

## **Complaint**

Mrs S has complained about the overdraft charges Santander UK Plc ("Santander") applied to her current account. Mrs S is being represented, by the ("representative"), in her complaint.

The representative has said the charges applied to Mrs S' account were unfair as there was a failure to take account of her patterns of reliance on debt and hardcore borrowing. In the representative's view, there was no proper consideration of the longer-term impact of the borrowing on her.

## **Background**

Mrs S has had an overdraft on her Santander account since at least the end of 2015. Since at least early 2016 the limit on the account has been £1,750.00.

In March 2024, Mrs S complained saying that she was allowed to continue using the overdraft in a way that was unsustainable and caused her continued financial difficulty.

Santander partially upheld Mrs S' complaint. It did not think that it had done anything wrong or treated Mrs S unfairly in the period up to the end of April 2018. However, it offered to refund all of the charges added to Mrs S' overdraft from May 2018. Mrs S remained dissatisfied after Santander's response and referred her complaint to our service.

When Mrs S' complaint was referred to our service, Santander told us that we couldn't consider parts of it as it was made too late. At this point it also said that it was prepared to refund all of the charges added to Mrs S' account from March 2018, which was the six-year period prior to it receiving Mrs S' complaint.

One of our investigators reviewed what Mrs S and Santander had told us. She reached the conclusion that we could look at the entire period Mrs S had her overdraft for but thought that what Santander had already done to put things right for Mrs S was fair and reasonable in all the circumstances of her case.

The representative, on behalf of Mrs S 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.

### *The time limits for making a complaint to our service*

There are time limits for referring a complaint to the Financial Ombudsman Service. Santander has argued that Mrs S' complaint was made too late because she complained more than six years after the charges on the overdrafts were applied, as well as more than

three years after she ought reasonably to have been aware of her cause to make this complaint.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's been complained about, or if later, more than three years after the complainant (in this case, Mrs S) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

Mrs S has complained about the charges that were applied to her overdraft and says that there was a failure to take account of her patterns of reliance on debt and hardcore borrowing. This means Mrs S had, at least, six years from when the charges in question were applied (up to February 2018) in order to complain.

Mrs S didn't complain until March 2024. I'm therefore satisfied that Mrs S clearly complained more than six years after all of the charges in question were added to her account.

However, DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've considered whether DISP 2.8.2R (2)(b) provides Mrs S with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Mrs S was aware, or she ought reasonably to have been aware of her cause for complaint, it would have to be the case that she was aware or ought reasonably to have been aware that:

- there was a problem – in this case her overdraft charges were excessive and therefore unfair;
- the overdraft charges caused her loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was Santander.

Mrs S' account statements would have made her aware of the charges she is now complaining about when they were being applied. I think that in knowing about the charges themselves Mrs S had enough information to decide whether she considered these charges to be excessive and whether she thought Santander applying them in the circumstances that it did was unfair. This is particularly as she will have known how often she was overdrawn and whether these charges were causing her to remain in this position.

I also think that Mrs S would have known that these charges were causing her a loss given what she has said about struggling to repay them and them causing a reliance on debt. Equally, as it was Santander that was charging Mrs S, I think that she ought reasonably to have realised that Santander might have been responsible for her problem too. I'm therefore satisfied that Mrs S ought to have been aware of her cause to complain at the time that these charges were applied.

In reaching my conclusion, I've noted the representative's argument that it has seen decisions where ombudsmen have said that they wouldn't necessarily expect a reasonable person to blame the lender for any difficulty they may have had repaying credit. I accept that it won't always be the case that a customer will hold the lender responsible for the position that the representative has described.

However, in this case, Mrs S hasn't simply complained that she shouldn't have been lent to. She's also complained that it was unfair for Santander to charge her in circumstances where she was experiencing financial difficulty, was reliant on debt and was hardcore borrowing. I'm satisfied that Mrs S would have known about these matters, regardless of what she may

or may not have thought about Santander's initial decision to lend to her. And as it was Santander that was charging her in these circumstances, I'm satisfied that she ought reasonably to have realised that Santander may have had some responsibility for her problem, whether or not she actually realised this was the case.

