

The complaint

Miss R is unhappy with the charges Santander UK Plc has applied on her current account over the past six years.

What happened

In October 2019, Miss R complained to Santander that it was charging her too much on her current account as she was in financial difficulty. She asked it to refund all charges applied over the past six years and stop any future charges. Santander said the charges were applied in line with the terms of the account so it wouldn't stop or refund them. It gave Miss R details of an internal team which could help if she was in financial difficulty and signposted her to some debt advice charities.

Unhappy with Santander's response, Miss R referred her complaint to our service. She told us Santander hadn't met its regulatory obligations. But our investigator didn't uphold her complaint. He found Santander had applied the fees in line with the terms of the account. And he thought it had done enough to support Miss R in light of her financial situation. For example, he pointed out that Santander *had* refunded some of Miss R's fees in the past. He didn't recommend that Santander should stop or refund any charges.

Miss R didn't accept our investigator's view. She said she was a long-time customer of Santander and it could afford to return her charges — which would be the only way for her to get out of her overdraft. Her case has been passed to me for a final 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. Having done so, I've come to the same outcome as our investigator — and for largely the same reasons.

Miss R says Santander hasn't met its obligations under section 5.1.14 of the Financial Conduct Authority's *Banking Conduct of Business Sourcebook* (BCOBS). This says that, if a consumer claims that a payment hasn't been correctly executed, it's down to the firm "*to prove that the payment was authenticated, accurately recorded, entered in the firm's accounts and not affected by a technical breakdown or some other deficiency*". I'm not convinced this has any bearing on Miss R's case, however, as she's disputing *charges* rather than *payments*. She also hasn't indicated that any specific *charges* have been executed incorrectly. Ultimately, from the evidence I've seen, I'm satisfied her charges have been applied correctly and in line with the terms and conditions of the contract she entered into with the bank. Nevertheless, I've gone on to consider whether they were fairly applied in the circumstances.

Miss R alleges that Santander has breached its regulatory duty under Section 9 of the Lending Code (later replaced by The Standards of Lending Practice). Broadly speaking, in line with longstanding good industry practice and Santander's regulatory duties (including section 7.3 of the Consumer Credit Sourcebook [CONC]), I'd expect it to treat

Miss R with forbearance and due consideration in periods when the bank was—or should reasonably have been—aware that she was experiencing financial difficulty.

During the period I'm considering, Miss R appears to have been managing her account well. All but one of the charges she's disputing were for using her *arranged* overdraft. I don't think it would or should have been concerning for Santander that Miss R was, on occasion, making use of a lending facility that it had approved.

There was only one occasion when Miss R exceeded her overdraft limit. She was charged for this — but a Supreme Court ruling in November 2009 (*Office of Fair Trading v Abbey National plc & Others* [2009] UKSC 6) makes it clear that charges of this type generally can't be challenged on the basis they're too high/unfair. I do have an obligation to take account of the law; and whilst we're not strictly bound by it because of our 'fair and reasonable' jurisdiction, we wouldn't lightly ignore such weighty an authority as the Supreme Court, the highest in the UK.

The occasion when Miss R breached her overdraft limit occurred back in November 2017. She only exceeded her limit by around £15, and the balance was brought back within her limit the next day. I wouldn't have expected Santander to realise she was in financial difficulty based on her account management. I therefore don't consider it unfair to have applied the charges it did.

Additionally, in instances when Miss R *did* contact Santander about her financial situation or the impact of charges, it offered some refunds. It refunded and waived charges following a complaint she raised back in 2013. Its records show it offered a further refund in April 2014. I'm satisfied this demonstrates that Santander has treated Miss R with forbearance when appropriate. But these non-contractual gestures don't set precedents that the bank is bound to follow thereafter. It will assess each case individually based on the facts and circumstances as then exist.

Miss R has let us know about the difficult circumstances she's currently facing, including a recent reduction in her income. I'm very sorry to hear about Miss R's circumstances, and I want to reassure her I've taken these into account when considering Santander's response. When she contacted it about her situation, it gave her details of an internal team which she can speak to if she needs further support. It also directed her to some organisations providing free debt advice. Firms aren't *obliged* to refund charges in response to allegations of financial difficulty — there are a range of things they can do to help. Santander's response gives Miss R the option of seeking further support if she needs it.

Overall, I'm satisfied Santander has applied her charges fairly, reasonably and in line with the terms and conditions of the contract. It has also provided a reasonable level of support to Miss R in relation to her financial situation — in line with principles of good industry practice and regulatory guidance. So I'm not persuaded Santander should be compelled by the Financial Ombudsman Service to refund any more charges or waive them going forward. If it wishes to make further gestures due to Miss R's situation—with which I empathise—then I'm afraid that must be a matter for the bank's discretion and goodwill at this point in time. Our role isn't to make *political* decisions such as redistributing wealth because a customer is in financial hardship whereas a bank 'can afford it'; it's to remedy wrongdoing *impartially*.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 19 February 2020.

Rachel Loughlin
Ombudsman