

Complaint

Miss C 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 she shouldn’t have been given the overdraft and this caused ongoing financial difficulty.

Background

Miss C originally applied for a student overdraft in October 2012. Santander accepted Miss C’s application and she was provided with an overdraft which had a limit of £250. This limit was increased to £1,500.00 in August 2014, £1,800.00 in August 2015 and finally £2,000.00 in August 2016.

In December 2024, Miss C complained saying that Santander shouldn’t have given her this overdraft or increased her limit and doing so caused ongoing difficulty as charges were applied even when she was unable to afford them.

Santander partially upheld Miss C’s complaint. It didn’t think that it had done anything wrong or treated Miss C unfairly in the period up to the end of February 2023. However, it refunded all of the charges added to Miss C’s overdraft from March 2023 onwards. Miss C remained dissatisfied after Santander’s response and referred her complaint to our service.

One of our investigators reviewed what Miss C and Santander had told us. He reached the conclusion that we could look at the entire period Miss C had her overdraft for. However, he wasn’t persuaded that Santander had acted unfairly by providing an overdraft, increasing the limit, or ignored Miss C’s request for assistance prior to February 2023. So the investigator thought that what Santander had already done to put things right was fair and reasonable and didn’t think that Miss C’s complaint should be upheld.

Miss C 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Santander has argued that Miss C’s complaint was made too late because she complained more than six years after the decision to provide the overdraft, the first limit increase and when some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Having carefully considered everything, I’ve decided not to uphold Miss C’s complaint. Given the reasons for this, I’m satisfied that whether Miss C’s complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

Having considered matters, I'm satisfied that it is reasonable to interpret Miss C's complaint as being one alleging that the lending relationship between Miss C and Santander was unfair to Miss C as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Miss C 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 ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Miss C's can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Santander was unfair to her. I acknowledge the possibility that Santander may still disagree that we are able to look at the whole of Miss C's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters. This includes the submissions that Miss C has made about her complaint having been made in time.

In deciding what is fair and reasonable in all the circumstances of Miss C's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss C'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 (Miss C), 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. 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.

Given Miss C's complaint, I therefore need to think about whether Santander providing Miss C with an overdraft, increasing her limit or allowing her to use the overdraft in the way that it did, resulted in the lending relationship between Miss C and Santander being unfair to Miss C, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Miss C's relationship with Santander is therefore likely to be unfair if it irresponsibly provided the overdraft or allowed Miss C to continue using her overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for her. And if this was the case, Santander didn't then remove the unfairness this created somehow.

I've therefore considered whether this was the case.

Santander's initial decision to provide Miss C with an overdraft and then increase the limit on it to £2,000.00

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Miss C's complaint.

Santander needed to make sure that it didn't lend irresponsibly. In practice, what this means is Santander needed to carry out proportionate checks to be able to understand whether Miss C would be able to repay what she was being lent before providing any credit to her.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I think that it is worth me starting by saying that when she was initially granted this overdraft Miss C wouldn't have had to pay any interest or charges for some time provided that she kept within her agreed limit. I think this is especially important context to bear in mind given Miss C's complaint about the initial decision to grant her an overdraft and the limit increases.

When Miss C initially applied for her student overdraft, I understand that Santander will have carried out a credit search. Bearing in mind what I've been provided, I'm satisfied that any credit search that Santander carried out will more likely than not have shown that Miss C hadn't had previous difficulties with credit. I've not seen anything to suggest that the situation changed by the time that Miss C was provided with her limit increase afterwards either.

I'm also mindful about Miss C's circumstances at the time of her overdraft application and the fact that she was entering full time education. And at the time of the limit increase Miss C was in receipt of an income too. In these circumstances, it's difficult for me to agree that agreeing this overdraft was wholly unreasonable given it would provide her with some breathing space and was a far better alternative to any other alternative sources of credit Miss C would more likely than not have turned to.

I note that Miss C says that she shouldn't have been lent to as she was a student. However, there isn't a prohibition on lending to a student. Furthermore, for reasons, I don't think it was unreasonable for Santander to lend in Miss C's particular circumstances either. Indeed, I don't agree that Miss C was provided with her overdraft at a time where she had no income given Miss C is likely to have been in receipt of student loans and then a regular income after this.

