

The complaint

Mrs H complains that Santander UK Plc lent to her irresponsibly.

What happened

Mrs H has been a customer of Santander since 2005. She says that in 2011, she applied for an overdraft and has *"been living in it since"*. She was given a limit of £1,000 which has not changed since.

On 4 March 2024, Mrs H complained to Santander. She said it should have carried out better checks on her application for the initial overdraft and if it had done so, it ought to have refused to lend to her. Mrs H explained the charges and interest of around £30 a month were preventing her from repaying the overdraft. To resolve her complaint, Mrs H asked Santander to refund interest and charges from when she first took the overdraft.

Santander looked into Mrs H's complaint and issued a final response letter (FRL). It said she had complained about the initial overdraft too late for it to consider under the complaint handling rules of the Financial Conduct Authority (FCA), because more than six years had passed. But it agreed it could have done more to offer her support with the overdraft and refunded charges and interest from 1 January 2017 to 7 May 2024 (the date of its FRL) totalling £2,162.44. It added interest at 8% to that figure giving a total payment of £2,718.76. As Mrs H's overdrawn balance was less than that figure, it removed the overdraft following the refund, leaving her account in credit.

Mrs H was unhappy with the refund offered by Santander as she felt it should go back further. She referred her complaint to our service and one of our investigators looked into it. Our investigator disagreed with Santander that the complaint had been brought too late. He felt it was reasonable to consider Mrs H's complaint to be about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140) which meant it had been brought in time and explained that to both parties.

Our investigator went on to consider the whole of Mrs H's complaint. He said due to the time that had passed, there was insufficient information available from the parties to enable him to reach a finding on whether or not the initial agreement of the overdraft was reasonable. But he looked at how Mrs H's use of the overdraft had been monitored by Santander and felt it could have done more to help. Ultimately however, he said he felt the bank's refund was a fair way to resolve the complaint.

Mrs H didn't agree with our investigator. 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 part of 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 decision 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. I think this complaint can reasonably be considered as being about an unfair relationship as Mrs H says the increases simply made her situation worse. These may have made the relationship unfair as she had to pay more in interest than she could afford and 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 Mrs H's complaint can be reasonably interpreted as being about the fairness of her 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 (Mrs 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. This means that I have the power under our rules to consider the whole 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 Mrs H has complained about, I need to consider whether Santander's decision to lend to her, or its later actions, created unfairness in the relationship between her and Santander such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

In order to uphold Mrs H's complaint, I would need persuasive evidence of unfairness in the relationship. But due to the time elapsed since the overdraft was agreed, quite reasonably, neither Santander nor Mrs H have any useful information such as bank statements or a credit report from the time. In the absence of such evidence, I'm not able to make a finding on the bank's decision to agree the overdraft in 2011.

The law around s.140 has been clarified in a recent court case - *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34. In its judgement of that case, the Supreme Court said that remedies for unfair relationships are in 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 the claim.

So when deciding a fair and reasonable outcome to Mrs H's complaint and fair redress, it's important for me to take this into account as relevant law. 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.

In other words, if the complainant knew – or ought to have known – that there was unfairness but didn't complain for more than six years, then it's unlikely that the court would make an award. So where a complaint is raised outside that timeframe and we think the complainant was (or ought to have been) aware of the relevant facts of the case some time ago, we would limit any redress to charges and interest incurred for the six-year period prior to the complaint being raised.

In Mrs H's case, it is evident that she knew about the issues which led to any potential unfairness in the credit relationship some time ago. She says she was in difficulties with the overdraft *"pretty much straight away"*, and *"just carried on paying the fees each month"*. While she may not have known the full situation or law around the subject, I think it's likely she felt at the time that the situation felt unfair as she wasn't able to do anything about the charges she was incurring.

Mrs H says she complained to the bank about charges around eight years ago. I've looked at contact notes provided by the business and I can see this appears to have been in December 2015 as there's a note to say some charges were refunded and advice was given about how to prevent further occurrences. So it's clear Mrs H knew she could talk to the bank if she was struggling. She did so again in a year or so before she raised this complaint.

Bearing in mind what the Supreme Court said in the Smith judgement, even if we were to uphold Mrs H's complaint, we would limit any redress to the six-year period prior to the complaint being raised. But Santander has already refunded charges and interest for slightly more than that period – January 2017 onwards – whereas because Mrs H complained in March 2024, so I could only award back to March 2018. For that reason, I'm sorry to disappoint Mrs H, but I can't reasonably ask Santander to do any more than it has already done to resolve her complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 15 July 2025.

Richard Hale
Ombudsman