

## **Complaint**

Mr M has complained that Santander UK Plc (“Santander”) irresponsibly provided him with an overdraft which it continued applying charges on even when he was in financial difficulty.

## **Background**

One of our adjudicators looked at Mr M’s complaint and thought we could look at the decision to provide Mr M with his overdraft because he complained too late and that Santander hadn’t applied any of the more recent charges unfairly.

Mr M disagreed with our adjudicator and asked for an ombudsman to look at his case and make a final decision.

## **My provisional decision of 22 May 2023**

I issued a provisional decision – on 22 May 2023 - setting out why I intended to uphold Mr M’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that Santander would 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 didn’t consider it necessary to set all of this out in this my provisional decision.

I then went on to confirm that we had already explained why Mr M’s complaint being made in November 2022 meant that we were unable to look at what happened on his account prior to November 2016. And this meant that my consideration of Mr M case was limited to what happened on Mr M’s account from November 2016 onwards.

Having carefully considered everything provided, I thought that Santander acted unfairly when it continued charging overdraft interest and associated fees from November 2016, as by this point, Santander ought to have realised that Mr M’s overdraft had already become demonstrably unsustainable for him.

A cursory look at Mr M statements leading up to this period showed that his account hadn’t seen a credit balance for an extended period of time and he was also borrowing from a high-cost lenders. I could also see that he was gambling the overdraft funds in this account too. So it was my view that the activity on Mr M’s account didn’t suggest he was in any sort of position to repay what he already owed without undue difficulty or borrowing further either.

I thought that by November 2016 Santander should have stopped providing the overdraft on the same terms and treated Mr M with forbearance rather than adding even more interest, fees and charges on the overdraft. All of this meant that Santander should have realised that Mr M overdraft usage was indicative of there being a problem with the facility and offered him assistance. As Santander didn’t react to Mr M’s account usage, I was minded to conclude that it failed to act fairly and reasonably.

I thought that Mr M ended up paying additional interest, fees and charges at a time when he was already experiencing difficulty. So it was my intention to conclude that Mr M lost out because of what Santander did wrong and that it needed to put things right. I then set out a method of compensation which I thought addressed Santander's shortcomings and Mr M's resulting loss.

### **Responses to my provisional decision**

Mr M confirmed that he agreed with my provisional decision and that he had nothing further to add.

Santander didn't provide anything further for me to consider or ask for any additional time to do so.

### **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I set out in some detail why I intended to uphold Mr M's complaint in my provisional decision of 22 May 2023. As I've not been provided with anything further to consider by the parties, I've not been persuaded to alter my conclusions. So I'm still upholding Mr M's complaint. And I remain satisfied that Santander needs to put things right.

### **Fair compensation – what Santander needs to do to put things right for Mr M**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr M's complaint for Santander to put things right by:

- Reworking Mr M's current overdraft balance so that all interest, fees and charges applied to it from November 2016 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr M to arrange a suitable repayment plan Mr M is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2016. Santander can also reduce Mr M's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his 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 M 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 M's credit file. Santander can also reduce Mr M'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 M a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Mr M's complaint. Santander UK Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2023.

Jeshen Narayanan  
**Ombudsman**