

Complaint

Mr W says that Santander UK Plc (“Santander”) unfairly provided him with an overdraft and then increased its limit in circumstances where it was evident he was unable to repay to what he owed.

Background

In April 2020, Mr W successfully applied for an overdraft. He was granted a credit limit of £500. After the limit had been decreased to £250, Mr W successfully applied for three limit increases in the space of three days in October 2020. The first increase was to £350, the limit was then increased to £550, before it was finally increased to £1,000.00.

Prior to our investigator investigating Mr W’s complaint, Santander agreed to refund the interest fees, and charges it added to Mr W’s overdraft from February 2022. Mr W remained dissatisfied at this and referred his complaint to our service.

One of our investigators looked into Mr W’s concerns. She thought that Santander shouldn’t have increased Mr W’s overdraft limit to £1,000.00 in October 2020. And she recommended that Santander refund Mr W all of the extra interest he was charged as a result of this limit increase.

Santander accepted the investigator’s assessment. It also said that it would remove Mr W’s overdraft and not accept any further applications for one for a period of at least 12 months, after his refund as he would be in a credit balance and Mr W says he shouldn’t have an overdraft.

Mr W doesn’t dispute the outcome (and the assessment that his overdraft limit shouldn’t have been increased to £1,000.00 in October 2020) but he is unhappy at what Santander says it will do in relation to the overdraft going forward. So the complaint was passed to an ombudsman for a final decision.

As the parties appear to accept that Mr W shouldn’t have been provided with an overdraft limit increase in October 2020 and now simply disagree on what should be done to put things right, I have solely focused on what fair compensation should be in this complaint.

My findings

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 provided, I’m satisfied that what Santander has already agreed to do to put things right is fair and reasonable in the circumstances of Mr W’s complaint. I’ll explain why I think this is the case in a little more detail.

Santander has accepted that it shouldn’t have agreed to increase Mr W’s overdraft limit in October 2020 and that it failed to act fairly and reasonably towards Mr W by allowing him to borrow amounts more than the £550 he was already permitted to.

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. However, that's not possible in cases where funds that shouldn't have been advanced because typically those funds will have already been spent.

So we have to look at a way of asking a lender to put things right in some other fair and reasonable way. And where a business provided credit which it should have realised was unaffordable or unsustainable for a customer, 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 as a result of the credit it should not have been provided with. And if those interest and charges were paid also add 8% simple interest per year. Santander has agreed to do this and this part of the settlement is no longer the subject of any dispute between the parties.

However, as I understand it, Mr W will no longer have an outstanding balance on his overdraft once he is 'refunded' all of the interest, fees and charges he is entitled to from October 2020. Santander says that as Mr W will not have an outstanding balance on his overdraft and his successful complaint is that Santander shouldn't have lent to him in the first place, it proposes to remove the overdraft Mr W says he shouldn't have. Mr W is dissatisfied at this proposed action.

I can to some limited extent understand why Mr W may be unhappy at his overdraft being removed and why he may see this as him being penalised for having made a successful complaint. And I've thought about what he's said.

It may help to explain that it is effectively Santander's argument that it proposes to remove Mr W's overdraft because it has a legitimate reason to cease lending to him – namely the facility is by Mr W's own admission unaffordable for him. In the first instance, I think it's probably worth me saying that I cannot direct a firm to lend to an individual in circumstances where it legitimately decides that it is not prepared to do so. Mr W may say (as he appears to be arguing) that there isn't a legitimate reason for Santander to cease providing him with an overdraft.

However, I am mindful of the circumstances in this case. And I cannot ignore the fact that the entire premise of Mr W's complaint has been that Santander should not have advanced him credit as he has bad judgement when it comes to money management because of his gambling. And Santander allowing Mr W him the use of an overdraft in these circumstances was harmful for him and likely to cause him significant adverse consequences. Mr W's arguments on this matter have been accepted and, in large part, this is the reason his complaint has been upheld.

In my view, it would be unfair to Santander and Mr W, as well as being wholly unreasonable in its logic if I were to say that these conclusions should be reflected in what Santander should do up until this point; direct Santander to pay compensation as result and yet in that same direction also take no account of these conclusions in the position going forward by also requiring Santander to continue making an overdraft available to Mr W. I would in effect be saying that Santander failed to act fairly and reasonably towards Mr W by ignoring what it ought to have realised about Mr W's circumstances and as part of it putting things right going forward, it should now ignore this as well as what Mr W told it as part of his complaint.

I'm satisfied that directing Santander to continue providing Mr W with an overdraft in circumstances where it is no longer in dispute that it is unaffordable for him and it is likely to cause him significant adverse consequences, would be counterproductive and arguably not in Mr W's best interests, or those of Santander as a lender. This is especially the case as Mr W argues that he has bad judgement when it comes to money management due to his gambling and, in my view, making additional credit available to him in these circumstances has the potential to exacerbate this.

It's also worth noting that Santander hasn't said that it will cease lending to Mr W indefinitely. It has said that it will not lend to him for 12 months and that it will then review the position should it receive an application for credit from Mr W after this. I think that this considers the possibility that Mr W's situation might alter moving forward. I also think that the length of time before Santander says it will review matters is broadly around the period before I would, in any event, expect a lender to review how a customer is using an overdraft facility and whether this reflects the credit being, or remaining, affordable for them.

So I'm satisfied that Santander's response and proposed course of action is proportionate to what it now unquestionably knows about Mr W's circumstances, as a result of what it has learnt and what Mr W has said through the course of his complaint. And Santander's proposed actions in relation to Mr W's overdraft going forward are therefore fair and reasonable.

Overall and having considered everything, I'm satisfied that what Santander has already agreed to do to put things right for Mr W is fair and reasonable in all the circumstances of this complaint. I appreciate this may prove disappointing for Mr W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Fair compensation – what Santander needs to do to put things right for Mr W

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

- Reworking Mr W's current overdraft balance so that from October 2020 onwards interest, fees and charges are only applied to the first £550 owing. This is to reflect the fact that Santander shouldn't have increased Mr W's credit limit to £1,000.00.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr W to arrange a suitable repayment plan, Mr W 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 W's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in October 2020. Santander can also reduce Mr W'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 in an unarranged overdraft.

OR

- If the effect of reworking Mr W's account results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr W 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 W's credit file. Santander can remove Mr W's overdraft as long as doing so wouldn't leave him with an unarranged overdraft balance.

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr W 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 satisfied that what Santander UK Plc to put things right is fair and reasonable in the circumstances of Mr W's complaint and I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 July 2024.

Jeshen Narayanan
Ombudsman