

The complaint

With the help of a professional representative (PR), Mr H complains that Santander UK Plc lent to him irresponsibly. For ease, I'll refer mainly to the actions of the PR as being those of Mr H.

What happened

Mr H has had a current account with Santander since May 2010. At some point before February 2015, he applied for and was given an overdraft limit of £1,000 which has remained the same since.

On 12 March 2024, Mr H complained to Santander. He said he had become reliant on the overdraft and he *"has incurred significant charges of interest as a result"*. He said if Santander had carried out a proper credit assessment it would have seen the overdraft wasn't affordable for him. Mr H said the bank had failed to undertake its obligations to monitor his account and his reliance upon the overdraft became unsustainable. Overall, he said this demonstrated that his credit relationship with the bank was unfair as described by Section 140A of the Consumer Credit Act 1974 (s.140).

Santander looked into Mr H's complaint and issued a final response letter. It said his complaint about the initial lending decision had been brought too late under the complaint handling rules of the Financial Conduct Authority (FCA).

The bank looked at Mr H's other comments around financial difficulties. It said this isn't Mr H's main account and there was evidence that significant funds are transferred from this account to another. There have been occasions where he could have repaid the overdraft in full if he'd wished to. It said it had put in place arrangements for its Financial Support Team to get in touch with Mr H to assist him to clear the overdraft to help resolve his difficulties.

Mr H was unhappy with Santander's response, so he referred his complaint to our service and one of our investigators looked into it. He said as part of Mr H's complaint was that his relationship with Santander was unfair, the complaint had in fact been brought in time. He went on to consider the complaint, but didn't uphold it. He said there was insufficient evidence for him to be able to conclude it was irresponsible for Santander to lend to Mr H. And our investigator said that Mr H's use of the account indicated he has sufficient funds to have been able to repay the overdraft if he wished or was required to do so.

Mr H didn't agree with our investigator's opinion of the complaint. He referred to regulations contained in the Conduct of Business Sourcebook (CONC) which set out the expectations for banks with regards to monitoring their customers' accounts. As there was no agreement, the complaint has been passed to me for a decision.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Santander thinks this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. Mr H has complained that his credit relationship was unfair as he says the overdraft was not properly assessed or monitored. This led to him paying more in interest than he could afford, and he was unable to reduce the debt. 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.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr H's complaint can be reasonably interpreted as being about the fairness of his relationship with Santander, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Santander) and the debtor (Mr H), 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.

S.140B 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 what Mr H has complained about, I need to consider whether Santander's decision to lend to him and increase his overdraft, or its later actions, created unfairness in the relationship between the parties such that the bank ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr H's relationship with Santander is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Santander carry out reasonable and proportionate checks to satisfy itself that Mr H was in a position to sustainably repay the overdraft?
- If not, what would reasonable and proportionate checks have shown at the time?

- Did Santander make a fair lending decision?
- Did Santander act unfairly or unreasonably towards Mr H in some other way?

Santander had to carry out reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the credit sustainably. It's not about Santander assessing the likelihood of it being repaid, but it had to consider the impact of the credit on him. CONC 5.2A.12(1) says a business should consider the customer's ability to make repayments under an open-ended agreement "*within a reasonable period*", from income or savings.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, and the overall circumstances of the borrower.

Did Santander carry out reasonable and proportionate checks?

Mr H's overdraft was agreed more than 10 years ago, so it's not surprising that Santander no longer has details of the checks it would have carried out at the time. I say this because businesses are not obliged to hold records indefinitely.

Santander has provided banks statement information for Mr H's account going back to March 2018. We've asked Mr H if he can provide anything older, but he has been unable to do so.

There is no evidence from either party for me to review from the time when the overdraft limit was agreed. So I can't reasonably make a finding that Santander carried out reasonable and proportionate checks when assessing Mr H's application. But equally I can't reach a finding on what it might have found had it done so. For that reason, I can't reach a conclusion that it was unfair for Santander to agree Mr H's overdraft limit.

Did Santander act unfairly or unreasonably towards Mr H in some other way?

