

The complaint

Miss D has complained that Santander UK Plc (“Santander”) acted unfairly by continuing to apply overdraft charges to her joint account when she was in financial difficulty.

What happened

Miss D held a joint account with her ex-husband with an overdraft facility with Santander. In July 2020 Miss D’s husband withdrew £4,000 from the account and from August 2020 the account became permanently overdrawn.

Santander’s notes record that in late October 2022 (two years later) Miss D got in touch with Santander and advised that her ex-husband had moved out of their marital property in November 2020 and that he’d removed £4,000 from the account and stopped paying the mortgage and all other bills and that she had been continuing to pay the overdraft interest to protect her credit score. Miss D also advised that she was the victim of financial abuse and that she had been advised by her solicitor not to repay the overdraft as her ex-husband remained liable for the balance. Miss D asked if Santander could put a stop on the interest charges for her.

Santander advised Miss D that as the account was a joint account it couldn’t remove either party from the account or close the account until the overdraft is paid back. It said it could put a plan in place which would stop the interest being applied and then once the overdraft was paid back the account could be closed – but that this would impact on Miss D’s credit file. Or, it could change the type of account to one where interest was capped at £20 but that the fee for this would be £30.

Miss D declined both these options and complained to Santander that she was unable to afford to pay the overdraft fees. Santander said it couldn’t trace any calls from Miss D regarding the overdraft charges on the account and as it remains within the overdraft limit it was unable to reimburse or freeze the charges. But if the other joint account holder is preventing Miss D from accessing the account or stealing money, she should visit its customer support for financial abuse for help and guidance.

The overdraft balance was repaid in full by Miss D a few days after this on 7 November 2022 and the account was closed the following week.

As Miss D remained dis-satisfied she referred the complaint to our service.

Miss D's complaint was considered by one of our adjudicators. They thought that Santander ought to have realised that Miss D was experiencing financial difficulties by 23 August 2021 as the account had remained overdrawn for more than 12 months without the incomings to support it. They didn't think Santander went far enough to support her as it still continued to charge for the overdraft which impacted Miss D's hardship further.

They thought to put things right Santander should rework the joint account to remove all of the interest and charges added to the account from 23 August 2021.

Santander disagreed – it says due to the credits to the account it didn't meet its criteria to enter its collections systems and that its processes were followed correctly. It says it offered a solution that would've helped Miss D reduce her costs but that she declined its help. So the case was passed to an ombudsman for a final decision.

I issued my provisional decision on 21 August 2023. In my provisional decision, I explained why I was proposing not to uphold Miss D's complaint. I invited both parties to let me have any further submissions before I reached a final decision. Both parties have confirmed they have received by decision and neither Santander or Miss D have added any new information.

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.

In my provisional decision I said that:

"Firstly, it should be noted that while I have considered this complaint without the joint account holder's consent, any decision I make can't put them in a worse position and therefore the joint account holder's rights to bring their own complaint are unaffected.

Having considered everything provided, I'm currently thinking of not upholding Miss D's complaint. I'll explain why in a little more detail.

Miss D's main complaint point is regarding the charges applied to a joint account held with her ex-husband – she thinks they were unfair and wants a refund. She says it was a transfer out of the account of £4,000 by her ex-husband that caused the account to become overdrawn and that despite it being a joint account she was the only one paying the charges. Before I go any further, I want to be clear in saying that I haven't considered whether the various amounts Santander charged over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided.

Ultimately, how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with. That said, while I'm not looking at Santander's various charging structures per se, it won't have acted fairly and reasonably towards Miss D if it applied any interest, fees and charges to Miss D's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss D was experiencing financial difficulty.

So I've considered whether there were instances where Santander didn't treat Miss D fairly and reasonably. And overall, I don't think that Santander did treat Miss D unfairly or unreasonably. I say this because having a detailed look at the statements for the account I can see up until Miss D and her husband separated the overdraft wasn't being used and although I accept after this the account became and remained overdrawn, I can also see that enough money was being transferred in to service the overdraft charges, joint bills and direct

debts while keeping within the overdraft limit. I think this suggests the account was likely being maintained until a settlement was reached regarding Miss D and her ex-husbands financial affairs rather than financial difficulty.

I also note that it was two years before Miss D got in touch with Santander and informed it about her circumstances and enquired about the options available regarding the overdraft charges and that Santander's call notes record that Miss D said she could've paid off the overdraft earlier but was advised not to. So again, this suggests not financial difficulties but rather difficulties relating to a financial settlement.

I appreciate Miss D thinks it is unfair she was the only one paying the charges for the overdraft facility considering the £4,000 withdrawal made by her ex-husband. But Miss D and her ex-husband held the account jointly which means they are both liable for the outstanding balance of the overdraft regardless of who spent the funds. Both were entitled to benefit from the use of the funds and Santander are entitled to charge for this facility.

I also think the options Santander gave Miss D for managing the account going forward were fair:

1. *The account could be changed to one where the interest was capped for a monthly fee; or*
2. *If Miss D was having financial difficulties an affordable payment plan could be set up to repay the overdraft and all charges and interest would be stopped, but this would be recorded on Miss D's credit file.*

This is in-line with what I'd expect Santander to do. But Miss D didn't wish to continue to pay for the overdraft facility and didn't want her credit record affected so she declined both options and instead paid the outstanding balance of the overdraft off in full in a lump sum within days of contacting Santander – again not something I would expect to see if someone was having financial difficulties.

So overall and having considered everything, I don't think that Santander treated Miss D unfairly or unreasonably."

Miss D disputes that Santander gave her the options outlined above but I'm satisfied from the call log Santander provided that it did discuss these options with her. And as neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I do not uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold Miss D's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 2 October 2023.

Caroline Davies
Ombudsman