

Complaint

Mrs F has complained about an overdraft Santander UK Plc (“Santander”) provided to her. She says the overdraft was irresponsibly provided and caused her continued financial difficulty.

Background

Santander provided Mrs F with a student overdraft in 2015. The overdraft was to be interest and fee free for at least the duration of Mrs F’s studies provided she stayed within her limit. Once she completed her studies, in July 2018, her overdraft remained interest and fee free for a further two years. In July 2020, Mrs F’s graduate terms expired. At this point, she was transferred to a standard current account and began being charged for her overdraft.

In November 2023, Mrs F complained that she shouldn’t have been given the overdraft and that Santander failed to recognise that she had been experiencing difficulty.

Santander did not uphold Mrs F’s complaint. In essence, it thought that Mrs F had complained too late. Mrs F was dissatisfied at Santander’s response and referred her complaint to our service.

When Mrs F’s complaint was referred to our service, Santander told us that we couldn’t consider it as it believed it was made too late. One of our investigators reviewed what Mrs F and Santander had told us. She reached the conclusion that we could look at the entire period Mrs F had his overdraft for but she wasn’t persuaded that Santander had acted unfairly by allowing Mrs F to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Mrs F’s complaint be upheld.

Mrs F disagreed and asked for an ombudsman to look at her complaint.

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 at least parts of Mrs F’s complaint was made too late because she complained more than six years after the lending decision and 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.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mrs F and Santander was unfair to Mrs F as described in s140A of the Consumer Credit Act 1974 (“CCA”). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

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

I'm also in agreement with the investigator that Mrs F's complaint should be considered more broadly than just the lending decision or the individual charges. I consider this to be the case as Mrs F has not only complained about the circumstances behind the decision to lend and 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 Mrs F's complaint 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 Mrs F'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 Mrs F's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs F'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 (Mrs F), 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 Mrs F's complaint, I therefore need to think about whether Santander's allowing in providing Mrs F with her overdraft and then allowing her to use it in the way that it did, resulted in the lending relationship between Mrs F and Santander being unfair to Mrs F, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs F's relationship with Santander is therefore likely to be unfair if Santander allowed Mrs F to continue using his 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 act unfairly in providing the overdraft to Mrs F?

We've explained how we handle complaints about unaffordable and irresponsible lending on

our website. And I've used this approach to help me decide Mrs F's complaint.

Santander needed to make sure that it didn't lend irresponsibly. In practice, what this means is Santander needed to carry out proportionate checks to be able to understand whether Mrs F could afford to repay before providing her with an overdraft and her limit increases.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I understand that Santander is likely to have agreed to Mrs F's application after it carried out a credit search and obtained some information about her income and expenditure. On the other hand, Mrs F says Santander initially provided this overdraft at a time when she was about to become a student and had no income.

I've carefully thought about what Mrs F and Santander have said.

I know Mrs F says that the overdraft was provided to her at a time where she had no set income. However, it's worth noting that Mrs F didn't have to pay any interest or charges for some time provided that she kept within her overdraft limit. I think this is important context to keep in mind in this particular case.

In these circumstances, it's difficult for me to agree that agreeing this overdraft was wholly unreasonable given it was interest free and therefore a far better alternative to any other alternative sources of credit Mrs F is likely to have had available. This is particularly bearing in mind the extended period she'd have to repay what she could owe.

Furthermore, as the account continued to receive credits in line with the terms and conditions of the facility, I don't think that it was unreasonable for Santander to continue providing it. In these circumstances, I'm not persuaded that Santander caused unfairness in the relationship between I and Mrs F when it granted the overdraft.

Did Santander unfairly allow Mrs F to continue using her overdraft in a way that was unsustainable or otherwise harmful for her from July 2020?

I appreciate that Mrs F has said that it has become difficult for her to reduce the balance on the overdraft since Santander started adding interest in July 2020. I'm sorry to hear that Mrs F has had difficulty repaying her overdraft.

At this point, I think that it's worth me explaining that Santander won't have acted fairly and reasonably towards Mrs F if it applied any interest, fees and charges to Mrs F's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs F was experiencing financial difficulty. I've therefore considered whether there was an instance, or there were instances, where Santander didn't treat Mrs F fairly and reasonably.

In other words, I've considered whether there were periods where Santander continued charging Mrs F 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 considered matters, it's fair to say that Mrs F did use her overdraft regularly. And Mrs F may argue that the fact that she did so, in itself, was an indication that Santander ought to have taken action. But I think that it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Mrs F's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have stopped using her overdraft, based on this.

After all, if Mrs F was locked into paying charges because there was no 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 this isn't a case where the borrower was permanently in their overdraft right up to the maximum amount they could owe. Mrs F's account was in receipt of significant amounts of credits. So there were periods where Mrs F was in credit – although I do accept that Mrs F is likely to have met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, even though this is the case, the question here is whether Mrs F's use of her overdraft was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I don't think that this is the case. To explain, while I'm not seeking to make retrospective value judgements over Mrs F's expenditure, nonetheless there are significant transfers of funds going into and out of this account. Indeed, there appears to be little in the way of direct debits or other committed expenditure going out of the account either.

Equally, I can't see anything to indicate that the charges were causing her harm. For example, I can't see that Mrs F was borrowing from unsustainable sources in order to meet these charges or that her borrowing was increasing exponentially. I accept neither of these things in themselves (or when taken together) mean that Mrs F wasn't experiencing difficulty. But it's difficult for me to agree that she was reliant on credit.

I also say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mrs F failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mrs F failing to meet her commitments out of her disposable income – were present in Mrs F's circumstances.

Finally, while I appreciate that Mrs F has said that the funds going into the account were her husband's and not her own, I can't see that she ever notified Santander of this. And I don't think that it could reasonably be expected to realise that this was the case either.

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, would have been disproportionate.

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

Therefore, I don't find that the way that Santander allowed Mrs F to use her overdraft resulted in the relationship between Mrs F and Santander being unfair to Mrs F either.

Overall and having considered everything, I've not been persuaded that Santander created unfairness in its relationship with Mrs F, either by providing the overdraft or by allowing Mrs F to use her overdraft in the way that she did. Based on what I've seen, I don't find Santander treated Mrs F unfairly in any other way either.

So overall and having considered everything, while I can understand Mrs F's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs F. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding Mrs F's complaint, I would remind Santander of its continuing obligation to exercise forbearance and due consideration, given what Mrs F has said about having difficulty clearing her overdraft during the course of her complaint.

I would also encourage Mrs F to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Mrs F may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Santander's actions in relation to exercising forbearance on the overdraft balance.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 10 March 2025.

Jeshen Narayanan
Ombudsman