Mr H has referred to regulations contained in CONC which set out the expectations for banks with regards to monitoring their customers' accounts.

CONC 5D.2 says:

"A firm must establish, implement and maintain clear and effective policies, procedures and systems to:

*(1) monitor and review periodically the pattern of drawings and repayments of each of its customers under an arranged overdraft or an unarranged overdraft, and other relevant information held by the firm; **and***

(2) identify as early as possible, by reference to an appropriate collection of factors that take account of any relevant information held by the firm, any customers in respect of whom there is a pattern of repeat use, and then sub-divide those customers into the following two categories:

(a) customers in respect of whom there are signs of actual or potential financial difficulties;

(b) all other customers who show a pattern of repeat use (that is, all customers within CONC 5D.2.1R(2) who are not in category (a)). [emphasis added]

CONC 5D.2.3(5) sets out indicators which may be considered as signs of financial difficulty alongside repeated use of an overdraft and they include "*an upward trend in a customer's*

use of the overdraft over time, having regard to one or both of...the number of days of use per month; and the value of the customer's borrowing".

CONC 5D.3 sets out what a bank must do if it identifies repeat use of an overdraft where a customer is showing signs of actual or potential financial difficulty.

I've carefully reviewed the statement information we have for Mr H. I note that this doesn't appear to be his main account as there are no utility bills, housing costs, council tax etc. going through it. I have asked for confirmation of that and statements for the account from which the bills were paid, but unfortunately these have not been provided. Therefore, I don't have a full picture of Mr H's financial circumstances but have reviewed what I can.

I can see that from March 2018, he received a regular credit which appears to be his basic income of £2,400, plus another payment from the same source referenced "[previous month] comms" which appears to be a commission payment for the preceding month. This payment varied between £250 or so to in excess of £1,000. This is sufficient to return his account to credit each month.

The income described above continued until June 2019. From then onwards Mr H's income varied and was received from two limited companies, but at a lower level to that which he received previously. As Mr H was receiving his income in small irregular chunks, his account didn't return to credit from August 2019 to July 2020.

But while Mr H routinely made use of the overdraft, I don't think this alone means he was experiencing financial difficulty such that I'd expect Santander's reviews under CONC to take specific action. Looking at the transactions leaving the account, the majority of them appear to be discretionary, non-essential spending. This indicates to me that Mr H wasn't necessarily reliant on the overdraft for his essential spending such as housing and other living costs.

Mr H also had another current account with Santander that didn't have an overdraft limit and was funded by transfers from the account complained about. It appears this account was also used predominantly for non-essential spending. The statement information for that account shows he regularly had a few hundred pounds in there which would have significantly reduced his usage on the overdraft. There are several occasions where he could have repaid the overdraft in full, most notably September 2021 to June 2022 when his balance ranged from £2,600 to over £5,000 in credit.

There have been a number of direct debits which Santander have refused to pay from Mr H's account over the years. I note that Mr H wasn't charged a fee for the returned items due to the type of account he has. All were relatively small amounts – mostly less than £35 and all less than £80. But there have been occasions where he has had money on his other current account which could have covered the payment had he wished to do so.

That being so, I'm not persuaded that Mr H's use of the overdraft was due to a reliance on it for day to day living expenses. It appears he could have repaid the overdraft in a reasonable time if he wished or was called upon to do so without affecting his committed, essential spending. He did use the facility consistently, but he would have been able to reduce that reliance and to stop using it at all if he wished to do so.

I've considered what I would expect Santander to have done in view of Mr H's repeat use, bearing in mind that I wouldn't have expected it to categorise him as being in financial difficulties. I can see that the bank has written to Mr H several times about his overdraft use – eight times between June 2020 and October 2024 – explaining the costs he was incurring and asking him to speak to it if he's struggling. He hasn't responded to those letters.

So I don't think Santander acted unfairly or unreasonably towards Mr H. If he now finds himself in financial difficulty or simply wishes to arrange to repay his overdraft, I encourage him to reach out to the bank for help.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 July 2025.

Richard Hale
Ombudsman