

The complaint

Miss S has complained that Santander UK Plc (Santander) increased her overdraft limit without doing the right affordability checks. She says the increases were unaffordable and has asked for interest and charges incurred on the overdraft from the point her limit was increased to be refunded.

What happened

Miss S opened an account with Santander (ending 611) in December 2016 with an overdraft of £150 and it remained at this level until October 2020. At this point the overdraft limit increased several times until it finally reached £700 in December 2020.

Miss S complained to Santander in April 2023, and it issued its final response in July 2023. It agreed it should have done more to help Miss S reduce her overdraft borrowing and offered to refund interest and charges on the account from January 2021.

The investigator reviewed the information Santander and Miss S shared with us and issued her view. She upheld the complaint on the basis that when Santander increased the overdraft limit in October 2020, it was evident that the lending would be unsustainable.

Initially Miss S accepted the investigators view, however, when it became apparent that after the refund of interest and charges there would be a remaining balance and that this meant Santander wouldn't be removing adverse information from her credit file, Miss S asked for the case to be referred to an ombudsman for decision.

Miss S explained Santander's decision to lend to her in October 2020 caused her a lot of distress. She feels the payments she's already made to the account plus the refund of interest and charges should mean there wouldn't be an outstanding balance.

The investigator explained to Miss S that although she understood her situation would have been stressful, she didn't think it would be fair to award compensation. The investigator also explained there was still an outstanding balance to be paid. So, although we'd expect any adverse credit information to be backdated to October 2020, it was fair that the adverse information was recorded to accurately reflect the position of the account.

The investigator also let Miss S know that we would expect the business to refund interest and charges from the point they unfairly extended credit to a customer. But we wouldn't expect a business to write off or waive the principal amount borrowed.

As no agreement could be reached the matter has been passed to me to decide.

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 explain how we handle complaints about unaffordable and irresponsible lending on our website. I've used this approach to help me decide Miss S' complaint. The key questions for me to think about while looking at Miss S' complaint are:

- Did Santander complete reasonable and proportionate checks to satisfy itself Miss S would be able to repay the overdraft in a sustainable way?
- If so, did it make a fair lending decision?

I've considered these questions carefully, and I agree that from October 2020 Santander unfairly increased Miss S' overdraft limit and lent to her irresponsibly.

The amount of credit extended to Miss S on her account ending 611 was relatively modest. However, Santander still needed to be satisfied that Miss S could sustainably repay the credit it extended to her based on the information available to it.

Santander hasn't been specific about what checks it completed when it agreed to lend further to Miss S. So, I've carefully considered the account history, for this account and have had sight of the account history for another account Miss S held with Santander. Having considered this information, I'm not persuaded Santander did enough to be satisfied the lending from 2020 onwards was sustainable.

At the point Santander decided to increase Miss S' overdraft in October 2020 it was evident from her account history that:

- Miss S was spending a significant amount on gambling on both accounts with Santander.
- Miss S didn't have a regular income coming into the account ending 611.
- Miss S was using her overdraft to fund the gambling.
- Miss S requested increases to her overdraft in very quick succession – sometimes on the same day.

At the point it increased Miss S' overdraft limit, based on the information available to it, Santander should have been aware that extending further credit to Miss S was likely to be unsustainable given her income and the activity on the account. So, I don't think Santander made fair lending decisions between October 2020 and December 2020 when the final increase was applied.

Santander has accepted that it shouldn't have extended further credit to Miss S and has agreed to refund interest and charges from 9 October 2020 onwards, which I agree is fair. I've looked at the transaction history for Miss S' account including the fees and charges applied to the account from October 2020. I've also considered the payments Miss S made towards the account and I'm satisfied that there is an outstanding balance left to be paid. But I don't agree that it would be fair for Santander to refund the principal overdraft borrowing. I'll explain why.

There would have been steps Santander could have taken so that Miss S might have avoided the repeated pattern of incurring charges for the use of her overdraft. So, I think it would have been reasonable for Santander to take steps to support Miss S given what it would have known about her account and spending at the time. Given this it's reasonable for

Santander to refund the interest and charges it applied to the account after it increased her overdraft limit.

However, there are no industry rules that say what a bank should do when it realises a customer may have a gambling addiction. I can't see Miss S approached Santander herself about her gambling or financial problems before she made her complaint in 2023. And whatever support Santander may have offered could have been turned down. So, I don't think it would be appropriate for Santander to refund the principal overdraft amount.

As there will be an outstanding balance on the account after any refunds are applied, it's fair that this is reflected on Miss S' credit file until she is able to repay the balance. I say this because Santander have an obligation to accurately record the position of the account and any prospective new lenders need to be aware of the true situation while the balance is outstanding. However, Santander should back date any adverse information to October 2020 and should remove the adverse information once the balance has been repaid.

Putting things right

For the reasons set out, I think it's fair and reasonable for Santander to refund interest and charges incurred by Miss S as a result of the credit unfairly extended to her, therefore Santander should rework the account and:

- Taking account of any refunds already made, rework the account so any charges and interest applied to it on sums above £150 are refunded. This refund should be used to reduce any outstanding balance on the account.
- Add 8% simple interest per year* to the above refunds - calculated from the date of payment to the date of settlement.
- As an outstanding balance remains, Santander should contact Miss S to arrange repayment of the outstanding amount. This could be in the form of an affordable payment plan however Miss S should note any payment arrangement will affect her credit file until the debt is repaid. Once Miss S has cleared the balance, any adverse information because of the unfair lending should be removed from the credit file.

*HM Revenue & Customs requires Santander to deduct tax from any award of interest. It must give Miss S 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

My final decision is that I uphold this complaint and require Santander UK Plc to settle the case as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 3 May 2024.

Charlotte Roberts
Ombudsman