Miss C says that she was reliant on this overdraft as she was using it to cover her essential expenses. I don't know if this was the case. But nonetheless I can't see an alternative where Miss C would have been able to borrow from a lender – in order to pay for her essential expenses – without having to pay interest at the time. And given the circumstances, where this was a student and then graduate account where Miss C would continue to receive the funds interest free for an extended period, it's difficult for me to accept that Santander providing Miss C with the overdraft or increasing the limit was unfair.

So overall bearing in mind the circumstances and the type of facility it agreed to, I don't think that Santander treated Miss C unfairly or unreasonably when providing her with an interest free overdraft of up to £2,000.00.

I'll now go on to consider whether it was fair and reasonable for Santander to begin adding interest to Miss C's overdraft when it did so.

Did Santander unfairly allow Miss C to continue using her overdraft in a way that was unsustainable or otherwise harmful for her in the period prior to March 2023?

Before I go any further, as this aspect of Miss C's complaint essentially boils down to a complaint that Miss C 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 Miss C if it applied this interest, fees and charges to Miss C'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 which would have resulted in Santander charging Miss C unfairly.

Having looked through the statements Santander has sent, it's clear that Miss C has been using her overdraft since it started attracting interest after it was converted to a standard current account. I'm therefore satisfied that there can be no dispute that Miss C was using her overdraft over the period of time this part of her complaint is concerned about. Miss C's arguments appear to suggest that this in itself means that her complaint should be upheld.

However, Miss C's overdraft was arranged under an open-ended agreement credit agreement. This means that Miss C had an agreement to use her overdraft and as a result she was entitled to use it without having to reapply to do so. Therefore, Miss C 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. 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.

It's also worth saying that 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.

I've therefore considered whether Santander acted fairly and reasonably towards Miss C, in this light. In other words, I've considered whether there were periods where Santander continued charging Miss C even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

Having looked through Miss C's account statements throughout the period concerned, I can't see that Santander ought reasonably to have realised that Miss C was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Miss C's overdraft.

I'll explain why I think this is the case in a little more detail.

To begin with, I can't see Miss C notified Santander that she was struggling and that these charges were causing her difficulty, prior to making her complaint. If she had Santander would have known that the charges were causing harm and I would have expected it to act. Nonetheless, even though I can't see that Miss C directly told Santander that she couldn't afford to pay these charges, I've also considered whether her account activity ought to have alerted it to this being the case.

In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has set out guidance on what it considers to be potential indicators of financial difficulty.

The '*Guidance on financial difficulties*' 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. Having looked at Miss C's account transactions, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in her circumstances during the entire period I've looked at.

I've also looked at Miss C'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 Miss C 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 this aspect of Miss C's complaint is concerned with, Miss C's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, Miss C had savings which she could have used to clear her overdraft and then removed it from her account.

In these circumstances, I'm satisfied that prior to March 2023 there is no clear evidence of Miss C being a borrower that was marooned in their overdrawn with no reasonable prospect of exiting it. Furthermore, while I'm not seeking to make retrospective value judgements over Miss C expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss C's account.

I accept that Miss C may well have had 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 Miss C was borrowing from unsustainable sources specifically to pay for these overdraft charges either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss C wasn't struggling. But I don't think that Miss C's account conduct and overdraft usage obviously show that she was clearly in financial difficulty. And bearing in mind I'm satisfied that it is more likely than not that Miss C did not directly tell Santander that she was experiencing financial difficulty at this stage, that's what I'd need to be persuaded of in order to uphold her complaint.

Looking from the outside, it looks like Miss C had the funds to be able to reduce the amount that she used her overdraft. Therefore, I don't think that Miss C was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable

prospect of Miss C exiting her overdraft. And Santander was reasonably entitled to believe that Miss C 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.

Overall and having considered everything, I don't think that it was unreasonable for Santander to have proceeded adding the charges that it did and hasn't refunded. Therefore, I've not been persuaded that Santander created unfairness in its relationship with Miss C by providing her with an overdraft, increasing her limit or allowing her to use it in the way that she did up until the end of February 2023.

Furthermore, any unfairness that may have been created by Santander allowing Miss C to continue using the overdraft in the same way from March 2023 onwards has since been removed as a result of Santander refunding the fees it charged from then onwards. Based on what I've seen, I don't find Santander treated Miss C unfairly in any other way either.

So while I can understand Miss C's sentiments and appreciate why she is unhappy, I'm nonetheless satisfied that what Santander has already done to put things right in her case is fair and reasonable in all the circumstances and I'm not upholding this complaint. I appreciate this will be very disappointing for Miss C. 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 not upholding Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 24 November 2025.

Jeshen Narayanan
Ombudsman