, equating to about 1% of the balance. As he paid off some of the balance transfer he made new purchases which kept his balance just under his credit limit.

In late 2011 and early 2012 there is evidence of a significant number of gambling transactions, with at one stage in February and March 2012 Mr B spending several times his net monthly income. Each of these incurred a cash fee cost as they were treated as quasi-cash transactions.

During the course of those two months Mr B made lump sum payments on the credit card, which kept his credit balance just below his limit until he exceeded it in April and May 2012. In May 2012 Mr B paid off the entire balance. It is not clear what the source of this payment was but I think it's likely he made a balance transfer to another account.

Santander wasn't expected to stop Mr B gambling. It was up to Mr B to decide how to use his credit card. But these transactions should have begun to help Santander build a picture of how Mr B was using his credit.

Over the course of the next three years Mr B used the card for normal purchases of goods and services, with only the occasional gambling transaction. He continued to make minimum repayments without paying off much, if any, of the capital borrowed. By August 2015 he had reached his credit limit again and in September and October 2015 and January 2016 he exceeded it.

At this point Mr B's use of cash transactions began to increase. He continued to make minimum repayments and remained over his credit limit for eight out of 12 months in 2016, incurring charges each time. This pattern continued over the period 2017 to March 2020 with Mr B regularly over his credit limit and making minimum repayments.

On 13 March 2020 Mr B made two large transactions to pay off his outstanding balance. Five days later he began a week-long gambling binge, spending up to £1,000 a day. He exceeded his credit limit again and remained in this position until June 2021 when he again paid off his balance in full. Within two months he had made further purchases taking him over his credit limit and he remained over his limit until January 2022, when he again made several larger payments to reduce his outstanding balance significantly. This is the latest point of data I have available to me.

Businesses are obliged to monitor a consumer's repayment record and any other relevant information held and to take appropriate action where there are signs of actual or possible financial difficulties.

Santander has explained it considers it met its obligations to Mr B by regularly sending him letters which explained the implications of making low payments towards his balance. It did this at least eight times, with at least five of those letters in the period January 2018 to November 2020. It also sent Mr B letters when over a period of 18 months he had paid more in interest, fees and charges than he'd repaid towards the capital he owed over the same

period. Santander says that Mr B didn't respond to any of these and didn't tell it he was experiencing any financial problems.

I don't think this was enough. While Santander may have met the minimum statutory requirements in terms of notifying Mr B of the implications of his continued pattern of payment and providing contact details of debt advice bodies I think it needed to go further than this when it became clear that Mr B's difficulties were not short-lived and temporary.

Although a customer paying only the minimum required under any agreement is not, by itself, necessarily a sign of possible or actual financial difficulties Santander should also have taken into account other factors. In Mr B's case I consider this to include the length of time over which he had been indebted, the pattern of making large repayments following many months of only meeting minimum repayments (indicating the shifting of balances between cards), the gambling transactions sometimes equating to several months' salary over a period of a few days, the regular cash withdrawals and the regular exceeding of his credit limit. I think all of these factors combined to indicate that Mr B would not be able to repay his balance in a reasonable period of time.

I have thought carefully about the point at which Santander should have realised that Mr B was unable to sustainably repay his debt and intervened to offer forbearance.

I think that by January 2019 it was clear that Mr B was in difficulty and that he needed greater intervention from Santander than the generic letters it had sent. I say this because in the year preceding this he had exceeded his credit limit in seven out of those 12 months. He had also used the card for gambling and Santander could see from his earlier use of the card that this was not an isolated case. Mr B had managed his account in a similar way in the past, specifically in 2011 and 2012 – although in those instances Mr B had made large payments to his account, too. His account management to April 2016 seemed to be acceptable, with only four late payments in that time and only relatively few gambling transactions of low value. From June 2016 to July 2017 Mr B was over his limit in ten of those months. There followed a period of reasonable management of the account, albeit at levels where Mr B used about 95% of his available credit each month, before June 2018 when he slipped again into being unable to stay within his credit limit. By January 2019 I think Mr B had shown a pattern of account conduct which should have caused Santander to intervene.

Essentially I have come to a similar finding to our adjudicator – that Santander should have done something when it was clear that Mr B was unable to manage his persistent debt. However, I have identified a specific point at which I think Santander should have shown active forbearance. And I disagree with our adjudicator's suggested remedy - £200 compensation. I think Mr B should be put as closely as possible into the position he would have been had Santander shown forbearance at the point I consider it should have done.

Santander responded to my provisional decision with further submissions. I do not intend to reproduce them in full here. It is sufficient to say that Santander makes the following main points:

- It acknowledges there were times when Mr B did not manage his account well and Santander reported negative information about that, but Mr B was able to rehabilitate his account.
- Conduct of Mr B's account and reporting by TransUnion (Santander's financial data provider) did not indicate a consumer in financial hardship.
- If Santander had restricted Mr B's card he would not have been able to use it for day

to day expenses.

- Mr B did not seek assistance other than in 2011 and 2021 which minimised Santander's chances of intervening and assisting him.

I do not consider that any of these points constitutes new information that I have not already considered. A careful reading of my provisional decision (and, now, this decision) explains why I do not consider these points make a difference in Mr B's case. In relation to the restriction of Mr B's card preventing him using it, this is really rather the point. Santander needed to act to prevent Mr B getting further into debt that he could not sustainably repay, whether this was for day to day expenses or otherwise. I don't think Santander is seriously suggesting it actively chose to allow Mr B to continue managing his account in the way he did out of concern for his welfare.

I also remind Santander that it had previously accepted the adjudicator's suggested settlement on the basis that the adjudicator considered it had not acted fairly. Santander did not do this on a clear 'goodwill' basis or indicate that it didn't agree with the view. All my decision serves to do is explicitly set out the point at which I consider Santander should have shown forbearance and brings the redress in line with our usual compensation in such circumstances.

Putting things right

I think Santander should have frozen interest and charges on Mr B's account from 4 January 2019. However, Mr B has had the benefit of the money he spent on the account so I think he should pay this back. Therefore, Santander should:

- Rework the account removing all interest and charges from 4 January 2019.
- If the rework results in a credit balance this should be refunded to Mr B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Santander should also remove all adverse information recorded in relation to the account from Mr B's credit file.
- If, after the rework, there is still an outstanding balance on the card Santander should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the outstanding balance, any adverse information recorded after 4 January 2019 should be removed from his credit file.

*HM Revenue & Customs requires Santander to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I have decided Santander UK Plc acted unfairly by not showing forbearance when it was clear Mr B had enduring financial problems which meant he could not pay his debt off in a reasonable time in a sustainable way.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 January 2023.

Sally Allbeury
Ombudsman