

Complaint

Mr and Ms S have complained about the overdraft charges Santander UK Plc ("Santander") applied to their current account. Mr and Ms S have said that Santander failed to pick up on their financial difficulty and offer appropriate assistance to exit their overdraft. They say that this failure resulted in them experiencing ongoing difficulty.

Background

Mr and Ms S have had an overdraft on their account with Santander from around 2017. The earliest information that Santander has been able to provide shows that Mr and Ms S had a limit of £500 which ended up being increased to £1,000.00 in November 2017. In June 2019, the overdraft limit was initially increased to £1,500.00 before it was increased to £2,000.00.

In February 2025, Mr and Ms S complained saying that they were allowed to continue using the overdraft in a way that was unsustainable after Santander failed to pick up on their financial difficulty.

Santander partially upheld Mr and Ms S' complaint. It accepted that it shouldn't have allowed Mr and Ms S to use their overdraft in the way that from January 2020 onwards. So it agreed to refund all the interest fees and charges it applied to the from January 2020 onwards. However, Santander did not think that it had done anything wrong or treated Mr and Ms S unfairly prior to this. Mr and Ms S remained dissatisfied at Santander's response and referred their complaint to our service.

When Mr and Ms S' complaint was referred to our service, Santander told us that we couldn't consider part of it as it was made too late. One of our investigators reviewed what Mr and Ms S and Santander had told us. She reached the conclusion that we could look at the entire period Mr and Ms S had their overdraft for, but she wasn't persuaded that Santander had acted unfairly by allowing Mr and Ms S to use their overdraft in a way that was unsustainable or otherwise harmful prior to January 2020.

Overall, the investigator thought that what Santander had already done to put things right for Mr and Ms S was fair and reasonable in all the circumstances of their case and therefore didn't recommend that it be upheld.

Mr and Ms 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Santander has argued that part of Mr and Ms S' complaint was made too late because they complained more than six years after some of the charges on the overdraft were applied, as

well as more than three years after they ought reasonably to have been aware of their cause to make this complaint.

Having considered everything, I've decided what Santander has already done to put things right for Mr and Ms S is fair and reasonable in all the circumstances. So I've not to uphold their complaint. Given the reasons for this, I'm satisfied that whether Mr and Ms S' complaint about some of the specific charges applied was made in time or not has no impact on that outcome. I'll explain why I consider this to be the case.

Having considered matters, I'm satisfied that it is reasonable to interpret Mr and Ms S' complaint as being one alleging that the lending relationship between Mr and Ms S and Santander was unfair to Mr and Ms S as described in s140A of the Consumer Credit Act 1974 ("CCA").

I consider this to be the case as Mr and Ms S have 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 they alleges it ought to have seen they were experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr and Ms S' complaint can therefore reasonably be interpreted as a complaint that the lending relationship between themselves and Santander was unfair to them. I acknowledge the possibility that Santander may still disagree that we are able to look at the whole of Mr and Ms 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.

In deciding what is fair and reasonable in all the circumstances of Mr and Ms S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr and Ms S's complaint can be reasonably interpreted as being about that their lending relationship with Santander was unfair to them, relevant law in this case includes s140A, s140B and s140C of the CCA.

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S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Santander) and the debtor (Mr and Ms 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 their 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 Mr and Ms S' complaint, I therefore need to think about whether Santander's actions in allowing Mr and Ms S to use their overdraft in the way that it did prior to January 2020, resulted in the lending relationship between Mr and Ms S and Santander being unfair to Mr and Ms S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mr and Ms S' relationship with Santander is therefore likely to be unfair if Santander allowed Mr and Ms S to continue using their overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for them. And if this was the case, Santander didn't then somehow remove the unfairness this created.

I'll now consider if this was the case in the period prior to January 2020.

Did Santander unfairly allow Mr and Ms S to continue using their overdraft in a way that was unsustainable or otherwise harmful for them prior to January 2020?

