

The complaint

Mr and Mrs D complain that Santander UK Plc irresponsibly provided them with access to an overdraft facility and allowed them to become reliant on it without stepping in. They say this resulted in the relationship between them and Santander being unfair.

Mr and Mrs D are supported in bringing this complaint by a representative. But, for ease, I'll refer to Mr and Mrs D throughout.

What happened

Due to the passage of time, Santander hasn't been able to provide much information about the early lending history of the overdraft facility it provided. However, it's explained that the overdraft limit has been £2,500 since at least June 2015.

In summary, Mr and Mrs D say Santander didn't undertake an appropriate assessment of their circumstances and failed to take into account that they were reliant on borrowing. As a result, Mr and Mrs D say they remained at the upper limit of the overdraft for a prolonged period and incurred significant charges as a result.

Santander reviewed matters and, in summary, thought that a complaint about the provision of the overdraft and limit increases had been brought too late under the rules that this service needs to apply. In relation to the management of the overdraft facility, Santander said the account received enough credits to clear the overdraft, which could have been removed at these points. It also said its Financial Support Team would contact Mr and Mrs D to complete an income and expenditure review to reduce the overdraft balance. However, if it was unable to make contact with Mr and Mrs D after 60 days, the overdraft would be removed in full.

An Investigator here reviewed matters. In summary, he thought part of the complaint had been brought too late under the rules that apply to this service – including any lending decisions and application of interest and charges more than six years before the complaint was raised. However, he thought we could look into the complaint about Santander perpetuating an unfair credit relationship. In doing so, however, he didn't recommend that this complaint be upheld. He noted that there were regular credits into the account, no evidence of prolonged overdraft usage, and that money was also being transferred into external accounts held.

Santander didn't dispute our Investigator's opinion, but Mr and Mrs D did and mostly reiterated their previous points. They also said one of the other accounts they were transferring money into belonged to their son, whom they were supporting at the time.

Overall, an agreement hasn't been reached. So, the case has been passed to me to decide.

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.

In deciding this complaint, I have taken into account all of the submissions that have been provided. However, it's important I explain that my decision will only focus on what I consider to be the crux of Mr and Mrs D's complaint. This isn't intended to be discourteous, but instead it reflects my informal role in reaching a decision here.

Santander thinks part of this complaint has been raised too late under the Financial Conduct Authority (FCA) Dispute Resolution (DISP) Rules, which set timescales within which complaints need to be brought to this service. Our Investigator explained why he didn't think we could look into a complaint about the application of credit limits, or interest and charges, that occurred more than six years before the complaint was raised. But he explained that he thought Mr and Mrs D were also complaining about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140). And, he outlined why he thought the complaint about an allegedly unfair relationship had been brought to this service in time.

For the avoidance of doubt, I agree with this reasoning, and I think this service is able to consider the complaint about an allegedly unfair relationship. I acknowledge Santander still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

As our Investigator explained in his opinion, in deciding this complaint I'm required to take account of relevant law, amongst other things. Mr and Mrs D's complaint includes concerns about the fairness of the relationship between a borrower and a lender arising out of a credit agreement. I say this because Mr and Mrs D's complaint letter makes reference to Section 140 and outlines that Santander's actions created an unfair relationship.

Therefore, given that I think Mr and Mrs D are complaining about Santander's perpetuation of an unfair relationship, relevant law here includes Section 140A, Section 140B and Section 140C of the Consumer Credit Act 1974.

As our Investigator outlined, S.140A of the CCA says that a court may make an order under S.140B if it determines that the relationship between the creditor and the debtor 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 things 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.

S.140B sets out the sorts of orders a court might make – these are wide powers, including to change the terms of the agreement, reduce the amount owed or require a refund, or to do or not do any particular thing. I've kept this in mind as relevant law in deciding what's fair and reasonable in all of the circumstances.

I'll first consider whether Santander's decision to provide access to an overdraft facility created an unfair relationship. To do this, I've kept our general approach to complaints about unaffordable and irresponsible lending in mind, including the relevant key rules, guidance and good industry practice.

Santander hasn't been able to provide much information about the early lending history on the account – including when any limits were provided, or the results of any checks carried out before lending. I draw no negative inference from this, considering how long ago this would have taken place. However, Santander has said the overdraft limit was £2,500 from at least June 2015.

The earliest statements Santander has provided are from 2016 onwards, and don't cover the period that Santander says any lending decisions would have taken place. Mr and Mrs D haven't provided any statements. Therefore, this all means that I can't conclude that Santander created unfairness in its decision to provide access to any opening overdraft limits, or any limit increases that may have taken place in this period.

I note that the balance did, on occasion, go beyond the £2,500 limit – though usually not by more than a few hundred pounds at the most, and was generally quickly brought back within the limit. Santander has said the limit has remained at £2,500 since 2015, which I agree is likely to be the case. That being said, when thinking about the increased balances, I've also considered the possibility that the limit may have been changed over the years. However, even if this were the case, I'm not persuaded it changes the findings I've reached about the lending decisions. I say this because there were large incoming credits into the account shown on the available statements, and so any increase that may have taken place – which was likely to have been minimal anyway – was likely to be affordable and therefore wasn't unfair.

I'll turn next to Mr and Mrs D's concerns about being reliant on the overdraft, to the extent that they think Santander ought to have stepped in. The earliest statements Santander has provided are from 2016 and, as outlined above, Mr and Mrs D haven't been able to provide anything more. So, I've based my review on the statements provided from 2016 onwards to understand whether I think Santander ought to have stepped in and taken corrective measures instead of continuing to apply charges.

Having reviewed the available statements, whilst Mr and Mrs D make regular use of the overdraft over the years, I'm not persuaded that they were necessarily reliant upon it for the whole period in question, or that the overdraft had become demonstrably unsustainable for them. I say this because whilst the account did experience several periods of being overdrawn, there were also many times where the account was in credit.

There were regular incoming credits into the account over the period in question including what appear to be regular income payments – confirmed by Mr and Mrs D in conversations with this service. I've also noted regular deposits and transfers into the account over the period in question, some of which were from the same provider paying regular income into the account. Some of these credits were very large payments and there were therefore instances where the credit balance was, in my opinion, significant. Additionally, Mr and Mrs D also appear to transfer funds to other accounts. Whilst I note what they say about this being to support their son, they've also confirmed that one of these accounts was a savings account.

As outlined previously in this decision, if the limit stayed at £2,500 – which I think is likely to have been the case – then there were occasions where the account was over the arranged overdraft limit. However, this was generally brought back within the limit relatively quickly. So, I'm not persuaded that this changes the findings I've reached.

I have also considered that there were periods where there were incoming credits from other lenders, and regular payments to lenders too – including what appear to be from short-term lenders and home credit providers. It's certainly arguable that this, in isolation, ought to have

prompted Santander to ask more questions to determine whether the overdraft facility remained sustainable. However, as outlined, this was happening alongside regular income payments, as well as other regular deposits and transfers into the account. And, some of these credits were significant and well in excess of the overdraft limit. So, considering everything in the round, it's difficult for me to reasonably conclude that Mr and Mrs D were in a position where they simply couldn't exit the overdraft if they wished to. And I'm therefore not persuaded this resulted in an unfair relationship between the parties.

In conclusion, given all the circumstances of this complaint, I don't think Santander acted unfairly or unreasonably when it provided any overdraft limits, or by allowing Mr and Mrs D to use the overdraft in the way they did. And, I don't think the credit relationship between the parties would be viewed as unfair under S.140A Consumer Credit Act 1974. It follows that I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 9 June 2025.

Hana Yousef
Ombudsman