

### **complaint**

Mr C is unhappy with how Santander UK Plc have handled his overdraft. He also thinks they didn't give him enough support when he told them he was struggling with his finances.

### **background**

I attach my provisional decision of 25 January 2018, which forms part of this final decision. In my provisional decision I set out why I didn't intend to uphold Mr C's complaint. I invited both parties to make any further comment before I reached a final decision.

Santander replied and said they accepted the provisional decision.

Mr C replied and said he didn't accept the provisional decision; he also raised some further points.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes Mr C's response to my provisional decision. But, my conclusion remains as set out previously for essentially the same reasons.

Mr C raised several points. Whilst I won't address everything he has said individually, I have read all his comments and taken them into consideration when making my final decision.

Mr C said that he didn't think Santander had taken into account his mental health needs. I don't agree. Santander referred Mr C to one of their internal teams who help customers who suffer from mental health problems. If Mr C chose not to engage with the support he was offered, I can't fairly say that that is the fault of Santander.

Mr C maintains that a loan would've helped him to avoid the overdraft charges. As I explained in my provisional decision, it's up to Santander whether or not they choose to lend and on what terms. I've not seen any evidence they treated Mr C unfairly when deciding not to offer him any lending.

In summary I remain satisfied that Mr C has been treated fairly by Santander, so I won't be asking them to take any action. I understand Mr C has been having a difficult time. But the issue of his debt still needs to be addressed. This means Mr C and Santander need to work together to agree a repayment plan.

I would urge Mr C to get in contact with Santander at the earliest opportunity. And I would expect Santander to continue to treat him sympathetically.

### **my final decision**

For the reasons outlined above, 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 5 March 2018.

Richard Annandale  
**ombudsman**

## copy of provisional decision

### **complaint**

Mr C is unhappy with how Santander UK Plc have handled his overdraft. He also thinks they didn't give him enough support when he told them he was struggling with his finances.

### **background**

Mr C complained to Santander in January 2017. He was unhappy about charges that had been applied to his account regarding his overdraft. He didn't think the bank was treating him sympathetically especially as he had told them he was struggling with his finances and suffering from depression. He also wanted Santander to give him a loan and an increase in his overdraft.

Santander looked into his complaint and said the charges had been correctly applied. They also explained they wouldn't lend to someone in financial difficulties due to concerns they wouldn't be able to repay.

In June 2017 Mr C again complained to Santander. This time he was unhappy that overdraft charges were still being added to his account. He wanted half of the charges to be refunded or his outstanding debit balance to be written off. He also said he had asked in a branch over a year earlier for his overdraft facility to be removed and the bank had failed to do so. He reiterated that he thought Santander were failing to support him when he was struggling financially.

Santander responded, they said that his overdraft facility had now been removed and they had no record of an earlier request to do so. They also said the fees on his account had been correctly applied and they didn't agree they had treated him unfairly. Mr C didn't accept this and in November 2017 he brought his complaints to our service.

As more than six months had passed since Mr C's January complaint, our investigator couldn't consider it. Under our rules a complaint must be brought within that time limit unless there are exceptional circumstances for the delay. Or the business gives permission for us to look at it outside of the time limits.

I've been in contact with Santander and taking everything into consideration in this case they agreed for us to consider the January 2017 complaint.

Our investigator didn't think Mr C's June 2017 complaint should be upheld. She thought Santander had treated him fairly. Mr C doesn't agree and so his complaint has come to me for a decision.

### **my provisional findings**

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

As there are several issues Mr C has complained about I'll deal with each one in turn.

#### *the handling of Mr C's overdraft*

I know Mr C is unhappy at the charges he had to pay. But I think it might be helpful for me to explain that in 2009 the Supreme Court ruled that bank charges (including overdraft fees) aren't penalty charges and couldn't be challenged on the grounds of being too high or being unfair.

So, I'm not really in a position to say that the charges were unfair and can only look to see whether the charges in question have been applied accurately. Having reviewed the terms and conditions of Ms C's account, I think that Santander accurately applied the charges in line with its terms and

conditions. And the information I've seen (Mr C's statements) show that he was clearly notified when the charges would be applied.