Before I go any further, as this essentially boils down to a complaint that Mr and Ms S were unfairly charged as a result of being allowed to continue using their 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 Mr and Ms S if it applied this interest, fees and charges to Mr and Ms S' account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr and Ms S were experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, prior to January 2020, where Santander failed to treat Mr and Ms S fairly and reasonably.

In other words, I've considered whether there were periods where Santander continued charging Mr and Ms S 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 they were in financial difficulty.

Having looked through the account statements I've been provided with, I can't see that Santander ought reasonably to have realised that Mr and Ms S were 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 the overdraft facility prior to January 2020. I'll explain why I think this is the case in a little more detail.

To start with, I think it's fair to say that Mr and Ms S did use their overdraft. Mr and Ms S' arguments appear to suggest that this in itself means that they were experiencing financial difficulty and therefore the complaint should be upheld. However, Mr and Ms S' overdraft was arranged under an open-ended agreement credit agreement.

This means that Mr and Ms S had an agreement to use their overdraft and as a result they were entitled to use it without having to reapply to do so. Therefore, Mr and Ms S using their overdraft in the period that they did doesn't automatically mean that their 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.

I 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, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr and Ms S' incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for them to have stopped using their overdraft, prior to January 2020 based on this.

I think that if Mr and Ms S were locked into paying charges in circumstances where there was no reasonable prospect of them exiting their overdraft then their facility would have been unsustainable for them. So I've carefully considered whether this was the case.

The first thing for me to say is that Mr and Ms S' account was in receipt of credits that were more than sufficient to clear the overdraft within a reasonable period of time. I accept that there were periods where Mr and Ms S used their overdraft more often. I've therefore considered whether Mr and Ms S' use of their overdraft (and Santander continuing to allow them to use it) was causing them to incur high cumulative charges, which they had absolutely no way of avoiding and which were harmful to them. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr and Ms S expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr and Ms S' account. Given the overdraft charges also appear on the statements, I think that Mr and Ms S ought to have realised that how much they were paying for using their account in the way that they were.

So I simply don't agree that Mr and Ms S were using their overdraft purely for essential spending, or because they had a reliance on credit to get by. Indeed, it's worth noting that prior to January 2020, Mr and Ms S' account regularly received funds that were sufficient to completely clear the overdraft in full.

Furthermore, the regular credits received into the account also suggested they could have cleared their overdraft within a reasonable period of time had they wished to do so. Equally, prior to January 2020, I can't see that they were borrowing from unsustainable sources in order to meet the overdraft charges.

I accept neither of these things in themselves (or when taken together) absolutely mean that Mr and Ms S weren't experiencing difficulty. But I don't agree that Mr and Ms S were reliant on credit in the way that has been suggested. They appear have been able to make any essential commitments without using their overdraft. However, they were choosing to use their overdraft to make discretionary transactions and in periods where they had increased funds their discretionary expenditure increased. I don't think that they were displaying any behaviour which objectively shows they needed assistance at this stage.

Overall and having considered everything, I don't think that it was unreasonable for Santander to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Santander taking corrective action, in the way that it would have

done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Santander to demand that Mr and Ms S immediately repay their overdraft, in circumstances where there was a realistic prospect of Mr and Ms S clearing what they owed in a reasonable period of time.

Therefore, I'm not persuaded that the relationship between Mr and Ms S and Santander was unfair to Mr and Ms S prior to January 2020. I've not been persuaded that Santander created unfairness in its relationship with Mr and Ms S by allowing them to use their overdraft in the way that they did up to the end of December 2019.

Furthermore, any unfairness created by Santander allowing Mr and Ms S to use their overdraft in the way that they did from January 2020 onwards has since been removed as a result of Santander refunding all the interest, fees and charges that it added from this point onwards.

Overall and having considered everything, while I can understand Mr and Ms S' sentiments and appreciate why they are unhappy, I'm satisfied that what Santander has already done to put things right for them is fair and reasonable in all the circumstances and I'm not upholding their complaint. I appreciate this will be very disappointing for Mr and Ms S. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr and Ms S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Ms S to accept or reject my decision before 1 December 2025.

Jeshen Narayanan
Ombudsman