

Complaint

Mr G has complained that Santander UK Plc (“Santander”) continued to allow him to use his overdraft over an extended period and even when he was in financial difficulty.

Background

Mr G was initially provided with an overdraft in February 2018. Since 2021 Mr G has had an overdraft limit of £1,000.00.

One of our investigators looked at Mr G’s complaint and thought that Santander should have realised that Mr G’s overdraft had become demonstrably unsustainable for him by August 2023. So he upheld Mr G’s complaint and that Santander needed to refund all the interest, fees and charges it added to his account from August 2023 onwards.

Santander disagreed with the investigator’s view and so the complaint was passed to an ombudsman for review.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’m upholding Mr G’s complaint. I’ll explain why this is the case in a little more detail.

Santander will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don’t consider it necessary to set all of this out here.

Having carefully considered everything provided, I think Santander acted unfairly when it continued charging overdraft interest, fees and any associated charges on Mr G’s facility from August 2023.

The rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can in some circumstances be an indication of financial difficulty. I note that, in this case, Santander believes that Mr G’s overdraft usage wasn’t in itself problematic and I do accept that prolonged and repeated overdraft usage by a customer won’t always mean that they are, as a matter of fact, in financial difficulty.

Nonetheless, I’m mindful of the particular circumstances here and the fact that Mr G’s prolonged and persistent use of his overdraft is accompanied by the fact that his account transactions clearly show that he was making repayments to a debt management plan (“DMP”). Mr G’s account transactions in the period leading up to August 2023 do show that the credits going into the account exceeded his credit limit. But it is also clear that there are significant gambling transactions going from Mr G’s account.

In reaching my conclusions, I've also considered that Santander has said it issued a number of letters and communications to Mr G and that he failed to get in touch to say he was in financial difficulty and/or ask for help. I've thought about what Santander has said. As Santander sent Mr G thirteen separate notifications, across a variety of communication mediums, informing him that he was using his overdraft regularly and that this was expensive, it's fair to say that Santander did contact Mr G.

It's also fair to say that Mr G didn't ask for help even though, at least, some of the communications offered it. A bank sending a customer letters about their overdraft usage and inviting them to get in touch if they need help, is usually a fair and reasonable first step to a customer that is using their overdraft regularly. This is especially when there are no obvious signs of financial difficulty present. Indeed, a letter can sometimes be a catalyst to a customer changing their behaviour and using their overdraft less.

However, Mr G didn't change his behaviour and I think that Santander failed to react to the unfolding situation, or seek to address what was clearly at the root of Mr G's issue. Indeed, bearing in mind that a customer being in a DMP is considered to be an indicator of financial difficulty according to the regulator's guidance in CONC 1.3.1G (6), I think that Santander ought to have realised that Mr G's gambling was problematic and proving to be unsustainable.

In my view, Mr G's overdraft usage had become so problematic the situation had gone past simply sending communications. Santander continuing to provide Mr G with the use of an overdraft in these circumstances was always likely to cause harm. Equally, while Mr G may not have got in contact to ask for help, there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling.

Some consumers may even go further and say they can and will make payment when the reality is they can't. While Mr G didn't contact Santander, most likely because he didn't realise the impact of him continuing to gamble and failing to deal with the matter at hand was having, I don't think it was reasonable for Santander to conclude that he wasn't in financial difficulty. Mr G feared losing the overdraft and the impact that this would have on his ability to gamble.

Indeed, I note that he even applied for a limit increase, which was declined. I don't know why this limit increase was declined, but I do think that any sort of meaningful assessment of Mr G's circumstances ought to have concluded that he wasn't proving able to sustainably repay the overdraft limit he had, let alone an increase to it.

Furthermore, I've already explained that Mr G's circumstances met the objective criteria indicating that a customer will likely be in difficulty, according to the regulator's guidance in CONC 1.3.1G (6). So, in this case, I don't think that this is me applying hindsight to Mr G's position at the time at the expense of what Santander could reasonably have been expected to know at the time.

As far as I'm concerned, in this case, Santander's actions in failing to impose a solution to Mr G's overdraft usage, rather than simply offering to discuss one and instead allowing him to continue using his overdraft and incurring further charges, when everything it had was suggesting he would struggle to be able to repay what he owed, worsened Mr G's problem rather than helped him.

To be clear, I don't think that the fact that Mr G was gambling in itself means that Mr G's overdraft was unsustainable. However, when the amount that Mr G was gambling is taken together with the fact that he had entered into a DMP and the fact that he hadn't had a credit

balance, on his account, for any sort of meaningful period, I do think that Santander ought to have been concerned that Mr G's overdraft had become demonstrably unsustainable for him.

Overall and having considered Santander's arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr G by not taking corrective action in relation to his overdraft when it ought to have realised he was struggling to repay what had become a problem debt by August 2023 at the latest. It follows that I'm upholding Mr G's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Santander and Mr G might have been unfair to Mr G under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Santander to do results in fair compensation for Mr G given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Santander needs to do to put things right for Mr G

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr G's complaint for Santander to put things right by:

- Reworking Mr G's current overdraft balance so that all interest, fees and charges added from August 2023 onwards are removed. This is to reflect the fact that Santander ought to have realised that the overdraft had become demonstrably unsustainable for Mr G by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Santander should contact Mr G to arrange a suitable repayment plan Mr G is encouraged to get in contact with and cooperate with Santander to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr G's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in August 2023. Santander can also reduce Mr G's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr G along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Santander should remove any adverse information from Mr G's credit file. Santander can also reduce Mr G's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr G a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr G's complaint. Santander UK Plc should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 April 2026.

Jeshen Narayanan
Ombudsman