

## **Complaint**

Ms H 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 becoming reliant on debt.

## **Background**

Ms H opened a current account with Santander in May 2007. From what I’ve seen, Ms H had an overdraft limit of £1,700.00 in 2014. This limit looks to have been increased to £3,000.00 in January 2015 before it was reduced to £2,700.00 and then £2,000.00. The overdraft was removed from Ms H’s account in February 2024.

Ms H’s complaint was looked at by one of our investigators. She eventually reached the conclusion that it wasn’t fair and reasonable for Santander to continue allowing Ms H to use her overdraft in the same way from January 2022 onwards. So she partially upheld Ms H’s complaint.

Santander accepted the investigator’s conclusions. However, Ms H did not and asked for an ombudsman’s decision. As the parties are in agreement that Santander shouldn’t have allowed Ms H to continue using the overdraft from January 2022 onwards this decision is solely focusing on matters that took place prior to this period.

## **My findings**

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

Having carefully considered everything provided, I’m satisfied that what Santander has already agreed to do to put things right for Ms H is fair and reasonable in all of the circumstances of her complaint. As this is the case, I’m not requiring Santander to do anything more or anything further and I leave it up to Ms H to decide whether she wishes to accept Santander’s offer. I’ll now proceed to explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Ms H 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 H if it applied this interest, fees and charges to Ms H’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, prior to January 2022, which would have resulted in Santander charging Ms H unfairly.

Having looked through Ms H's account transactions and the excerpt Ms H has provided from her credit report, 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 H was using her overdraft over the period of time she's had it.

Ms H's arguments appear to suggest that this in itself means that her complaint should be upheld. However, Ms H's overdraft was arranged. This means that she had an agreement to use her overdraft and she was entitled to use it. Therefore, Ms H 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. I note that Ms H has referred to final decisions, from our database of published decisions, where ombudsmen have upheld cases finding that a lender acted unfairly by allowing a customer to use their overdraft in these circumstances.

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 H, in this light.

In considering this matter, the first thing for me to say is that 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 H'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 - such as Ms H here - 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, this is not the same as a customer paying charges that they appear to have been able to afford for using a credit facility that they had applied for and been provided with.

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. This '*Guidance on financial difficulties*' is set out in CONC 1.3.

It 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 H's account transactions, I've seen no indication that any of the potential signs of financial difficulty contained in regulator's guidance, were obviously present in her circumstances during the period I'm looking at. Furthermore, I can't see anything in Ms H's account transactions 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.

Indeed, it's worth noting that one of the final decisions Ms H has referred to, was one that I issued. However, the content of that decision makes it clear that the reason I was persuaded to uphold that complaint was because the lender concerned had ignored instances of the above factors being present on that customer's account. I don't think those same circumstances are present here.

I've also looked at Ms H'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 H 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 H'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 H's case isn't one where a borrower was permanently in their overdraft. It is clear that there were times where Ms H returned to a credit balance. The fact that Ms H 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 H expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Ms H's account. Indeed, there was significant discretionary spend and Ms H also appears to have been transferring funds to and from another account of hers. Given Ms H will have seen how much she was paying in charges, I think that she ought to have realised that how much she was paying as a result of using her overdraft in this way.

I accept that Ms H 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 H 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 H wasn't experiencing difficulty. But I don't think that Ms H's account conduct and overdraft usage obviously show that she was. And that's what I'd need to be persuaded of in order to uphold her complaint for the period I'm looking at.

Looking from the outside, it looks like Ms H 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 H was choosing to

use her overdraft to make discretionary transactions, rather than it being the case that she had become reliant on it.

Therefore, I don't think that Ms H was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Ms H exiting her overdraft. And Santander was reasonably entitled to believe that Ms H 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 prior to January 2022.

In reaching this conclusion, I've also considered whether the lending relationship between Santander and Ms H might have been unfair to Ms H under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied that what Santander has already agreed to do to put things right for Ms H's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I'm also not persuaded that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

Overall and having considered everything, I'm therefore not requiring Santander to do anything more and I leave it up to Ms H to decide whether she wishes to accept its offer in settlement of her complaint. I appreciate this may prove disappointing for Ms H – particularly as it's clear that she feels strongly about her complaint. But I hope that she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

#### **Fair compensation – what Santander needs to do to put things right for Ms H**

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Ms H's complaint for Santander to put things right by:

- Reworking Ms H's overdraft balance so that all interest, fees and charges that were added from January 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Ms H to arrange a suitable repayment plan, Ms H is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement for this. If it considers it appropriate to record negative information on Ms H's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2022.

OR

- If the effect of reworking Ms H's account results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms H 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 balance remains after all adjustments have been made, then Santander should remove any adverse information from Ms H's credit file.

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Ms H a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Santander UK Plc has agreed to do to put things right is fair and reasonable in the circumstances of Ms H's complaint. I'm therefore not requiring it to do anything more or anything further and I leave it up to Ms H to decide whether she wishes to accept its offer to settle her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before **28 April 2025**.

If Ms H does not accept my decision before **28 April 2025** it will not be binding on Santander. Should Ms H seek to accept the decision (or the proposed settlement) at a later date, it will be a matter for Santander to decide whether it is willing to settle the complaint in line in the way that it has agreed to.

Jeshen Narayanan  
**Ombudsman**