*dealing sympathetically with Mr C's problems*

What I can consider is whether or not Santander treated Mr C fairly with regard to his financial difficulties and mental health problems. Santander aren't obliged to refund charges when they become aware that a customer is in financial difficulty. But we do expect a business to treat such customers in a positive and sympathetic manner.

Having reviewed Mr C's account since 2015 I can see that about £700 of overdraft charges were applied. Nearly a third of those charges were refunded to Mr C because of his financial troubles. Over the same period Mr C was referred by Santander to outside organisations who specialise in helping people who are struggling with debt.

I can see that Mr C was also given access to specialist teams within the bank who help people in his situation. Assistance was offered around budget planning and discussions were had about the most appropriate products for him. There were some gaps in contact between Santander and Mr C. But these were due to Mr C not taking them up on some of the support they offered.

Following Mr C's June 2017 complaint his overdraft facility was removed and a hold was placed on his account. This was to stop further fees being accrued.

From what I've seen so far, I'm satisfied Santander have treated Mr C fairly. And from the calls I've listened to I think they have tried to help him to better manage his finances.

*irresponsible lending and the decision not to lend*

Mr C is unhappy that Santander wouldn't offer him a loan and an increase in his overdraft facility. He says that the extra money would've got him back on track and helped him to avoid incurring further fees. This was during a conversation with a staff member where they were discussing his options. And although I've not seen evidence of any formal applications, he was advised it wouldn't be an option for him.

The call handler explained that as he was already in financial difficulties, they wouldn't be able to offer him any lending. I'd expect Santander to consider Mr C's request for lending, taking into account his circumstances. I'm satisfied they did that here. While I appreciate Mr C was disappointed by what he was told, ultimately it's up to Santander to decide whether they are prepared to lend and on what terms. This isn't something we'd usually interfere with unless there was evidence of unfairness. I haven't seen anything which leads me to think Santander did something wrong in making the decision they did.

Mr C also says that his £100 overdraft facility was irresponsible lending. I've looked at Mr C's account statements and I don't agree. Mr C regularly went overdrawn and made use of his overdraft facility. This was usually only by a small amount and for a relatively short period of time. In such circumstances I don't think he was disadvantaged by having this facility.

I've listened to calls from January 2017 where he discusses removing his overdraft facility. Santander offered to set up a payment plan to help him clear the overdraft and then to remove the facility. So I think continuing with the facility was Mr C's decision and his options were clearly explained to him.

*failure to remove the overdraft facility earlier*

In June 2017 Mr C complained that Santander hadn't removed his overdraft facility when he asked them to in branch over a year earlier. In response to this Santander said they had no record of his request. They also pointed out that Mr C had been regularly using his overdraft facility within that time. They highlighted he had raised a separate complaint in January 2017 about them not allowing

him an increase in his overdraft limit. And how that didn't fit in with his complaint that it hadn't been removed some time earlier.

I don't think it would be fair for me to criticise Santander in these circumstances. Although Mr C says he made the request, he was in regular contact with Santander and had regularly discussed his overdraft. So I can't see any reason why he couldn't have asked what was happening with regard to shutting down his overdraft facility.

In January 2017 there was a call in which the removal of the overdraft was discussed with a call handler. I think Mr C could've raised this issue at that point. From Santander's perspective the June 2017 complaint was the first they knew of it and the facility was then promptly removed. I can't say it's unfair of them to have not taken action before then. Particularly, given Mr C had a number of opportunities to raise his concerns as to why action hadn't been taken before.

#### *summary*

From everything I've seen so far I'm satisfied Mr C has been treated fairly by Santander. Mr C is clearly struggling with his finances, but in this case I do think he has been treated sympathetically by the bank. They have offered support, made appropriate referrals and refunded many of the charges he incurred.

I know Mr C has since opened another account elsewhere. But I would still urge him to contact Santander to arrange a plan for his outstanding debt. And I would expect Santander to continue to treat him sympathetically.

#### **my provisional decision**

For the reasons I've explained, but subject to any further comments and evidence I receive from either Mr C or Santander UK Plc, I don't intend to uphold this complaint.