

The complaint

Miss L has complained that Santander agreed unaffordable increases to her overdraft without doing the right affordability checks. She says the increased overdraft was unaffordable and has asked for all interest and charges incurred on the overdraft to be refunded.

What happened

Miss L took out an overdraft of £800 with Santander in August 2015. She increased the overdraft limit several times until her complaint about the increase in 2023.

In its response to Miss L, Santander said it completed thorough checks to make sure it was lending to her affordably. Based on the checks it did Santander said it had no reason to think the overdraft was unaffordable for Miss L. Santander also said that it could see Miss L had a large payment of £18,000 into the account and chose not to use this to pay off the overdraft. Instead, she put around half the funds into savings.

Following the complaint and given Miss L's circumstances, Santander said it was going to contact her to put in place a Monthly Reducing Overdraft arrangement. This meant fees and charges would be suspended for up to 36 months. It said if it was unable to contact her it would remove the overdraft facility and the full balance would become payable.

Miss L was unhappy with Santander's response and feels it should refund all the charges and interest she has incurred to date. So, she referred the complaint to this service.

One of our investigators looked into the complaint and said that Santander had acted unfairly from the point that it increased Miss L's overdraft in July 2019. Santander didn't accept the investigators opinion, stating that Miss L had sufficient income between 2019 and 2023 to sustain the overdraft. It also said she spent a relatively high amount on non-essential items, suggesting a good level of disposable income rather than any financial difficulties. It said had she wished to do so she could have reduced her level of spending on non-essential items and decreased her overdraft. In addition to this it referenced her transfers to savings as a further indicator that she wasn't in financial difficulties. As no agreement could be reached on these points the case 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.

Miss L has asked this service to look into the limit increases on her overdraft and so this will be the focus of my decision.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance, and good industry practice - on our website. I've taken that into account when considering Miss L's complaint.

Santander needed to take reasonable steps to ensure that it didn't lend irresponsibly to Miss L. This means that it should have carried out proportionate checks to make sure she could afford to repay what she was being lent in a sustainable way. These checks could take into consideration several different things, such as how much was being lent, the amount of the repayments and Miss L's income and expenditure.

In addition to ensuring the lending is affordable when it makes the decision, Santander also has an obligation to monitor the overdraft for persistent use and to take action where it sees that this is the case.

I've taken all of this into account when considering Miss L's case. Having done so I don't think Santander has acted fairly for broadly the same reasons as the investigator.

For ease I have set out a history of the relevant lending decisions below:

Increase/Decrease	Date	Existing Limit	New Limit
First increase	11 June 2018	£800	£1,000
Second increase	09 July 2019	£1,000	£1,200
Third increase	09 July 2019	£1,200	£1,500
<i>First decrease</i>	<i>25 July 2019</i>	<i>£1,500</i>	<i>£500</i>
Fourth increase	25 July 2019	£500	£1,500
Fifth increase	29 October 2022	£1,500	£1,800
Sixth increase	29 October 2022	£1,800	£2,000
Seventh increase	05 November 2022	£2,000	£2,500

Irresponsible lending

Having considered the increase Santander agreed in June 2018, I agree that the checks completed by Santander were proportionate given the relatively modest increase of £200 and the new limit of £1,000. Given Miss L's income at the time, her overall indebtedness and her relatively good credit score, I don't think Santander's decision to increase the limit here was unreasonable.

However, from the evidence supplied, by the time Miss L applied for further lending in July 2019 her indebtedness had increased significantly, but her income had not. Looking at Miss L's statements for the three months before the lending in July 2019, it's clear there was a significant deficit in two of the three months and that Miss L's income wasn't in general covering her essential spending. This is supported by the fact Miss L had incurred unarranged overdraft fees in each of the 3 months prior to the July 2019 limit increases. I think it was evident from the account that Miss L didn't have sufficient disposable income to sustainably repay further lending, in addition to the £15,700 she already had in other borrowing.

Overdrafts are an expensive form of borrowing and are designed for short term emergency spending. It's clear from the account usage after June 2018 that this isn't how the account was being used and that Miss L was struggling to sustainably repay the debt. I say this because Miss L had been over reliant on the overdraft to pay for essential living costs. For the year prior to the lending decisions in July 2019, she had remained in the overdraft and only came out of it for a few days at a time.

