

## **The complaint**

Mrs B says Santander UK Plc irresponsibly allowed her to continue to use her overdraft facility.

## **What happened**

Mrs B has had an overdraft limit on her account for several years. In April 2023, Mrs B complained to Santander that she'd become reliant on it as a high-cost debt for her day-to-day expenses, resulting in significant charges and interest.

Santander looked into Mrs B's complaint and rejected it. In its final response, it said reasonable and proportionate checks were completed before the overdraft was agreed to ensure it was affordable for Mrs B. Santander reviewed the usage of the overdraft since January 2014 (as far back as its system had information) at which point Mrs B's overdraft limit was £1,500. It has varied over the years since then, reaching a high of £2,300 in February 2016, reduced to £100 in 2018 and currently stands at £2,000.

Santander said Mrs B's average monthly income since 2014 was over £2,600 per month. It said she'd spent almost £70,000 on luxury items such as flights, holidays, car finance and music lessons in that time. It also noted she'd received over £28,000 in car sales in the same period. Santander said there was no evidence that Mrs B was reliant on the overdraft or that she was unable to repay it. It said overdrafts are provided on a non-advised basis, so it was for Mrs B to consider whether she used the overdraft and what she used it for. It

Mrs B didn't agree with Santander, so she referred her complaint to our service. One of our investigators looked into it. He explained that he didn't think we could look at the lending decisions which took place before 21 April 2017 because they'd taken place too long ago, so they were out of our jurisdiction. Both Santander and Mrs B agreed with that.

Our investigator went on to consider the more recent lending decisions and acknowledged that Mrs B's complaint wasn't just about the decisions to lend, but also that Santander had allowed her to become reliant on high-cost debt. He said overdrafts are intended for unforeseen emergency borrowing not prolonged day to day expenditure and that Mrs B's account had not returned to credit for a sustained period. He said Santander should have noted that she wasn't using the facility as intended and shouldn't have continued to offer it on the same terms. Our investigator felt Santander had treated Mrs B unfairly by continuing to charge as it had. He upheld Mrs B's complaint.

Mrs B accepted what our investigator said, but Santander didn't. As there was no agreement, the complaint has been passed to me for a 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.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct

Authority, in its Consumer Credit Sourcebook (CONC). CONC 6.7.2R says lenders must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties. They must identify any customers in respect of whom there is a pattern of repeat use, and where there are signs of actual or potential financial difficulties. It gives examples of what may be signs of actual or potential financial difficulties, one of which is where a customer becomes or remains overdrawn in every month over a preceding 12-month period.

I've looked carefully at Mrs B's bank statements dating back to 31 December 2013 which have been provided by Santander. A pattern is evident where Mrs B's account would sometimes return to credit for a few days immediately following her payday and then return to an overdrawn position. She would occasionally return to credit longer – for example between January and July 2018. But in that January, she received £6,500 from a loan company which funded her account through to July when it began to go overdrawn again. Since then, Mrs B's account hasn't been in credit for more than a few days at a time or for any sustained period.

It seems to me that Mrs B's account performance displays signs of actual or potential financial difficulties as described by CONC. I say this because her account has become or remained overdrawn in every month since the statements began, with the exception of six months or so during 2018 following receipt of loan proceeds. CONC sets out steps lenders can take in respect of repeated use of an overdraft facility by a consumer who is in actual or potential financial difficulties. These include exploring with the consumer the reasons for the repeated use and, ultimately, removal of the overdraft facility.

Santander has pointed out that over that time, Mrs B has spent a large amount on what it terms as *'luxury or non-essential items'* such as flights, holidays, car finance and music lessons. But I think that misses the point. It said in its response to our investigator that the bank can't be *"expected to be the arbiter of what their customers should and should not spend their money on"*. I agree with that statement – it's not for Santander to say what Mrs B should or shouldn't spend her own money on. But Santander does have an obligation to monitor her overdraft usage to ensure it was being used appropriately.

Overdrafts are intended for short term emergency borrowing and are priced by lenders accordingly. They are not designed for long-term borrowing or prolonged day to day expenditure. As a result of being allowed to run her account in almost constant overdraft, Mrs B has paid a significant amount in charges and interest.

Santander has shown this service that it wrote to Mrs B regarding her persistent usage and the cost of her overdraft facility. But I don't think that was enough in this instance to fulfil its obligations under CONC. Rather I think it ought to have done more given she was displaying signs of actual or potential financial difficulties as described by CONC.

If Santander had appropriately monitored Mrs B's overdraft use and intervened in line with its obligations under CONC, I don't think she would have paid the charges and interest for the use of the overdraft, and the bank wouldn't have benefitted from them. It's fair then, that the charges and interest paid should be returned to her.

### **Putting things right**

To resolve Mrs B's complaint, Santander should:

- Re-work Mrs B's account so that all interest, fees and charges applied to it from 21 April 2017 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Santander should contact Mrs B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs B's credit file, it should backdate this.

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 Mrs B, 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 Mrs B's credit file.\*

\*HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mrs B a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint. Santander UK Plc should settle the complaint as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 February 2024.

Richard Hale  
**Ombudsman**