

## **The complaint**

Mr H has complained that Santander UK Plc (“Santander”) irresponsibly increased the limit on his overdraft. He says that Santander acted unfairly by continuing to apply overdraft charges to his account when he was already in financial difficulty.

## **What happened**

Mr H opened his account in February 2021 when Santander granted him an overdraft facility of £250. In January 2022 Santander increased his overdraft limit to £1,500.

Mr H says that Santander failed to take into account that he was reliant on his overdraft and that he was using it and other borrowing to help fund heavy gambling. He says Santander didn’t conduct an appropriate assessment of his use of the account and his existing overdraft facility. Because of this he says he has been charged a significant amount of interest and fees.

Our investigator upheld Mr H’s complaint, saying that Santander ought to have realised that Mr H wasn’t using his overdraft facility as intended and so it shouldn’t have agreed to increase his overdraft limit.

As Santander disagreed with our investigator’s finding, 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.

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 making a lending decision and going on to apply overdraft charges. So I don’t consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I think Santander acted unfairly when it increased Mr H’s overdraft in January 2022 and then continued charging overdraft interest and associated fees. I say this because I think on balance there was ample evidence to show that the nature of the account usage necessitated better checks and such checks would likely have shown that continuing to offer Mr H an overdraft facility would be unsustainable for Mr H given his sustained use of gambling sites.

Looking back over the past 12 months Santander would have seen that Mr H only began receiving his salary into this account in September 2021. Before this point Mr H was making ad hoc payments back and forth to the account, however it was in an overdraft position more often than not.

An overdraft is intended for short-term and emergency use. As things stood though, it’s difficult to see how granting Mr H an increased overdraft would have been applied for that

type of use. Santander would also have been aware that Mr H had applied to take out a loan for £10,000 at around the same time with the stated reason of it being used for debt consolidation. This followed on from a loan for £15,000 taken out a month earlier from another lender. Up to that point Mr H had shown little reliance on credit or taking out new credit. So again, I think Santander ought to have been prompted to enquire further about Mr H's financial circumstances.

I think it's reasonable to characterise Mr H's account activity as being volatile – with large amounts of money being passed back and forth between accounts - with little to show how his income was being applied. I don't consider that the way he'd been using his overdraft alongside how he was operating his account demonstrated that he was using his overdraft in line with its intended purpose as a short-term borrowing facility. The fact that the account was essentially used to receive a salary and transfer it elsewhere, with no indication of how he was funding his day-to-day living expenses and other existing credit, ought to have prompted further enquiry by Santander. So I don't think the checks Santander carried out at the time were proportionate.

Whilst Mr H wasn't using this account for gambling transactions, I consider that proportionate checks would more likely than not have revealed that Mr H was gambling large sums through another account.

I say this because I consider Santander should have looked to understand Mr H's overall financial situation, including his expenditure and regular commitments, before approving any further lending. Mr H has provided us with the bank statements for the account the majority of the transfers are made to and from. In the absence of any other contrary information I consider these allow me to reasonably identify what proportionate checks would have shown Santander at the time.

I've reviewed the statements in the three months leading up the lending decision in January 2022. I've seen multiple transactions to gambling websites across this period. In the statement covering October 2021 I've seen over 30 transactions with identifiable gambling companies, and there are a number of other payments which appear similar although aren't clearly identifiable as being used for gambling. The transactions I have identified amount to around £5,700.

I consider Santander ought reasonably to have identified that continuing to provide Mr H with his existing overdraft facility wasn't sustainable at this point, let alone increasing it. Santander should have stepped in and looked to support Mr H with his financial situation and taken appropriate steps to ensure it was responsible in managing any outstanding debt from that point onwards.

To summarise, Mr H ended up paying additional interest, fees and charges at a time when there was evidence available to show that he was gambling heavily and in financial difficulties. It's therefore my conclusion that Mr H lost out because of what Santander did wrong and that Santander now needs to put things right.

I've also considered whether the relationship between Mr H and Santander might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Mr H results in fair compensation for him in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right – what Santander needs to do to put things right for Mr H**

Having thought about everything, I require that Santander should:

- Rework Mr H's current overdraft balance so that any interest, fees and charges applied to it from 22 January 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Santander should contact Mr H to arrange a suitable repayment plan. Mr H 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 H's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft on 22 January 2022. Santander can also reduce Mr H'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 removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H 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 H's credit file. Santander can also reduce Mr H'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 H a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint and require Santander UK Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 July 2024.

Michael Goldberg  
**Ombudsman**