

## **complaint**

Mrs T complains that Santander UK Plc has not treated her fairly in that it provided her with an overdraft facility without undertaking proper checks, has applied unfair charges to that facility and has not treated her positively and sympathetically in relation to her financial difficulties. She would like the bank to refund all overdraft charges applied to the account, freeze all future overdraft charges and set up a repayment arrangement.

## **background**

Mrs T intended to switch her banking to Santander and applied for a current account with an overdraft facility. However, she says Santander was not able to match the overdraft facility on her existing account, so she decided not to proceed with the switch. Despite this, Santander opened the account and overdraft facility, and Mrs T used it, eventually reaching the limit of her overdraft. She has remained at that limit, meeting minimum monthly payments towards it, but more recently experienced difficulties. She says she cannot afford to repay the overdraft or the fees being applied to it, and that Santander should never have opened it if she did not meet its lending criteria.

Our adjudicator did not consider the bank had acted unreasonably. Noting that bank records indicated a review of affordability had taken place, she was satisfied that the bank had provided the overdraft as a result of making appropriate checks. She also considered that as Mrs T had used the facility and had had the benefit of it, she had accepted the facility and its terms of use. She also noted that Santander had offered to help Mrs T regarding her financial difficulties, but agreed with the bank that this did not necessarily mean any fees which the bank was entitled to charge would be refunded.

Mrs T does not agree, saying that she did not have a conversation with the bank regarding affordability, and that the bank should have seen the account was not appropriate for her. She says that because the bank should not have given her the overdraft, it should not now be able to charge her fees on it. And because those fees are exacerbating her financial difficulties, she considers that the bank should refund those paid, and freeze future fees while she repays the debt.

## **my findings**

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

Mrs T has raised a number of issues in her complaint, which I've addressed in turn, below.

### *approval of the overdraft facility*

Mrs T is unhappy that Santander went ahead and opened an account with an overdraft facility, despite refusing her initial application. She says she does not recall discussing affordability with the bank when making the initial application, though does say she had a conversation with the bank during which she was upset that she had not been approved for the limit sought.

While we do not have call recordings of Mrs T's conversation(s) with the bank, bank notes do indicate that an affordability check was undertaken and that this would have been the basis for the original lending decision. I consider it is entirely possible that a review of that

decision was undertaken as a result of Mrs T's conversation with the bank, leading to the application being approved as a result of further consideration.

Because of this, on balance I'm satisfied that the bank did undertake appropriate affordability checks before opening the account and providing the overdraft facility, and I can't conclude that it acted unreasonably in doing so. Mrs T did not contact the bank to ask it to close the account, but started using it and the overdraft. In this way, she showed she accepted the account, overdraft and applicable terms and conditions. There is nothing in this conduct which would have suggested to the bank that it had made an error or gone against her wishes. Mrs T says the bank should have known the account was not suitable because she was not paying her salary into it, but this is consistent with use of a current account. As Mrs T was using other features and keeping the account within its limits, I don't consider the bank would have been have taken any particular action for much of the time she operated the account.

#### *arranged overdraft fees*

Mrs T says that because she should never have been given the overdraft facility, the bank should not be able to charge overdraft fees on it. I'm afraid I do not agree. I realise Mrs T's financial situation is difficult, but I can't find that the bank has acted unreasonably. This is because I think it was reasonable for Santander to open the account and provide the overdraft, and because Mrs T accepted the terms and conditions, which include when and how overdraft fees will be applied. Santander has applied the fees in line with the terms and conditions and I'm not able to say they should be refunded.

#### *responsible lending*

Mrs T has said that because she operated the overdraft close to its limit for a long time and did not pay her salary into the account, Santander should have realised it was not affordable for her. I do realise that having additional debt and trying to find the money to cover minimum charges for it was causing Mrs T financial stress. But I don't think this was a result of an error by Santander. Santander provided her with an overdraft and charged the fees it was entitled to under the terms and conditions. I can't find it acted unreasonably in this regard.

Lenders are expected to respond positively and sympathetically where they become aware of a borrower's financial difficulties. In this instance, I consider this was when Mrs T contacted the bank because she was unable to cover the overdraft fees. The bank refunded some charges as a goodwill gesture, referred her to its financial assistance service, and indicated it was prepared to look at a repayment arrangement. It has also frozen fees for the duration of this complaint. I consider this to have been fair and reasonable in the circumstances. Banks aren't required to respond to financial difficulties in a prescribed way (such as by refunding charges), and I can't require Santander to take a particular action. Because of this, I can't order it to refund previous overdraft fees or freeze future ones.

#### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 3 May 2016.

Catherine Wolthuisen  
**ombudsman**