

The complaint

Mr P complains that Santander UK Plc has applied unfair charges to his bank account.

What happened

Mr P had a bank account with Santander. He says that Santander regularly applied a significant amount of charges for being in an unauthorised overdraft. Mr P says this caused him to be in financial difficulties and led to him taking out other debt. He says because of his occupation at the time it was difficult for him to contact Santander about this. He wants Santander to refund the bank charges it applied for the past six years.

Our investigator thought that Santander had acted fairly and reasonably. She said that it applied the charges in line with the terms of the account and the Supreme Court had said that these types of charges weren't unfair. She also said that Santander has previously waived charges, gave Mr P information about how to avoid charges, referred Mr P to organisations that could help with debt and passed him to its financial support team. She said that Santander had acted positively and sympathetically to Mr P's situation.

Mr P didn't accept what the investigator said.

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.

The charges have been applied in line with the terms and conditions of the account that Mr P agreed to. And when the Supreme Court considered bank charges they found that they didn't generally amount to penalties and can't be challenged on the grounds they are too high. I must take the law into account in deciding what I consider to be fair and reasonable in the circumstances of this case. Having done so, and in the circumstances, I don't consider it was unfair for Santander to apply charges when Mr P had an unauthorised overdraft.

That is not the end of the matter though. Santander had an obligation to treat its customers who were in financial difficulty positively and sympathetically.

I'd note that just because someone is going into an unauthorised overdraft and incurring charges, it doesn't necessarily mean that they are experiencing financial difficulty - although it can be an indication of that. In the circumstances here, I don't think the fact that Mr P had an unauthorised overdraft and incurred charges was enough to put Santander on notice that he was in financial difficulty.

I say that as Santander has provided copies of Mr P's bank statements. They show that Mr P had a regular income that was sufficient to cover any committed expenditure, with a surplus left after that. So I can't see any reason why Santander ought reasonably to have thought that Mr P was in financial difficulty.

Despite that, it has waived fees, pointed Mr P in the direction of debt charities and referred him to a specialist support team. After carefully considering the circumstances here, I consider that was reasonable and that Santander treated Mr P fairly.

Mr P says that Santander should have offered him an arranged overdraft. But it has no obligation to proactively offer this to its customers - and it says it has no record of an application from Mr P. In the circumstances here, I don't consider Santander has acted unfairly by not offering Mr P an arranged overdraft.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 September 2020.

Ken Rose
Ombudsman