

Complaint

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

She’s effectively said the charges applied to her account were unfair as there was a failure to take account of her not being able to afford them.

Background

Ms L originally had an account with a provider which Santander subsequently acquired. It my understanding that Ms L may have had this account and an overdraft on it from as far back as 2010. However, Santander has limited records for the period prior to January 2015. It has said that Ms L had a limit of £1,550.00 at this point. The limit fluctuated between being £2,500.00 at its highest in November 2015 to £500 at its lowest in July 2020. In May 2021, the limit was increased to £1,000.00.

In July 2024 Ms L formally complained saying that Santander applied overdraft charges to her account despite her struggling to keep afloat and being unable to afford them. Santander did not uphold Ms L’s complaint. It didn’t think that it had done anything wrong in providing Ms L with her overdraft or allowing her to use it in the way that she did. Ms L remained dissatisfied at Santander’s response and referred her complaint to our service. When Ms L referred her complaint to us, Santander told us that it considered Ms L’s complaint was made too late.

One of our investigators reviewed what Ms L and Santander had told us. He reached the conclusion that we could look at the entire period Ms L had her overdraft for. However, he wasn’t persuaded that Santander had acted unfairly by allowing Ms L to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Mrs M’s complaint be upheld.

Ms L 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Santander has argued that Ms L’s complaint was made too late because she complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Having carefully considered everything, I've decided not to uphold Ms L's complaint. Given the reasons for this, I'm satisfied that whether Ms L's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

Having considered matters, I'm satisfied that it is reasonable to interpret Ms L's complaint as being one alleging that the lending relationship between Ms L and Santander was unfair to Ms L as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Ms L has not only complained about the circumstances behind the application of the individual charges, but also the fact Santander's failure to act during the periods she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Ms L's can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Santander was unfair to her. I acknowledge the possibility that Santander may still disagree that we are able to look at the whole of Ms L's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Ms L's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms L's complaint can be reasonably interpreted as being about that her lending relationship with Santander was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Santander) and the debtor (Ms L), 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.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B 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 Ms L's complaint, I therefore need to think about whether Santander's allowing Ms L to use her overdraft in the way that it did, resulted in the lending relationship between Ms L and Santander being unfair to Ms L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Ms L's relationship with Santander is therefore likely to be unfair if it allowed Ms L to continue using her overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for her. And if this was the case, Santander didn't then remove the unfairness this created somehow.

Did Santander unfairly allow Ms L to continue using her overdraft in a way that was unsustainable or otherwise harmful for her?

Before I go any further, as this essentially boils down to a complaint that Ms L 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 Ms L if it applied this interest, fees and charges to Ms L's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware that there was a clear reason it would have been unfair to do so. I've therefore considered whether such a reason existed which would have resulted in Santander charging Ms L unfairly.

Having looked through the account transaction data Santander has sent and the earliest statements that Ms L has been able to provide, it's clear that she has been using her overdraft since it was granted to her. I'm therefore satisfied that there can be no dispute that Ms L was using her overdraft over the period of time she's had it.

Ms L's arguments appear to suggest that this in itself means that her complaint should be upheld. However, Ms L's overdraft was arranged. This means that she had an agreement to use her overdraft and she was entitled to use it. Therefore, Ms L using her overdraft in the period that she had it doesn't automatically mean that her complaint should be upheld.

That said, I do 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, it isn't always the case 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.

I've therefore considered whether Santander acted fairly and reasonably towards Ms L, in this light.

In considering this matter, the first thing for me to say is that after the regulator amended its rules in December 2019, since late 2020 lenders have been required to write to customers explaining that using an overdraft can be expensive and that there may be more suitable alternatives for borrowing over the longer term. Lenders have effectively been required to encourage borrowers to use other means in these circumstances.

Furthermore, should a customer fail to take notice of these letters and continue using their overdraft in this way, the rules in place since then have permitted lenders to take corrective action, this is even where a customer might be using their account in accordance with the terms and conditions.

That said, having considered Ms L's complaint, it appears as though her concerns are mostly focused on a period of time prior these requirements coming into force. That's not to say that there weren't any obligations in place upon lenders during this time. However, it's fair to say that in this period, where a customer didn't get in contact and ask for assistance and where a customer was using their overdraft within the terms and conditions, there were more limited circumstances where a lender could and would be expected to act.

One such instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty. Nonetheless, it would need to be objectively clear to the lender, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

To be clear, having looked at the correspondence Ms L has provided, I am aware that she has contacted Santander about the amount of the charges being applied and being unhappy that she wasn't notified about changes in advance of them being implemented. However, this isn't the same as saying she couldn't afford them. Indeed, it doesn't automatically follow that someone cannot afford charges simply because they have challenged the proportionality or legitimacy of them.

