

The complaint

Mr J complains that the overdraft he had from Santander UK Plc was unaffordable to him.

What happened

Mr J opened a student account on 31 August 2016. This transitioned through a graduate account, before becoming an Everyday account on 15 July 2021 with an overdraft limit of £2,000. At this point Mr J's previously free overdraft became subject to interest and fees.

Mr J says Santander failed to notice his ongoing financial difficulties and continued to add fees and charges to his account, thereby worsening his situation. He says his monthly income was less than his overdraft and he had to borrow elsewhere to try to clear it. Mr J adds he's consistently had a large, often unauthorised, overdraft and was only ever in credit as a result of loans from elsewhere. He says Santander should have noticed his financial difficulties as it repeatedly rejected his applications for an increased overdraft.

Santander initially said the situation in which Mr J has found himself was not down to an error on its part, but more recently accepted it should have stepped in sooner to assist him with reducing his overdraft facility. It said it had already refunded £57.89 in December 2023, but also offered to refund the fees applied between February 2023 and November 2023. It also referred Mr J to its financial support team to look at options to reduce the overdraft.

Mr J said Santander should have identified signs of financial difficulty earlier than February 2023. He says he was not meeting the terms of the graduate account in 2019, as he was not using it to pay in his salary, and so it should not have started to charge interest from 2021.

Our investigator recommended the complaint should be upheld. She considered Santander had acted unfairly by charging overdraft fees from 15 July 2022 as it should have realised the use of the account was unsustainable when it carried out its annual review.

Santander responded to say that it agreed to the investigator's view and that Mr J now has a repayment arrangement in place which will be reported as such to the credit agencies.

Mr J said that the late payment markers should be removed from his credit file as he could have rectified the situation earlier if Santander had agreed to a resolution initially.

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.

I need to take into account the relevant rules, guidance and good industry practice.

Bearing this in mind, in coming to a decision on Mr J's case, I have considered the following questions:

- Did Santander complete reasonable and proportionate checks when assessing Mr J's overdraft to satisfy itself that he would be able to repay it in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?
- Did Santander make a fair lending decision?
- Did Santander act unfairly or unreasonably in some other way?

Transition from Graduate account to Everyday account

I have seen the terms and conditions of the Santander Graduate account and they say that *“on the second anniversary of your account opening”* the account will *“automatically be transferred to an appropriate current account”*. They also say that *“the Specific Conditions in this document will cease to apply to your current account”* – in this case the relevant conditions include the *“interest-free and fee-free Arranged Overdraft”*.

So, I can't conclude Santander did anything wrong by converting Mr J's account to an Everyday account and applying the new terms and conditions to his £2,000 overdraft from 15 July 2021.

Overdraft usage from 15 July 2021

Mr J initially began to repay his overdraft and it was down to £1,538 by 10 September 2021. However, almost immediately, Mr J withdrew the available balance, and, by January 2022, he'd established a pattern of only paying in the equivalent of the interest he'd been charged.

With the balance remaining at £2,000, or slightly higher, Santander sent a number of communications about the arrears to Mr J from February 2022 onwards, encouraging him to get in touch about his overdraft. By July 2022 though, one year after the account had converted, Mr J was still only repaying the charges each month and the balance was consistently above £2,000.

As Mr J hadn't responded to any of Santander's messages, I don't consider Santander should have reasonably been aware that he was in financial difficulties before July 2022, but proportionate checks at that point would have indicated that the use of the account was likely to be unsustainable.

In summary, I find that Santander should have responded more proactively in July 2022 and, therefore, it should refund the interest and fees it charged from 15 July 2022.

Credit File

Santander was sending Mr J messages about arrears from February 2022 but didn't send adverse information to credit reference agencies at that stage. When Mr J made contact in December 2023, I can see he offered to repay £1 per month, which Santander accepted. The customer contact notes also indicate Mr J was told about the effect on his credit file.

Although I understand Mr J's point when he says he could have avoided adverse markers if Santander had agreed a resolution sooner, I need to also consider that Santander tried to contact Mr J almost two years earlier. As it is, even though Mr J was regularly over his overdraft limit, and Santander had sent him a number of arrears letters in 2022, I've seen evidence to show that the first negative marker on his credit file wasn't until December 2023. Given that Mr J was repaying £1 per month at that stage, and Santander is obliged to provide accurate information to the credit reference agencies, I don't find it unreasonable that this repayment arrangement was reported as such.

So, I'm not going to ask Santander to remove the negative information from December 2023 from Mr J's credit file, although I understand that, more recently, his monthly repayment was changed to around £162 which will enable a timely settlement of the account.

Finally, I've also considered whether Santander acted unfairly in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I'm satisfied that, based on what I've seen, no additional award would be appropriate.

My final decision

My decision is that I uphold this complaint in part. Santander UK Plc should do the following, as it has agreed to do:

- Rework the account removing all interest and charges applied from 15 July 2022;
 - If the rework results in a credit balance, this should be refunded to Mr J along with 8% simple interest per year* calculated from the point at which his account balance would have been in credit.
 - Or, if after the rework there is still an outstanding balance, Santander should arrange an affordable repayment plan with Mr J for the remaining amount, if it has not already done so.

*HM Revenue & Customs requires Santander to deduct tax from any award of interest. It must give Mr J a certificate showing how much tax has been taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 September 2024.

Amanda Williams

Ombudsman