

The complaint

Mr C complains that Santander UK Plc lent to him irresponsibly.

What happened

Mr C has two current accounts with Santander and had overdraft limits on each as follows:

Account 1 – number ending 8143		Account 2 – number ending 4552	
Date	Overdraft limit	Date	Limit
Prior to January 2007	£1,000	May 2015	£2,000
September 2007	£1,250	No changes in the limit	
August 2008	£1,500		
August 2009	£1,800		
July 2010	Nil – overdraft removed		
August 2010	£2,000		
September 2011	£950		
October 2017	£5,000		

On 1 February 2024, Mr C complained to Santander. He said, “*overdrafts are meant for short-term borrowing but that was not what I was using the account for*”. He said the fees and charges levied for the use of the overdrafts made his situation worse, and Santander ought to have noticed his difficulties and gambling during the annual reviews of the limits. He asked Santander to refund interest and charges levied since 2017.

Santander looked into Mr C’s complaint but hadn’t issued its response within the eight-week timeframe set by the Financial Conduct Authority (FCA) in its complaint handling rules (DISP), so Mr C referred his complaint to us as he was entitled to do.

Once it had been referred to us, Santander told us it was still reviewing the complaint. It later told us that Mr C had brought his complaint about the lending decisions too late under the FCA’s rules as more than six years had passed since the decisions had been taken.

But it accepted it should have monitored his accounts more closely and ought to have stepped in to help. As a result, it made an offer to refund all charges and interest to Mr C dating back to 18 December 2019. It said it would use the refund to reduce the balance on the account and reduce the overdraft limit to match that. It said once that had been done, Mr C should contact its Financial Support Team to agree a repayment plan for the remainder. Once the balances are fully repaid, it would block his account from further lending for 12 months.

Mr C’s complaint was passed to one of our investigators. She felt it was reasonable to consider that Mr C’s complaint is not just about the lending decisions made, but also about his credit relationship with Santander being unfair as described by Section 140A of the Consumer Credit Act 1974 (s.140). With that in mind, she didn’t agree Mr C’s complaint had been brought too late.

Our investigator looked into the whole of the complaint. She explained that Mr C hadn’t used

his overdrafts between May 2011 and November 2017, so she wouldn't have expected Santander to identify any issues until review dates after that. She felt the first time Santander would have thought there were problems was likely to have been in December 2018 when it wrote to him about his overdraft use. The bank had shown that Mr C didn't respond to its contacts about his overdraft use. Our investigator felt that the bank ought to have intervened at the next review – December 2019 – and as a result, she said Santander's offer was fair and recommended it to Mr C.

Mr C didn't agree with our investigator. As there was no agreement the complaint has been passed to me for a decision.

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.

Mr C has responded in detail in several emails since our investigator sent her opinion of the complaint. I have read these carefully and considered everything he's said and will address the majority of his points in my comments. But I won't be responding to each and every thing he's said on a point-by-point basis. This isn't to be discourteous, simply it reflects the informal nature of our service.

There are time limits for referring a complaint to our service and they are set out in DISP 2.8.2R. Santander thinks this complaint was referred to us too late. It is evident that all the lending decisions took place more than six years before the complaint was made and our investigator explained why Mr C's complaint about those had been brought too late. For clarity, I agree with our investigator on that.

But our investigator also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time. She said we could look at the whole of the complaint on this basis. I don't quite agree with our investigator in that regard as I don't think we can look at Mr C's credit relationship under Account 1 prior to July 2010. Let me explain.

Whether a credit relationship is unfair for the purposes of s.140 isn't judged at its start but when the relationship ends (or when the issue comes to be decided if that happens sooner). This means that time for the purposes of the time limits in DISP 2.8.2 R(2) doesn't start until the credit relationship ends.

Under Account 1, Mr C had a credit relationship through the overdraft which started prior to January 2007 which appears to have been on student terms. But in July 2010, the overdraft was removed which had the effect of ending that credit relationship. A new credit relationship began the following month, when Mr C applied for – and was given a new overdraft on graduate terms.

As the first relationship ended more than six years ago and outside the other aspects of DISP 2.8.2R, it falls outside the jurisdiction of this service. Even if I could look at it, as it was on student terms, it was likely to have been interest free at that time, so I would be unlikely to be able to say the relationship was unfair at that stage or make an award of charges and interest as none would have been levied.

But I can consider the relationship which began in August 2010 on Account 1 as that has continued through to the present. And the credit relationship under Account 2 has also persisted, so remains within our jurisdiction.

