

Complaint

Mr A has complained about the overdraft charges Santander UK Plc ("Santander") applied to his current account. He's said the charges were unfair and they kept him in an overdrawn balance.

Background

When it completed its investigation into Mr A's complaint, Santander agreed that it ought to have realised that Mr A's overdraft had become unsustainable for him from January 2020. So it agreed to rework Mr A's account balance so that all interest added from January 2020 onwards were removed. Mr A remained dissatisfied at Santander's offer and referred his complaint to our service.

Mr A's complaint was looked at by one of our investigators. She didn't think that Santander had done anything wrong between 2017 and January 2020 and so thought that what Santander had already agreed to do to put things right was fair and reasonable. She therefore didn't think that Santander needed to do anything further.

Mr A disagreed with the investigator and asked for an ombudsman's decision.

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 done to put things right is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more or anything further. I'll explain why I think that this is the case in a little more detail.

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 charging structure per se, it won't have acted fairly and reasonably towards Mr A if it applied these interest, fees and charges to Mr A's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr A was experiencing financial difficulty. So I've considered whether there were instances where Santander didn't treat Mr A fairly and reasonably.

In other words, I've considered whether there were periods where Santander continued charging Mr A even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew he was in financial difficulty or it ought to have realised this was the case.

I've looked through Mr A's account transactions throughout the period concerned. And I can't see that Santander ought to have taken corrective measures in relation to Mr A's overdraft during the period we've looked at.

It's fair to say that Mr A used his overdraft. And I accept that Mr A might say this in itself was an indication Santander ought to have taken action. But I also think it's important to look at Mr A's incomings and outgoings as well as any overdrawn balance and whether it was possible for him to have stopped using his overdraft, based on this. After all if he was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him.

During the period concerned Mr A had an overdraft limit of £500. While I'm not seeking to make retrospective value judgements over Mr A expenditure over this time, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions as well as transfers going from Mr A's account.

Indeed, it's fair to say a significant proportion of Mr A's expenditure was discretionary. This was well in excess of the overdraft charges that he was incurring and the credits going into his account suggested he could have exited his overdraft while it was only £500 within a reasonable period of time, had he wished to do so.

I don't think that Mr A using his overdraft, in circumstances where he was permitted to do so and where there were no other recent signs of financial stress (there were payments to a debt collection agent but this had been ongoing for some time), means that Santander ought reasonably to have taken unilateral action. This is particularly the case when considering the implications Santander taking such action would have had on Mr A.

I accept neither of these things in themselves (or taken together) mean that Mr A wasn't experiencing difficulty. But there isn't anything in the transactions in themselves which ought to have alerted Santander to this prior to January 2020.

So overall and having considered everything, I don't think that it was unreasonable for Santander to have proceeded adding the charges that it did – especially bearing in mind the implications of Santander taking corrective action in these circumstances would have been disproportionate.

In reaching this conclusion I've also considered whether the lending relationship between Santander and Mr A might have been unfair to Mr A under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Santander irresponsibly allowed Mr A to continue using his overdraft prior to January 2020, or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

I'm therefore satisfied that what Santander has already agreed to do to put things right for Mr A's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I leave it to Mr A to decide whether he wishes to accept Santander's offer.

I appreciate this is likely to be very disappointing for Mr A. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Santander UK Plc has already agreed to do to put things right for Mr A is fair and reasonable in the circumstances of his 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 A to accept or reject my decision before 13 August 2024.

Jeshen Narayanan
Ombudsman