

## **Complaint**

Mr B has complained about the overdraft charges Santander UK Plc ("Santander") applied to his current account. He's said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period and even when it was clear that he was struggling.

## **Background**

Santander provided Mr B with an overdraft in 2015. Mr B's limit reached £1,800.00.00 and he only started being charged for using his overdraft after his graduate terms ended in 2020.

Mr B's complaint was looked at by one of our investigators. She thought that Santander ought to have realised that it shouldn't have continued allowing Mr B to use his overdraft by July 2021. Therefore, it needed to refund all of the interest, fees and charges added to Mr B's overdraft from this point onwards.

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

## **My provisional decision of 24 February 2025**

I issued a provisional decision – on 24 February 2025 - setting out why I was not intending to uphold Mr B's complaint.

In summary, I wasn't intending to uphold Mr B's complaint because I was satisfied that Santander didn't allow Mr B to continue using his overdraft in a way that was unsustainable or otherwise harmful for him.

## **Santander's response to my provisional decision**

Santander responded to confirm that it agreed with my provisional decision and that it had nothing further to add prior to my final decision.

## **Mr B's response to my provisional decision**

Mr B disagreed with my provisional decision. In summary, he argued that this was because my provisional decision failed to apply the regulator's (the Financial Conduct Authority ("FCA")) provisions correctly and misinterpreted key facts in his financial situation. In particular, he considers:

- Santander failed to assess his financial difficulty despite his persistent overdraft use.
- he did not receive persistent overdraft usage letters and Santander should prove that he did.
- I misinterpreted cryptocurrency transactions as liquid funds.
- his financial difficulty was ignored due to a temporary credit balance.
- there was a misunderstanding of proportionality regarding intervention.
- he used a money transfer to repay his overdraft and this was ignored.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their responses to my provisional decision.

I've read and considered everything that has been provided. I accept and acknowledge that Mr B has referred to a number of reasons why he thinks that Santander acted unfairly towards him in relation to his overdraft. However, bearing in mind Mr B's response to my provisional decision, I think that it is important for me to explain that my role here isn't to enforce the regulator's rules. It is to determine what's fair and reasonable in all the circumstances of his case.

I also want to reassure Mr B that where I haven't commented on a specific issue, or a comment that he has made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I don't think I need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

Having carefully considered everything provided, including the responses to my provisional decision, I'm still not upholding Mr B'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 Mr B was unfairly charged by being allowed to continue using his 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 Mr B if it applied this interest, fees and charges to Mr B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Santander didn't treat Mr B fairly and reasonably.

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

Before I get into what Santander perhaps ought to have realised about Mr B's circumstances, I wish to make it clear that I've not seen anything to suggest that Mr B got into direct contact with Santander to explain that he was in financial difficulty and needed help to repay his overdraft.

Indeed, Mr B's initial letter of complaint made no reference to Santander failing to offer him help, after him notifying it that he was in difficulty. Had Mr B got in contact and asked for help, Santander would have been obliged to offer forbearance and due consideration in line with its regulatory obligations.

However, as Mr B didn't get into contact with Santander it would only have been fair and reasonable to expect it to have acted if Mr B's account conduct clearly demonstrated that the overdraft had become unsustainable for him and there was no reasonable prospect of Mr B

paying what he owed. I've looked through Mr B's account statements throughout the period concerned and considered whether Santander ought reasonably to have realised that this was the case.

Having done so, I can't see that Santander ought to have realised that Mr B was struggling to the extent that it should unilaterally have taken corrective measures in relation to Mr B's overdraft. To explain, there is no dispute that Mr B used his overdraft regularly. And Mr B may argue that the fact that he 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 the 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 Mr B's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this.

After all, if Mr B was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. 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 a customer was advanced an overdraft facility which had a limit of an amount where there was absolutely no reasonable prospect of this being cleared. Furthermore, as I pointed out in my provisional decision, Mr B was given a considerable interest free period after his student terms expired, in order to allow him to reduce his balance.

So I think it is simply incorrect to say that failed to provide Mr B with an opportunity to repay what he owed, without adding interest. Equally, Mr B's failure to clear the overdraft during the period he had graduate terms makes it difficult for me to accept that the argument that he would have acted differently had he been given a further interest free period.

In any event, and notwithstanding the interest free period Mr B was previously given, the question for me to consider here is whether Mr B's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. 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 Mr B's expenditure, nonetheless there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr B's account. Indeed, it's fair to say that a significant proportion of Mr B's expenditure at the time that the investigator believes that the complaint should be upheld was discretionary.

As Santander has pointed out Mr B made significant transfers to and from crypto currency accounts. Indeed, Santander was reasonably entitled to conclude that Mr B was storing funds in crypto currency accounts, which could have cleared the overdraft had he wished to do so. I've noted Mr B's reference to FCA policy statements and consultation papers relating to cryptocurrency. However, these papers were published with a view to providing clarity on the rules relating to market participants carrying out activities in this area. Santander wasn't carrying out activities in this area.