I acknowledge Santander still doesn't agree we can look at this complaint, but as I don't plan to ask it to do any more than it has already offered to do, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr C's complaint can be reasonably interpreted as being about the fairness of his relationships with Santander, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Santander) and the debtor (Mr C), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

As mentioned above, whether a relationship is unfair is considered when the matter comes to be decided or at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr C has complained about, I need to consider whether Santander's decision to lend to him and increase his overdraft limits, or its later actions, created unfairness in the relationship between him and Santander such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr C's relationships with Santander are therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Santander carry out reasonable and proportionate checks to satisfy itself that Mr C was in a position to sustainably repay the credit?
 - If not, what would reasonable and proportionate checks have shown at the time?
 - Did Santander make a fair lending decision?
- Did Santander act unfairly or unreasonably towards Mr C in some other way?

Santander had to carry out reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the credit sustainably. It's not about the bank assessing the likelihood of it being repaid, but it had to consider the impact of the overdraft on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments

and the overall circumstances of the borrower.

Did Santander carry out reasonable and proportionate checks?

Due to the time elapsed, there is no information about the checks carried out by Santander at the time of Mr C's applications for the overdrafts. This isn't surprising as banks are not required to hold information indefinitely. But in view of that, I can't therefore say for sure whether reasonable and proportionate checks were carried out, so I've gone on to think about what it might have found if it had carried out sufficient checks. I'd usually do that by looking at the customer's bank statements for a few months before each lending decision as this provides a fairly detailed picture of their circumstances at the time.

Santander has been able to provide transaction and balance information for Mr C's accounts with it as well as some details from a credit reference agency going back to 2015 covering these accounts.

From 2015, each account maintained a credit balance through until at least October 2017 – often by several thousand pounds. So if Santander had taken a closer look at Mr C's statements in response to his overdraft applications, I don't think it would have identified any issues which would have made it think the increase in overdraft limits would be unaffordable for Mr C.

I think Santander made fair decisions to lend when it agreed the overdraft limits for Mr C.

Did Santander act unfairly or unreasonably towards Mr C in some other way?

As Mr C has pointed out – and our investigator has said – Santander had a duty to monitor Mr C's use of his overdraft facility and step in if it felt there were signs of actual or potential financial difficulties. We'd generally expect this monitoring to take the form of an annual review.

Mr C has told us he feels his financial difficulties started in 2016. But his bank statements don't reveal that as his accounts were run exclusively in credit - sometimes with fairly significant balances - until in October 2017 when he used a very small portion of his limit for an odd day here and there. Mr C didn't start significantly using his overdraft limits until November 2017. That is not to say that Mr C wasn't in difficulties in 2016, but I don't think I'd have expected Santander to pick up on them.

Following a review, Santander wrote to Mr C in December 2018 pointing out he was paying overdraft fees and suggesting he may benefit from talking to its Money Management Team. It said the team could help him to avoid charges, maintain his credit rating and manage his money better. It did so because it had noticed he had used his overdraft significantly over the last year. I think this shows Santander was monitoring his account and had reached out to offer support, but I wouldn't expect it to take action immediately.

But Mr C didn't contact Santander and so things continued. I think it was reasonable for Santander to reach out to Mr C over the next year or so. But eventually I'd expect it to begin to take further action after it became clear he may be experiencing difficulties – perhaps calling Mr C and trying to discuss his situation, but I can't see that it did that.

Nonetheless, Santander has offered to refund charges and interest levied on Mr C's accounts from a year after it started to write to him – so December 2019 onwards. I think this is a reasonable offer in the circumstances and is in line with what I'd expect.

To resolve this complaint - in line with what it has already offered - Santander should:

- Re-work Mr C's current accounts so that all interest, fees and charges applied to them from 18 December 2019 onwards are removed.

AND

- If an outstanding balance remains on the accounts once these adjustments have been made Santander should contact Mr C to arrange a suitable repayment plan. If it considers it appropriate to record negative information on Mr C's credit file, it should backdate this to December 2019.

OR

- If the effect of removing all interest, fees and charges results in there no longer being any outstanding balances, then any extra should be treated as overpayments and returned to Mr C, 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 balances remain after all adjustments have been made, then Santander should remove any adverse information from his credit file. †

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Santander should put matters right as outlined above and it has offered to do already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 June 2025.

Richard Hale
Ombudsman