

The complaint

Mr S has complained that the charges Santander UK Plc ("Santander") applied to his overdraft caused him extreme financial difficulty. He is also unhappy about the difficulties he has faced in trying to get in touch with Santander.

What happened

Mr S has an overdraft with a limit of £3,000. Mr S complained to Santander about its charges causing him financial difficulty and the difficulty he had trying to get through to it.

Santander provided Mr S with a direct number to contact its financial support team and gave him the details of organisations that could assist him with his debt. Santander apologised for the wait time that Mr S experienced and offered him £40 compensation. Mr S accepted the £40 and brought his complaint to this service.

Following this Santander reviewed Mr S's complaint again and agreed as a gesture of goodwill to settle Mr S's complaint by:

- Refunding all fees and interest paid from December 2020 to date and apply 8% interest to that amount. The charges add up to £633.97 and Santander will waive any pending charges.

This would be on the conditions that:

- The settlement amount would be used to reduce Mr S's overdraft balance and Mr S's limit would be reduced to the remaining balance;
- That Mr S then contacts its Financial Support team within 30 days' so that it can arrange a reduction plan to clear the remaining overdraft.
- During this period all fees and interest will be suspended;
- If a plan is not agreed then Santander will provide 30 days' notice to remove the overdraft in line with its terms and conditions.

One of our adjudicators looked at this and thought that what Santander had offered is in-line with what we'd recommend and didn't think it needed to do anything more.

Mr S disagreed, he is unhappy at having the overdraft facility removed as he doesn't have the money to pay it off and has asked for an ombudsman's 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 carefully considered everything, I think that what Santander has already agreed to do to put things right for Mr S is fair and reasonable in all the circumstances of his complaint. I'll explain why I think this is the case.

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. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And where a business increases 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.

In this case, on review Santander agreed to refund all interest and charges applied to Mr S's overdraft facility following him getting in touch with its credit card financial support team in December 2020. Mr S declined to discuss his overdraft at the time until a budget planner had been completed, but once it was completed with the credit card team Santander failed to go on to discuss his overdraft facility.

And having reviewed Mr S's statements and Santander's internal notes I'm in agreement that Santander should've done more to help Mr S with the knowledge it had at that time it was clear that Mr S was having financial difficulties. If Mr S agrees to Santander's offer he will likely be left with an outstanding balance on his overdraft, once all adjustments have been made, and he's been 'refunded' all of the interest, fees and charges caused by his overdraft. And furthermore, Santander wishes to remove his overdraft facility.

Mr S is unhappy with this, but it is clear from Mr S's statements that he has not been able to maintain a credit balance for a long period of time and that it is not affordable for him. It would be irresponsible of a lender to not take this action. So while Mr S may be left with a balance to pay and will no longer have the overdraft facility and he 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 says Santander should do something different here. He says that he doesn't have the money to pay off his overdraft. I've thought about what Mr S has said. And what he's said is a reason for upholding his complaint rather than a reason for departing from our normal approach to putting things right in cases such as his. All the interest, fees and charges Santander shouldn't have added have been removed from what he now needs to pay. So what Mr S is left with to repay are the funds which he used and benefitted from and Santander will work with Mr S to work out a reduction plan that is affordable for him.

So in these circumstances, and bearing in mind Mr S spent the credit, I think it's perfectly fair and reasonable to expect Mr S to repay these funds and I don't agree that allowing him to continue to have an overdraft facility which he says he can't afford to pay off would be appropriate or responsible.

Mr S is also unhappy about the difficulties he has had in trying to make contact with Santander. Some of the period Mr S is talking about was during the pandemic. I'm sure Mr S would agree that this was an unprecedented time and that some allowances need to be given for that. And I can see from Santander's contact notes that Mr S was able to discuss his finances with Santander during 2020 and 2021 and that the main contact issue he had was when he raised his complaint. Santander has already compensated Mr S £40 for the wait time he experienced on that occasion which Mr S accepted and I haven't seen enough to persuade me further compensation is warranted here or would make a material difference to his situation.

So bearing in mind all of this, I'm satisfied that what Santander has already offered to do to put things right for Mr S is fair and reasonable in all the circumstances of his case and I'm not persuaded further compensation is warranted, so I'm not requiring Santander to do anything more.

Mr S should now let Santander know whether he is willing to accept its 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 is fair and reasonable in the circumstances of his case. 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 to accept or reject my decision before 6 July 2023.

Caroline Davies
Ombudsman