

## **The complaint**

Mr and Mrs P have complained that Santander UK Plc (“Santander”) approved an overdraft facility that was unaffordable and acted unfairly by continuing to apply charges to their account when they were in financial difficulty.

## **What happened**

Mr and Mrs P complained to Santander about charges applied to their overdraft and that they were told by an advisor the only option available to help was a loan which Santander refused. Santander says all charges were applied correctly in line with the terms and conditions of the account and would’ve been shown on statements sent out and declined to give Mr and Mrs P their behavioural scoring information as it was business sensitive.

Mr and Mrs P brought their complaint to this service where an adjudicator thought we could only look at the charges applied to their account from May 2015. The adjudicator was of the view that Santander acted unfairly when it continued charging overdraft fees from 1 February 2020 because by this point Mr and Mrs P hadn’t seen or maintained a credit balance for an extended period of time and there was no longer enough savings in their accounts to clear the overdraft balance.

Following this Santander agreed to settle the complaint in line with our adjudicators view by:

- Refunding fees and interest between 1 February 2020 and October 2021 and apply 8% interest to that amount;
- It will apply the above amount to the balance currently held in Financial Support. As the refund will not clear the balance owed Mr and Mrs P will need to contact its Financial Support Team to set an arrangement;
- It will amend the credit file as appropriate.

Mr and Mrs P didn’t wish to accept this offer – they say the funds in the savings account were for business purposes and can’t see why we can’t go back the full six years and have asked for an ombudsman decision.

## **Why I can’t look back before May 2015**

The rules applying to this service say that, I can’t look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority’s handbook.

Mr and Mrs P raised their complaint in May 2021. Six years before they raised their complaint is May 2015. And as Mr and Mrs P had an overdraft facility and the charges applied to this would’ve been notified to them at the time they were being applied, I think they ought to have known enough to decide whether they were unfair or causing financial

difficulty. So, I don't think that three years from when Mr and Mrs P ought to be reasonably aware they had reason to complain provides them with a longer period than the six year rule. So, I will only be looking at the affordability of their overdraft and charges applied from May 2015.

I can still look into Mr and Mrs P's complaint outside this time if I'm satisfied the failure to complain earlier was due to exceptional circumstances, but as they haven't made me aware of any exceptional circumstances I will only be looking at their account activity from May 2015.

### **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.

Firstly, to be clear my decision only addresses the fairness of the charges applied to Mr and Mrs P's account and the affordability of it after May 2015.

Having carefully considered everything, I think that what Santander has already agreed to do to put things right for Mr and Mrs P is fair and reasonable in all the circumstances of this complaint.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been charged the fees and given the credit they shouldn't have.

So where a business continues to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable.

And in this case after a detailed review of Mr and Mrs P's statements, I'm in agreement with our adjudicator that by February 2020 it was clear Mr and Mrs P's overdraft was unsustainable as their account hadn't seen or maintained a credit balance over a number of months.

I understand that when deciding on the point in time that Santander should've stepped in to help our adjudicator took into consideration funds held in a savings account in the name of Mr P. Mr and Mrs P have explained that the funds in that account weren't savings but were in fact business loans and the money wasn't available for them to pay down their overdraft.

I accept this might well have been the case but even dismissing this account – and the funds held within it - I'm still in agreement with our adjudicator about the date Santander should've stepped in. I say this as having a long and detailed look at the account statements in question they present a somewhat chaotic picture with numerous cash transfers in and out. I don't think it can be said from the statements alone that it was clear Mr and Mrs P were in financial difficulty, rather than a mismanagement of their financial affairs.

Although Mr and Mrs P's account was overdrawn the majority of the time this in itself doesn't necessarily mean they were in financial difficulty or that the overdraft was unaffordable. The statements show in 2016 there were payments in the thousands to a travel agency, auction and jewellery purchases and large cash withdrawals. While from 2017 to 2019 there were

also large cash withdrawals, payments by cheque and transfers out – some of which were clearly to pay bills and credit cards, while others - and I'm not seeking to make retrospective value judgements over their expenditure - are significant and at times large amounts of non-committed, non-contractual and discretionary transactions. All of which could've bought the overdraft right down and eventually paid it off.

So besides utilising their overdraft between 2015 and 2019 there isn't anything else on the statements such as returned payments, which ought to have alerted Santander to any potential financial difficulty. However, from early January 2020 there were less discretionary transactions out of the account and the balance wasn't reducing and so this is why I'm in agreement with our adjudicator that Santander should've stepped in from 1 February 2020.

Santander have told us that Mr and Mrs P are left with an outstanding debt, once all adjustments have been made, and they've been 'refunded' all of the interest, fees and charges caused by their overdraft from February 2020. So while Mr and Mrs P have been left with a balance and they might be unhappy with this, Santander has offered to do what I'd normally expect it to do here.

I understand Mr and Mrs P are unhappy about having negative information recorded on their credit files. But Santander are under a duty to report factually accurate information to the credit reference agencies it subscribes to on the way Mr and Mrs P manage their accounts – so amending their file to show the corrective action Santander takes is necessary.

So I'm satisfied that what Santander has already agreed to do to put things right for Mr and Mrs P is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Mr and Mrs P to decide whether they wish to accept Santander's offer.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Santander UK Plc has already agreed to do to put things right for Mr and Mrs P is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 7 July 2022.

Caroline Davies  
**Ombudsman**