

Complaint

Miss W has essentially complained that Santander UK Plc (“Santander”) unfairly provided her with an overdraft that was unaffordable.

She also says that it continued applying charges to her overdraft even after it should have realised that she couldn’t sustainably repay it. Miss W argues that by this stage she had been constantly in her overdraft and it was clear that she didn’t have the means to come out of it.

Background

Miss W has also complained about a personal loan that Santander provided to her in November 2021. However, that complaint is being looked at separately and I will make no findings regarding whether it should have been provided to Miss W in this decision. This decision is solely considering whether Santander acted fairly and reasonably in adding interest, fees and charges to her overdraft when it did.

One of our investigators looked at this complaint and thought Santander should have realised that Miss W’s overdraft had become unsustainable for her by July 2018 and so it shouldn’t have added any charges that it did go on to add from this point onwards.

Santander didn’t agree with the investigator’s assessment of the complaint. It stated that while it accepted that Miss W may have had and been using an overdraft for a significant period of time, she only started being charged interest for doing so from September 2020 onwards. So it didn’t think that refunding all of the interest charged from September 2020 onwards was fair and it instead considered that refunding any interest charged from July 2021 was fairer and made an offer along these lines.

Miss W did not accept Santander’s alternative proposed settlement. And as the parties have been unable to agree on matters the case was 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.

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 in this decision.

Having considered everything provided, I think Santander acted unfairly when it started adding interest and associated fees and charges to Miss W’s overdraft from September 2020 onwards.

By this point, it was evident that Miss W’s overdraft had become unsustainable for her and that charging her to provide it was likely to cause significant adverse consequences. Looking

at Miss W's statements leading up to this period it is clear that Miss W hadn't seen a credit balance for an extended period of time. Santander says that for a significant portion of the period that our investigator considered, Miss W wasn't charged interest.

This may well be true but given that she remained overdrawn to such an extent in a period, where interest and charges were not being applied, it's difficult for me to see how she would be in a better position to clear her outstanding balance within a reasonable period of time once Santander started to charge her interest from September 2020 onwards.

In reaching this conclusion, I'm mindful of what Santander has said about Miss W having managed to keep a credit balance on her current account after she was provided with a loan to consolidate her debts in November 2021. I accept that this does look to be the case.

However, while I make no finding on whether the personal loan was affordable, it seems to me that this does appear to support the notion that Miss W would more likely than not have existed her overdraft sooner than she did, if Santander had offered her the appropriate support before starting to charge her in September 2020. So, in truth, rather than persuading me that this complaint should not be upheld, Miss W's actions, in relation to her overdraft, after taking the loan persuade me that Santander acted unfairly but not proactively offering assistance prior to it charging interest on Miss W's overdraft.

Overall I'm satisfied that Santander should have realised that Miss W's account conduct suggested that her overdraft had become unsustainable before it started charging her in September 2020. As this is the case, I don't think that Santander acted fairly and reasonably towards Miss W, in relation to her overdraft from September 2020, and I'm upholding this complaint.

I've also considered whether the lending relationship between Santander and Miss W might have been unfair to Miss W under section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed in the section below results in fair compensation for Miss W in the circumstances of her complaint. And I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Fair compensation – what Santander needs do to put things right for Miss W

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

- Reworking Miss W's current account balance so that all interest, fees and charges applied to it from September 2020 onwards are removed.

AND

- If in the unlikely event that an amount owing remains on the current account once these adjustments have been made Santander should contact Miss W to arrange a suitable repayment plan, Miss W 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 Miss W's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on Miss W's overdraft in September 2020. Santander can also reduce Miss W's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

OR

- If, given what the Miss W's account movement transactions suggest is more likely, the effect of removing all interest, fees and charges results in Miss W having a credit balance on her account, then any extra she paid for her overdraft should be treated as overpayments and returned along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If Miss W has a credit balance once all adjustments have been made, then Santander should remove any adverse information from Miss W's credit file. Santander can also reduce and/or remove Miss W's overdraft limit if she has a credit balance and it considers it appropriate to do so.

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

My final decision

For the reasons I've explained, I'm upholding Miss W's complaint. And I'm directing 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 Miss W to accept or reject my decision before 5 August 2024.

Jeshen Narayanan
Ombudsman