Furthermore, as I explained in my provisional decision, the amount Mr B transferred to cryptocurrency providers provided at least a suggestion that Mr B had these funds available to repay his overdraft. So, in this case, my reference to Mr B's crypto currency transactions

is not in relation to the question of whether crypto currency should be treated as liquid assets as part of an investment portfolio.

My reference to crypto currency relates to whether Santander ought to have realised that Mr B couldn't repay his overdraft. And I don't see why Santander should have assumed that Mr B could not repay his overdraft as he would lose all of these funds. I've seen that Mr B has said that he lost money cryptocurrency trading and that Santander only made him aware of this type of transaction being high risk in 2021.

But Santander wasn't providing Mr B with investment advice. It was simply processing transactions which Mr B had authorised and which on the face of things he could afford. Therefore, it was up to Mr B to determine whether he wished to make the transfers that he did. And Santander was under no obligation to provide him with interest free credit in order to do so.

The fact that Santander took a commercial decision to no longer process such transactions in 2021 doesn't mean that it ought to have advised Mr B about the investment risks associated with crypto currency sooner. If Mr B feels that it was unfair for Santander to process the individual transactions then this is a matter he'll need to take up with it separately.

Equally, from Mr B's Santander's statements, I can't see anything to indicate that the charges Mr B were incurring causing him harm either. For example, I can't see that Mr B was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially. I accept neither of these things in themselves (or when taken together) mean that Mr B wasn't experiencing difficulty. But I don't agree that Mr B was reliant on credit.

Indeed, Mr B had a credit balance at the time that he made his complaint. Furthermore, Mr B hasn't provided me with anything which clearly shows me that his committed non-discretionary, rather than discretionary, expenditure, meant that he never had enough to be able to clear his overdraft. Or more importantly, that it was the interest being charged that was solely responsible for him remaining in an overdrawn balance. I don't think that Mr B making a money transfer to his account changes this either.

Given the repeat usage letters Mr B is likely to have been sent by Santander, I think that he ought to have realised how much he was paying for this. I would add that even if Mr B wasn't sent repeat use letters, as he has said in his response to my provisional decision, his account statements which he hasn't disputed receiving, in any event, show the amount he was paying in interest each month.

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 Mr B failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mr B failing to meet his commitments out of his disposable income – were present in Mr B's circumstances in July 2021 or at any time prior to his complaint. The lack of these indicators of financial difficulty in the account transactions, means that I don't think that Santander ought to have viewed Mr B's overdraft usage as being problematic.

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 July 2021, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Santander to demand that Mr B immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr B clearing what he owed in a reasonable period of time. Mr B has said that there wouldn't have been a need for him to repay the overdraft in one go. This is true to an extent. Santander did conclude that Mr B could repay what he owed within a reasonable period of time and Mr B was operating his overdraft within the terms and conditions.

However, as this is the case, Santander will have needed to rely on s98(6)(b) of the Consumer Credit Act ("CCA") in order to have been able to take unilateral action in these circumstances. This is likely to have seen Mr B served with a notice seeking to terminate his open-end credit.

It was only after this was done could any proactive forbearance measures have been taken, in circumstances where Mr B hadn't contacted Santander to ask for help in the first place. As this is the case, I remain satisfied that Santander taking action, would have been disproportionate bearing in mind the circumstances in this case.

In reaching my conclusions, I've also noted that Mr B has referred to a number of provisions within CONC 5.2A, which refer to creditworthiness assessments prior to a lender's decision on whether to lend, in order to support his arguments relating to Santander's obligations in relation customers who repeat use an overdraft.

However, the FCA's rules regarding overdraft repeat use are contained within section 5D of CONC. For the sake of completeness, I would add that I have not ignored or discounted Mr B's arguments simply because he has referred to and relied upon the incorrect provisions in CONC. Indeed, I accept the possibility that Santander may not have complied with a literal interpretation of each and every provision in CONC 5D in the period Mr B was using his overdraft. However, as I've explained, my role here isn't to enforce the FCA's rules.

My role is to consider what's fair and reasonable in all the circumstances. Bearing in mind everything I've been persuaded with, I've not been persuaded that Mr B has lost out as a result of any failure by Santander to act in accordance with CONC 5D. As this is the case, I'm satisfied that Santander did not charge Mr B in circumstances where it ought to have realised that it was unfair to do so.

Finally, I've also considered whether the lending relationship between Santander and Mr B might have been unfair to Mr B under s140A of the CCA.

However, for the reasons I've already explained, I'm satisfied that Santander did not lend irresponsibly or act unfairly in allowing Mr B to use his overdraft in the way that he did bearing in mind all of the circumstances. 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 Mr B's complaint. I appreciate that this will be very disappointing for Mr B – particularly as the investigator, albeit erroneously, suggested that the complaint should be upheld. 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 above and in my provisional decision of 24 February 2025, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 8 April 2025.

Jeshen Narayanan  
**Ombudsman**