

## The complaint

Miss A complains about Santander UK Plc unfairly taking away her remaining overdraft facility.

## What happened

Miss A has a bank account with Santander which has an agreed overdraft.

Following a technical error by Miss A at the end of 2022, her overdraft was reduced from £1,400 to £500. This left Miss A's account in arrears and has been the subject of a separate complaint.

Due to Miss A's account being in arrears, it was arranged for her to pay £55 on 27 February 2023 and 27 March 2023.

However, Santander say they didn't receive the first payment and, as the arrangement broke, they removed the overdraft on 21 March 2023.

However, Miss A was shocked when she received notification of this by text. Miss A explains this is because:

- She didn't receive any warning letters or information on the consequences of not making the payment
- She spoke to Santander on 14 February 2023 (prior to the 27 February 2023 payment due date) and discussed a pending Santander refund of £50 which she needed to help cover the £55 payment
- The Santander representative said she would release the refund. Also, due to Miss A's financial difficulty, Santander agreed to a breathing space until March 2023 and a new budget plan.

Miss A complained to Santander, and they said:

- *'Sorry that you may not have received the letter we sent but without receiving any contact from you to inform us of a change in your ability to pay the agreement, we took the actions we did'.*
- They were unable to reinstate the overdraft.

They also apologised and offered £50 compensation as apparently a representative hadn't passed on Miss A's complaint points which delayed the resolution.

Miss A brought her complaint to our service. She feels Santander haven't considered the call she had prior to the 27 February 2023 payment due date and that she has been unfairly impacted. However, our investigator didn't uphold her complaint.

As Miss A remains dissatisfied, her complaint has been referred to me to look at.

I issued two provisional decisions.

In my first provisional decision, issued on 28 March 2024, I said:

*What I've provisionally 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.*

*Having done so, I have a different view to the investigator. I'm upholding this complaint and I'll explain why.*

*I should first say:*

- *Where information is incomplete, inconsistent or contradictory, as it is in this case, I must reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available information.*
- *The 14 February 2023 call recording is important to this complaint as:*
  - *Miss A says:*

*'I had spoken to Santander that I did not have enough funds to make payment but I had requested refunds to help with reducing the overdraft and to have some access to the funds. The lady said she would give me breathing space until March and that she will give me access to the refund of £50 to help me and she also advised that I will need to do another budget plan which she will arrange. I am requesting the bank review the conversations on 14 Feb'.*

*'I had explained that I was arranging for refunds to enter my account to cover the payment as I didn't have any money at the time'.*

*'I wasn't informed at any point that the agreement had been broken and cancelling the entire overdraft would've (been) the consequence'.*
  - *I find Santander's contact system notes lack clarity*
- *The 14 February 2023 recording was requested by our investigator in July 2023 and a further seven times since I received this case at the end of January 2024. Santander haven't said that it isn't available, but it hasn't yet been received.*
- *I don't think it is fair or reasonable to keep Miss A waiting any longer, so I've had to reach a provisional decision on balance of probabilities, considering file submissions and testimony.*
- *However, should the call recording be received by the deadline, my provisional decision could change.*

*I found Miss A's testimony about the call on 14 February 2023 to be persuasive, and Santander's contact notes support her statement that she needed a refund, breathing space and a new plan.*

*I think it more likely than not that Santander's notes aren't comprehensive. They mention Miss A needing the refund for food and petrol and not wanting to risk negative consequences yet appear to say continuation of the arrangement was required.*

*Although they don't mention whether a breathing space or new plan was discussed, requested, offered or escalated, considering Miss A's refund request and affordability comments, I think it more likely than not that there was a discussion, and something was said that led Miss A to believe she didn't need to make the February 2023 payment.*

*Furthermore, I think it more likely than not that Miss A didn't receive the letter Santander sent on 6 February 2023, a week prior to the call, confirming the arrears repayment arrangement and 'continuation of collections and recoveries processes'. I*

say this because Santander reference this letter in their final response letter but haven't been able to provide a copy to our service, and have said:

- 'I have reviewed the Collections & Recoveries System notes (an updated copy is attached). As you will see, there is no reference to any letters around 6 February 2023. I'm assuming Miss A no longer has a copy of the letter which could be provided to your service. If not, is she able to recall the correct date? I have also reviewed other systems from where a letter may have been sent, but have not found anything from February 2023'.

This supports Miss A's comment about a lack of communication and clarity on the agreement and warning of the consequences. Also, Miss A says the first she knew about her overdraft being withdrawn was by text. And I can't see evidence that Santander sent Miss A confirmation letters either before or after she missed the 27 February 2023 payment.

So, based on the current information on file, I think it more likely than not that Miss A:

- Had reason to believe she didn't have to pay £55 on 27 February 2023
- Didn't receive communications
- Wasn't aware of the consequences of not paying this amount
- Hasn't been treated fairly by Santander here

Therefore, considering the above and the current information on file, my provisional decision is to uphold this complaint. And I require Santander to put Miss A back to the position she was in prior to 14 February 2023 and:

- Reinstate Miss A's £500 overdraft
- Discuss a new repayment plan, if still required
- Reverse the Credit Reference Agency markers made in February and March 2023
- Pay Miss A £250 compensation for the distress and inconvenience caused

In my second provisional decision, issued on 7 July 2024, I said:

*What I've provisionally 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 would like to thank both parties for their responses.*

*Miss A agreed with my provisional decision but included a comment that a higher amount of compensation should be considered.*

