

## **Complaint**

Mrs G has complained about the overdraft charges Santander UK Plc (“Santander”) applied to her current account.

Mrs G is being represented, by the (“representative”), in her complaint.

The representative has said the charges applied to Mrs G’s account were unfair as there was a failure to take account her patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on her.

## **Background**

Mrs G’s complaint was looked at by one of our investigators. She thought that Santander hadn’t acted unfairly or unreasonably and so didn’t recommend that the complaint be upheld.

The representative, on Mrs G’s behalf, 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 not upholding Mrs G’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mrs G was unfairly charged as a result of being allowed to continue using her overdraft, I want to be clear in saying that I haven’t considered whether the various amounts Santander charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately, how much a bank charges for its 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 Mrs G if it applied this interest, fees and charges to Mrs G’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs G was experiencing financial difficulty. So I’ve considered whether there was an instance, or there were instances, where Santander didn’t treat Mrs G fairly and reasonably.

In other words, I’ve considered whether there were periods where Santander continued charging Mrs G even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

Having looked through Mrs G’s account statements throughout the period concerned, I can’t see that Santander ought reasonably to have unilaterally taken corrective measures in

relation to Mrs G's overdraft. I accept that Mrs G used her overdraft and there is no dispute over that.

However the representative's arguments appear to suggest that this in itself means that Mrs G was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they had an agreement to use and which they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty. Indeed if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mrs G's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for her to have stopped using her overdraft, based on this.

I think that if Mrs G was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case. The first thing for me to say is that Mrs G was in receipt of a salary as well as other credits that were sufficient to clear the overdraft within a reasonable period of time. The amount of the credits always exceeded Mrs G's overdraft limit.

Furthermore, I'm satisfied that Mrs G's case isn't one where the borrower was permanently in their overdraft. There were periods where Mrs G was in credit. Although I do accept that there were plenty of times where Mrs G would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Santander didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Mrs G lost out as a result of any potential failing. I've also therefore considered whether Mrs G's use of her overdraft (and Santander continuing to allow her to use it) was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mrs G expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs G's account. Indeed, there was significant discretionary spend monthly and Mrs G also appears to be transferring funds to another account of hers.

Given the repeat usage letters Mrs G is likely to have been sent by Santander, I think that she ought to have realised that how much she was paying as a result of using her account in this way. So I simply don't agree that Mrs G was using her overdraft purely for essential spending, or because she had a reliance on credit to get by, as the representative says.

Indeed, it's fair to say that Mrs G's salary was sufficient to have cleared the overdraft within a reasonable period of time had she wished to do so. Equally, while I've noted what the

representative has said about Mrs G not having control of the account and I sympathise with the reasons why it says this was the case, I can't see anything in the account transactions which ought to have alerted Santander to the possibility of this, or that the charges she was incurring was causing her harm either.

For example, I can't see that there were wild fluctuations in the transactions, or that Mrs G was borrowing from unsustainable sources in order to meet the overdraft charges or that her borrowing was increasing exponentially either. The spend was fairly consistent and there was nothing to indicate that there was anything out of the ordinary that might be taking place.

Mrs G did have other credit commitments but this in itself does not mean that she was reliant on credit to meet her essential expenditure. And it isn't immediately obvious to me that Mrs G was borrowing from unsustainable sources – such as payday type lenders either. Finally, I can't see that this was a case where Mrs G was always towards the top end of her limit and maxing out the funds available to her either.

I accept neither of these things in themselves (or when taken together) mean that Mrs G wasn't experiencing difficulty. But I don't agree that Mrs G was reliant on credit. She was quite comfortably able to make any essential commitments without using her overdraft. However, Santander was reasonably entitled to conclude that she was choosing to use her overdraft to make discretionary transactions and in periods where she had increased funds her discretionary expenditure increased.

Overall and having considered everything, I don't think that it was unreasonable for Santander to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Santander taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Santander to demand that Mrs G immediately repay her overdraft and if not defaulting her account, in circumstances where there was a realistic prospect of Mrs G clearing what she owed in a reasonable period of time.

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

However, for the reasons I've already explained, I'm satisfied Santander did not lend irresponsibly or act unfairly in allowing Mrs G to use her overdraft in the way that she did. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mrs G's complaint. I appreciate that this will be very disappointing for Mrs G. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 2 December 2024.

Jeshen Narayanan  
**Ombudsman**