I'm also mindful that while Ms L has referred to being out of work and struggling to find permanent employment, prior to 2015. However, all of the earliest copy statements Ms L has provided do show that Ms L's account was receiving funds. These were made up of salary credits (the vast majority of the time), transfers from other accounts, as well as other credits. Furthermore, I can't see Ms L notified Santander that she was struggling because of a reduced income either.

On the contrary, while I accept that Ms L did tell Santander that she would struggle to provide proof of her salary, she did nonetheless say that she was part of a household that had a surplus and so could afford to convert a mortgage. The notes that Ms L has provided also indicate that she told Santander that she had savings too. In these circumstances, I'm not persuaded that the notes Ms L has provided of her conversations with Santander amounted to her telling it that she couldn't afford an overdraft.

Nonetheless, even though I can't see that Ms L directly told Santander that she couldn't afford to pay these charges, I've considered whether her account activity ought to have alerted it to this being the case. In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has (since April 2014) set out guidance on what it considers to be potential indicators of financial difficulty.

While this guidance came into force in April 2014, it effectively incorporated Section 9 of the British Bankers' Association's (of which Santander was a member of) Lending Code, which had already been in place for a number of years (including the period between 2011 and 2014). So I'm satisfied that the principle of this guidance, at the very least, is relevant to the entire period I'm looking at.

The '*Guidance on financial difficulties*' states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty.

However, having looked at Ms L's account transactions as well as the statements Ms L has provided, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in her circumstances during the entire period I've looked at. Furthermore, I can't see anything in Ms L's account transactions or statements which suggests that she was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Ms L's incomings and outgoings as well as her overdrawn balances and determined whether it was possible for her to have stopped using her overdraft, based on this. I think that if Ms L 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, even where the indicators of financial difficulties I've set out above weren't clearly present in her circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Ms L's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, I'm satisfied that Ms L's case isn't one where a borrower was permanently in their overdraft. It is clear that there were times where Ms L returned to a credit balance. The fact that Ms L was receiving regular credits into her account is another reason why her overdraft doesn't appear to have been obviously unsustainable for her.

Furthermore, while I'm not seeking to make retrospective value judgements over Ms L expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Ms L's account. Indeed, there was significant discretionary spend and Ms L also appears to have been transferring funds to and from another account of hers at times.

Equally, as Ms L has referred to having savings, it is difficult for me to conclude that she couldn't have just repaid the overdraft and removed the facility. This is particularly as Ms L did notice how much she was paying in charges and she therefore would have known much she was paying as a result of using her overdraft in the way that she was.

I accept that Ms L did have other credit commitments at this time. 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 Ms L was borrowing from unsustainable sources – such as payday type lenders – in order to pay for the charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Ms L wasn't experiencing difficulty. But I don't think that Ms L's account conduct and overdraft usage obviously show that she was. And bearing in mind I'm satisfied that it is more likely than not that Ms L did not directly tell Santander that she was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold her complaint.

Looking from the outside, it looks like Ms L had the funds to be able to reduce the amount that she used her overdraft. However, she was choosing not to do so. In these circumstances, Santander was reasonably entitled to conclude that Ms L was choosing to use her overdraft rather than it being the case that she had become reliant on it.

Therefore, I don't think that Ms L was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Ms L exiting her overdraft. And Santander was reasonably entitled to believe that Ms L was choosing to use her overdraft in the way that she was, rather than a case that her financial circumstances meant that she had no choice other than to do so.

As this is the case, I don't think that it was unreasonable for Santander to have proceeded adding the charges that it did. I've therefore not been persuaded that Santander created unfairness in its relationship with Ms L by allowing her to use her overdraft in the way that she did. Based on what I've seen, I don't find Santander treated Ms L unfairly in any other way either. In these circumstances, I don't find that the relationship between Ms L and Santander was unfair to Ms L.

For the sake of completeness, I would also add that I've noted to Ms L has referred to being provided with an account that was not suited to her needs. I've looked at her concerns through the lens of overdraft charges and have concluded that Santander was entitled to apply the charges that it did.

Should Ms L believe that the various accounts she had with Santander were unsuitable for her for other matters then these are concerns that she will have to take up with Santander in the first instance. I'd also add that Ms L may be able to complain to us – subject to any jurisdiction concerns (particularly time limits) – should she be unhappy with any response she receives from Santander in relation to this matter.

Overall and having considered everything, while I can understand Ms L's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms L. 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 Ms L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 18 June 2025.

Jeshen Narayanan
Ombudsman