*Santander provided the 14 February 2023 call recordings and copy of a letter confirming what was agreed on the call. Also, a missed payment letter dated 18 March 2023.*

*Due to technical difficulties the call recording was not made available to me until 25 June 2024.*

*Having listened to the call recordings my decision has changed. This is because I found that:*

- It was consistent with Santander's system notes

- *The Santander financial support representative didn't agree a new budget plan or to give Miss A breathing space until March 2023*
- *Whilst it was identified that Miss A's disposable income was insufficient to pay the £55, Miss A was aware of the consequences of not paying this amount and agreed to:*
  - *Pay the £55 due on 27 February 2023*
  - *Call Santander if she couldn't pay this amount*
- *Miss A was due to be receive her salary before the 27 February 2023 and the refund amount wasn't intended to cover the £55 payment*

*I recognise Miss A says she didn't receive communications form Santander, but I am now satisfied that Santander did send letters both confirming the 14 February discussion and subsequently chased the lack of payment.*

*Although I have empathy for the position Miss A found herself in when Santander reduced her overdraft limit, having considered the new information, I'm not upholding this complaint against Santander UK Plc.*

*My provisional decision*

*For the reasons I've given above, it's my provisional decision not to uphold this complaint against Santander UK Plc.*

*I'll look at anything else anyone wants to give me – so long as I get it before 4 August 2024.*

*Unless that information changes my mind, my final decision is likely to be as I've set out above.*

## **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 didn't receive a response from Santander.

In Miss A's response she said she was saddened by the decision and included the following points:

- *'Santander should have recognised that I was making efforts to pay the funds. The payment I received and agreed to have deposited into my account should have been considered part of my attempt to reduce my overdraft, given my circumstances'.*
- *'It is truly unfair that my efforts to restore the overdraft, given my financial circumstances, are not being acknowledged'.*
- *'I was not aware that missing a payment would cancel my entire overdraft, especially as I was focused on resolving the previous claim'.*
- *There were postal strikes during February 2023.*
- *'I stand by the fact that I did not receive any communication or letters to my address at the time. I do not have a copy of the call recordings to review but I was overwhelmed at that time trying to get breathing spaces on all financial responsibilities at the time'.*
- *'I also only received a text that my overdraft has been cancelled and in further arrears and no other notifications prior to this'.*

- *'I would like FOS to reconsider this decision given the length of time it has taken to investigate'.*
- *'Santander had technical errors, and I wasn't informed of this until now. As it has taken over a year to resolve this issue and given that I have only managed to clear the funds this year, it should show that I have made every effort to clear the balance'.*
- *'FOS is supposed to provide answers to complaints within 90 days of receiving the complete complaint file'. 'However, this has been delayed due to Santander's technical error, which has been forgiven and taken into account, whereas my error as a consumer has not been considered in this decision'.*
- *'In February 2023, I was doing everything I could to secure funds and create breathing room for other accounts and various direct debits. While managing this, I was also trying to resolve a previous claim to restore my original overdraft. We reached a settlement with Santander, which included a small compensation deposited directly into my bank account. I wasn't given a choice of where this money go only that it would go straight into my overdrawn balance. I did not protest that I should receive this amount somewhere else but I knew that it might give me some relief in meeting payments and this would demonstrate my effort to reduce the payment rather than redirecting it to another account'.*
- *'If I received this amount in February and March, I have no details since my bank account is now closed. Could this not count as having met the payment in February?'*
- *'I was unaware that missing a payment would result in the total cancellation of my overdraft, especially given my financial difficulties at the time. I find this truly unfair, as the entire issue began when I attempted to clear my overdraft in the first place. It seems unfair that when a customer makes an error while adjusting their finances, it is not taken into consideration, yet Santander's technical difficulties and delays in providing a response are given weight'.*

So, I considered everything again including the 14 February 2023 call and Miss A's latest submissions.

I should first say I am sympathetic to Miss A:

- Having her original overdraft limit reduced because of her technical error and finding herself in a difficult and stressful position of being in arrears and needing to make £55 payments on 27 February 2023 and 27 March 2023.
- Not receiving the letters Santander sent to her, including 6 March 2024, which would've made it clear that unless she called them, she would have to pay off the full overdraft amount.

However, our service considered Miss A's complaint about her overdraft being reduced. Also, I'm satisfied that Santander did send letters to Miss A and, on the 14 February 2023, Miss A was made aware of the importance of either paying Santander £55 on 27 February or calling them in advance if she couldn't afford to pay the amount.

I appreciate Miss A's frustration with postal issues; however, I don't think it would be fair to hold Santander responsible for delivery issues where they've been able to demonstrate they dispatched letters. Also, although it took Santander a long time to send our service a recording of the call she had with them on 14 February 2024, when I finally received this, I found that Miss A expressed concern about defaulting and knew about the risk of not making an agreed payment. Also, she said, 'keep it at £55 for now' and was advised to call back. So, whilst I am sympathetic to Miss A's circumstances and difficult position, I can't see that Santander have made any errors here and didn't try to assist her.

Although Santander didn't make the call recording available at an earlier stage of Miss A's complaint, I found the call supported their complaint outcome.

So, having considered everything again, including Miss A's latest submissions, I'm not upholding this complaint against Santander UK Plc.

### **My final decision**

My final decision is that I'm not upholding this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 12 September 2024.

Paul Douglas  
**Ombudsman**