

The complaint

Mr C complains that Santander UK Plc lent to him irresponsibly.

What happened

Mr C has an overdraft with Santander, he says the account was opened in 2007. However, given the passage of time, Santander only have records of an overdraft of £1,000 going back to 2016. In the time we have records for it appears the overdraft limit remained at £1,000.

In December 2023, with the help of a representative, Mr C complained to Santander saying it had lent to him irresponsibly and failed to appropriately monitor his account. He said this led to him paying more than he could afford in interest, fees and charges and as a result the relationship between him and Santander was unfair.

Santander looked into Mr C's complaint and said it felt it had acted fairly in providing the overdraft limit and in renewing the overdraft at each review. Santander said that there were times when Mr C was persistently using the overdraft. But it also noted he had received lump sums into the account that could have cleared the overdraft, and he had funds in an external account that he could have used to reduce or pay off the overdraft. So, it didn't think the overdraft was unaffordable for Mr C.

It did note that at the time of the complaint Mr C was exceeding his overdraft limit. Given the complaint explaining that Mr C and his representatives felt the overdraft was unaffordable, Santander said it would contact Mr C to set up a monthly reducing overdraft arrangement. It said as part of this arrangement it would suspend all interest and charges for 36 months but that it would be reported to the credit reference agencies as an arrangement. It also explained that if after 60 days it hadn't been able to reach Mr C it would remove the overdraft in full and that this would impact Mr C's credit file. In summary Santander didn't uphold the complaint.

Mr C didn't accept what Santander said and, again with the help of a representative, referred his complaint to our service and one of our investigators looked into it. When our investigator requested information from Santander, it provided what it had but said it didn't consent to us looking into the whole complaint because part of it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with Santander that it had been brought too late under the rules, so considered the merits of the complaint. But he didn't think Santander had acted unfairly.

Mr C rejected the investigators view. 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 Section 140A of the Consumer Credit Act 1974 (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 Mr C says the overdraft lending given to him was unaffordable for him and wasn't properly monitored. This may have made the relationship unfair as he's said he had to pay more in interest than he could afford. I acknowledge Santander still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, 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 C'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 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, including:

- 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, requiring a refund, or to do or not do any particular thing.

Given what Mr C has complained about, I need to consider whether Santander's decision to lend to him, or its later action or inaction, created unfairness in the relationship between him 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. Mr C'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, or if it failed to appropriately monitor the account and doing so would have revealed the lending was unfair, 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 C was in a position to sustainably repay the credit?
- 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 C in some other way?

Did Santander carry out reasonable and proportionate checks to satisfy itself that Mr C was able to sustainably repay the credit and if not, what would reasonable and proportionate checks have shown at the time?

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

Santander had to carry out reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the credit sustainably. There is no set list of checks that it had to do, but it could take into account several different things such as the type, amount, and length of the credit, the amount of the repayments and the overall circumstances of the borrower.

Given the passage of time, Santander has said it no longer has any evidence of the checks it completed when making the lending decision on this account.

This isn't unreasonable given it's been more than a decade since the initial lending decision was made. But it means I can't be sure what Santander's checks would have shown.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks, or there is no longer any evidence of what those checks showed, I'd go on to try to recreate reasonable and proportionate checks. This is to get an indication of what the checks would more likely than not have shown.

To do this I would normally use Mr C's statements from the time of the lending. Again, due to the time that has passed, Mr C has been unable to provide any information about his financial circumstances at the time of the lending. So, I don't have enough evidence to fairly say it was likely Santander should have known Mr C wouldn't be able to sustainably repay what he was being lent.

Given this, I'm not satisfied on the evidence available that Santander created unfairness in its relationship with Mr C as a result of its decision to give him the overdraft.

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

Santander has a responsibility to monitor its customers overdrafts. CONC 5D.2 covers a business' obligation to identify and monitor repeat use of overdrafts. It sets out that a business should identify any customers for whom there is a pattern of repeat use where there are signs of actual or potential financial difficulties, and customers who do not fall into that category. There is no set timeframe for the reviews to take place, but it appears that Santander reviewed Mr C's account in most months.

Looking at the account, it appears that it was managed reasonably between 2016 and 2022. There was some use of an unarranged overdraft in this time, and there were occasional returned direct debits. But this account behaviour was relatively infrequent, and the account regularly returned to credit. Additionally, the income to the account was more than enough to cover essential expenditure and Mr C received a large lumpsum payment in 2016 that meant the account ran with a consistent credit balance for some time after. Although Mr C made use of his overdraft and sometimes exceeded it, looking at the expenditure on the account, the income, and the available funds elsewhere, I don't think there is enough here to suggest that Mr C was in financial difficulty and that Santander should have removed the overdraft facility.

From 2023 Mr C started to use an unarranged overdraft more and spent less time in credit, and this continued to be the case until Santander agreed a way to pay down the overdraft in May 2024. However, having reviewed the statements, I don't think the use of the unarranged overdraft was as a result of financial difficulties. I say this because Mr C still had a reasonable amount of disposable income and received lumpsum payments into another account with Santander that would have enabled him to clear the overdraft in full or over time. So, I think Mr C would have been able to repay the overdraft over a reasonable period if he had chosen to.

Mr C has said he's been a single parent since the loss of his wife and has used the overdraft to manage his day-to-day cash flow and short-term liquidity needs. He's said he specifically saved money, so he had funds available in the event of an emergency and to help his children through higher education. Mr C says this means the lumpsums paid into his account weren't available to clear or reduce his overdraft. I appreciate why Mr C chose to manage his funds in this way, but I don't think that this is evidence that he was in financial difficulties or that the overdraft was unaffordable. Rather it demonstrates that Mr C chose to save funds rather than use that money to pay off or reduce his overdraft.

That said, even though I don't think the overdraft was unaffordable for Mr C, I would have expected Santander to get in touch with Mr C about his overdraft usage from at least 2020 onwards, given it's an expensive way to borrow over the longer term.

I can see that Santander contacted Mr C in 2015, 2017, 2018 and 2019 about the cost of the charges on the account. In 2020, 2021, 2022, 2023 and 2024 it contacted him about his overdraft usage. In these communications Santander said it explained the costs of using the overdraft. It said it also provided information about how it could help and included tips on how to reduce or avoid incurring the costs associated with the overdraft. These communications were in addition to his regular statements which also set out the cost of using the overdraft. I also can't see that Mr C approached Santander to let it know he was struggling financially prior to December 2023.

Given the lack of clear financial difficulties and the funds available in other accounts, I think it was reasonable for Santander to write to Mr C about his overdraft usage. But there was no regulatory obligation on Santander to do more than this (such as removing or reducing the overdraft). So, I don't think Santander acted unfairly by not taking more significant action than this prior to the complaint being raised.

Overall, and based on the available evidence I'm not satisfied that Mr C's relationship with Santander was unfair. It's not clear enough to me that Santander created unfairness in its relationship with Mr C by lending to him irresponsibly or failing to take the appropriate action when the account was reviewed.

I haven't seen anything to persuade me that any unfairness – or an unfair relationship between the parties under s.140 – existed by the point Mr C complained. So, I'm satisfied s.140 doesn't materially impact the outcome of this case. Based on what I've seen, I don't find Santander treated Mr C unfairly.

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 C to accept or reject my decision before 13 February 2026.

Charlotte Roberts
Ombudsman