Santander has argued that Miss L transferred a substantial amount to her savings account in the 6 months prior to the limit increases in July 2019, which indicates a healthy disposable income. I've considered this point and having looked at the transactions I can see that Miss

L transferred a larger amount from the same savings account to her current account with Santander during the same period. So, I don't agree this is evidence of a healthy disposable income, but rather of someone moving money around in an attempt to manage their finances.

Given the account conduct I think Santander needed to ask Miss L more about her circumstances before deciding to lend further in July 2019. Had Santander considered Miss L's financial situation more closely, on the evidence available, I think it would have realised that further lending would be unsustainable.

Given this I don't think Santander's decision to extend Miss L's overdraft limit in July 2019 was fair.

Persistent debt

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.

CONC 5D.2 sets out a business' obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.

Given this, I've considered whether Santander has acted fairly and in line with its obligations under CONC.

Although Miss L's overall indebtedness had reduced to around £9,300 by the time she applied for the increases in October 2022 and November 2022, her income hadn't increased, and she had been persistently overdrawn for some time.

I think there were a number of signs that Miss L might be in financial difficulty and that Santander should have recognised.

Looking at the account statements I can see that Miss L persistently used her overdraft throughout 2018, 2019, 2020, 2021, 2022 and 2023. For much of this time, she was overdrawn and often using most of the overdraft, only going into credit for a few days each month. She often incurred unarranged overdraft fees in this time and was paying for other credit using the overdraft.

So, I think from the information available to it, Santander should have identified that Miss L was potentially struggling financially. And it should have recognised this before it made its lending decisions in October and November 2022.

I appreciate that Miss L had a larger payment come into her account in mid-2020. I acknowledge that Santander feels she could have used this to clear her debts rather than putting it into savings. However, this was a redundancy payment and not just disposable income. I can't see Santander made any attempt to contact Miss L at the time of her redundancy and so it couldn't be sure whether she had another job lined up or would need to put the funds to one side to draw on later. In addition to this, Miss L was using payday lenders in 2020 and relying on her overdraft to meet her credit commitments. This should have alerted Santander to her potential financial difficulties.

I understand Santander said it wrote to Miss L in August 2019 and January 2020 about her use of the overdraft. So, Santander recognised the repeat usage of, and over reliance on, the facility. However, I can't see Miss L responded to these letters and no further action was taken by Santander.

Miss L was persistently using her overdraft right up to making the complaint in 2023. It's evident from the account that during that time Miss L was only ever in credit for a few days at a time, was using most of her overdraft throughout the rest of the month and was using payday lending and other revolving credit. So, I think Santander should have identified she was in (or potentially in) financial difficulty from at least 2019.

Taking into consideration Santander's obligations under CONC, I'm not satisfied it did enough to support Miss L by sending the letters in 2019 and 2020. I've seen no evidence that Santander took any steps to contact Miss L with suitable options to help her reduce her reliance on the overdraft. So, it follows I don't think Santander have acted fairly in offering the appropriate support to Miss L.

Given this, I don't think Santander's decisions to lend to Miss L in July 2019, October 2022 and November 2022 were fair. I say this because I think Miss L was showing signs of financial difficulty and Santander should have done more to help her to explore different options to reduce the debt rather than increase it.

My final decision

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

- Refund any interest and charges incurred as a result of the unfair lending from July 2019. This refund should be used to reduce any outstanding balance on the account.
- Santander should work out how much Miss L would have owed after the above adjustments.

- If the refund clears the adjusted balance any funds remaining should be refunded to Miss L along with 8% simple interest per year* - calculated from the date of overpayment to the date of settlement.
- If after all adjustments have been made Miss L no longer owes any money, then all adverse information regarding this account should be removed from her credit file from July 2019.
- Or, if an outstanding balance remains, Santander should look to arrange an affordable payment plan with Miss L for the outstanding amount. If any debt has been sold to a third party, Santander should either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Miss L 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 L a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 11 October 2024.

Charlotte Roberts
Ombudsman