

## **Complaint**

Mr P is unhappy with what that Santander UK Plc ("Santander") has agreed to do to put things right for him after it agreed that it shouldn't have allowed him to continue using his overdraft in the way that he did from March 2019 onwards.

## **Background**

After receiving an assessment from one of our investigators, Santander accepted that it shouldn't have allowed Mr P to continued using his overdraft in the way that he was from March 2019 onwards.

As a result of this, it offered to refund the interest it charged on Mr P's account between March 2019 and May 2020 as well as the interest it charged from October 2022 onwards. This differed from our investigator's suggestion of how it should put things right. And as Mr P did not agreed that this was fair and reasonable for Santander t do this, the complaint was passed to an ombudsman for a final decision.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's clear that all parties agree that Santander ought to have intervened and prevented Mr P from using his overdraft in March 2019. As this is the case, I don't need to look at the merits of what happened, I simply need to decide whether what Santander has agreed to do to put things is fair and reasonable.

Having carefully considered matters, I'm satisfied that Santander needs to do a bit more to put things right for Mr P in a fair and reasonable way. I'll now explain why I think that this is the case in a bit more detail.

It may help for me to explain 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 given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued 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 if those

interest and charges were paid also add 8% simple interest per year. As I've explained, this is what our investigator told Santander that it needed to do.

However, Santander has only agreed to do this for the period between March 2019 to May 2020 and again from October 2022 onwards. So what Santander has offered to do isn't in line with how I'd typically expect a lender to put things right in such a case.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

I've therefore considered whether there is a strong reason to depart from our typical approach in this case. I understand that the reason Santander is arguing that I should do something different here is because Mr P had a positive balance for a period from the start of the pandemic and his overdraft became sustainable for him for a period from that point onwards. I've considered what it has said.

In the first instance, I'm struggling to identify the logic in the construction of Santander's argument. I say this because it accepts that it ought to have taken corrective action and removed the overdraft from Mr P in March 2019. So Santander's argument appears to be suggesting that Mr P would have applied for a new overdraft facility in May 2020 and that it would have accepted such an application because Mr P had a credit balance at this stage.

I have difficulties accepting Santander's logic for a number of reasons. Firstly, it seems to me that our standard approach to putting things right in overdraft complaints already factors in periods where a customer may have a credit balance on their account.

I say this because a lender is required to refund any interest and charges that it applied to an account. And in periods where a customer had a credit balance they would not have been using their overdraft. So, in these circumstances, there would be no interest, fees and charges to refund as none were applied during the period.

Secondly, if I continue to play out Santander's logic (and accept it was fair and reasonable to accept a hypothetical overdraft application in May 2020) it suggests that the account would then have gone on to once again become unsustainable. And it would have been fair and reasonable for it to remove the facility, once again, in October 2022. But Mr P stopped seeing a credit balance from a significant time before October 2022. And I can't see how it would have been fair and reasonable for Santander to wait until the point that the account became as distressed as it became in March 2019, before it took any action.

Indeed, this would suggest that Santander wouldn't have learnt from what had previously happened in the course of its relationship with Mr P. And this in itself would be contrary to the rules and guidance and an indication of Santander failing to act fairly and reasonably.

Finally, I'm also mindful that the credits Mr P received (and which Santander has referred to) were Self-Employment Income Support Scheme payments. These were grants which Mr P was provided with by the government because of the pandemic. So, in any event, I don't see how Santander could possibly consider these to be a sustainable source of payments such that they could be considered to constitute funds that would reasonably repay an overdraft within a reasonable period of time. This is also without even considering the fact that these funds quickly dissipated, and Mr P was quickly back in the same pattern of unsustainable overdraft debt.

Overall and having considered Santander's arguments, I've not been persuaded that there's a strong enough reason to depart from our usual approach to putting things right where a lender continued to allow a customer to continue using an overdraft that had become demonstrably unsustainable for them. I'm therefore satisfied the facts and circumstances of this case mean that it would be fair and reasonable to apply our usual approach here.

As this is the case and Santander agrees and accepts that Mr P's overdraft had become demonstrably unsustainable for him in March 2019 (and therefore it ought to have taken corrective action), I'm satisfied that it should compensate him from that point onwards and in the way that I have direct to in the section below.

In reaching my conclusions, I've also considered whether the lending relationship between Santander and Mr P might have been unfair to Mr P under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Santander to do results in fair compensation for Mr P given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

### **Fair compensation – what Santander needs to do to put things right for Mr P**

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

- reworking Mr P's current overdraft balance so that all interest, fees and charges added from March 2019 onwards are removed. This is to reflect the fact that Santander ought to have realised that the overdraft had become demonstrably unsustainable for Mr P by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Santander should contact Mr P to arrange a suitable repayment plan Mr P 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 P's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in March 2019. Santander can also reduce Mr P'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 carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr P 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 P's credit file. Santander can also reduce Mr P'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 P a certificate showing how much tax it has taken off if he asks for one.

**My final decision**

For the reasons I've explained, For the reasons I've explained, I'm upholding Mr P's complaint. Santander UK Plc should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 December 2024.

Jeshen Narayanan  
**Ombudsman**