Three years from when each of the respective charges were applied does not provide Mrs S with longer (than six years from when the charges were applied) to complain. So I don't think that DISP 2.8.2R (2)(b) does apply in this case and as Mrs S complained more than six years after the respective events she is complaining about took place, she complained about the charges applied up until the end of February 2018, too late.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. However, Mrs S hasn't told us about anything that would have stopped her from complaining in time. As this is the case, I don't think that exceptional circumstances do apply in this case.

#### *Section 140A of the Consumer Credit Act 1974 and its relevance to this complaint*

Our investigator also explained why Mrs S' complaint was one alleging that the lending relationship between Mrs S and Santander was unfair to Mrs S 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.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Mrs S' complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mrs S 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 was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Mrs S' case, I am required to take relevant law into account. As I'm satisfied that Mrs 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 S), 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 her 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.

#### *Application to Mrs S' complaint*

Santander has now refunded all of the charges added to Mrs S' account from March 2018 onwards. This resulted in Mrs S having a credit balance and Santander no longer reporting any adverse information regarding the overdraft to credit reference agencies. This effectively means that there is no unfairness to remedy on the account from March 2018 onwards.

It is possible that any such unfairness may have existed earlier. For example, it is possible that Santander applied charges in circumstances where it shouldn't have done so prior to March 2018. However, just because there may have been unfairness in a debtor's relationship with a creditor doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In *Smith v Royal Bank of Scotland Plc*<sup>1</sup>, the Supreme Court pointed out that remedies for unfair relationships are at the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making that claim.

There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Mrs S' complaint and what is fair compensation, it's important for me to take this into account as relevant law. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

Where a consumer had knowledge of the relevant facts, our typical approach to cases of this nature is for the respondent firm to refund to them, the interest and charges they paid for the six years before they made their complaint. If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

In the section of this decision relating to time limits, I've already explained why I think that Mrs S had enough to know whether she considered the overdraft charges excessive and unfair and that she knew she was suffering a loss as Santander continued to charge her and she had to borrow elsewhere in order to pay these charges.

I'm satisfied that this is sufficient for Mrs S to have had knowledge of the relevant facts. However, Mrs S didn't do anything about this until she complained in March 2024. So I think it's right that any refund of interest and charges should be limited to the six-year period prior to Mrs S making her complaint.

As I've explained, Santander has already refunded the charges applied to Mrs S' overdraft in the six years prior to her complaint<sup>2</sup>. As this placed Mrs S in a credit balance, this ensured that it won't report any adverse information regarding this overdraft to credit reference agencies for this period.

So this means that even if I were to have found that any unfairness began earlier than March 2018 (which is six years prior to Mrs S making her complaint), which may or may not be the case, I still wouldn't have required Santander to do anything more or anything further.

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<sup>1</sup> *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

<sup>2</sup> Santander acknowledges that there is a further charge applied in April 2018 that was left of its refund in error. If it hasn't already refunded this charge, it will need to ensure that it now does this.

This is because I think that Mrs S had knowledge of the facts relevant to her claim, but substantially delayed making that claim.

As this is the case, I don't think that it would be fair and reasonable for me to require Santander to do anything more or anything further in this instance.

Overall and having considered everything, while I can understand Mrs S' sentiments and appreciate why she is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the circumstances of this complaint for me to require Santander to do anything more or anything further. I appreciate this will be very disappointing for Mrs S. 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 satisfied that what Santander UK Plc has already done to put things right is fair and reasonable in all the circumstances of Mrs S' complaint. I'm therefore not requiring it to do anything more or do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 August 2025.

Jeshen Narayanan  
**Ombudsman**