

The complaint

Mr B has complained about the fees and charges Santander UK Plc ("Santander") applied to his current account. He's said he's paid £1800 in charges and this caused financial distress.

What happened

Mr B complained to Santander in April 2019. Santander didn't agree with Mr B's complaint. It said the charges were correctly applied in line with the terms and conditions of the account and it wasn't aware Mr B was in financial difficulty. Mr B responded to say the mere fact of being charged ought to have made his financial difficulty apparent. As Santander didn't change its view on the complaint, Mr B asked us to look at his case.

Mr B's complaint was then looked at by one of our investigators. He didn't think that Santander had done anything wrong as Mr B hadn't said he was in financial difficulty. So he didn't recommend the complaint be upheld. Mr B disagreed with the investigator and asked for an ombudsman's 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 carefully considered everything provided, I've decided not to uphold Mr B's complaint. I'll explain why I've done so in a little more detail.

Before I go any further, I want to be clear in saying that I haven't considered whether the various amounts Santander charged in its tariffs of fees and charges over the years were fair and reasonable, or proportionate to the costs of the service provided. Ultimately a bank's tariff of fees and charges as well as how much it charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at the tariff set for the fees and charges, Santander won't have acted fairly and reasonably towards Mr B if it applied these fees and charges to Mr B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I've considered whether there were instances where Santander didn't treat Mr B fairly and reasonably. In other words I've considered whether there were periods where Santander continued charging Mr B even though it knew he was in financial difficulty or it ought to have realised this was the case.

Mr B has referred to financial difficulty. But he hasn't made reference to any particular period of time where he thinks Santander should have acted. Mr B has instead simply referred to all the charges he's paid and said these should be refunded. In his follow-up correspondence to Santander's response to his complaint he said he wouldn't have had to pay charges if he hadn't been in financial difficulty.

I've thought about what Mr B has said. But I wasn't to start by saying that it doesn't automatically follow Mr B must have been in financial difficulty for him to have been charged

in the first place. Financial difficulty is just one of the possible reasons why a consumer might not have the available funds in their account in order for a direct debit to be paid. As this is the case, I've looked at whether there were any periods where Santander ought to have realised that Mr B may have been experiencing financial difficulty.

Although some may argue it's not directly relevant here (which I don't necessarily agree with and I make no finding on whether this is the case), in Section 1.3.1G of the Consumer Credit Sourcebook ("CONC") the Financial Conduct Authority ("FCA") has set out a list of circumstances which if a firm was aware, or ought to have been aware of, may indicate that a consumer is in financial difficulty. As this is guidance on financial difficulty issued by the regulator, I do consider it is of some use here even though Mr M doesn't appear to have been provided with credit, whether formally or informally.

CONC 1.3.1G says:

"In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling"*

Having carefully looked through Mr B's statements throughout the period concerned I can't see that Santander ought to have been aware that any of the above matters may have been present in Mr B's financial circumstances.

Mr B may argue his returned direct debits were in themselves an indication he had an inability to meet repayments out of disposable income. But while I'm not seeking to make retrospective value judgements over Mr B expenditure, nonetheless I can't reasonably say that Santander ought to have realised Mr B's missed direct debit payments were an indication he may have been suffering financial difficulty. I say this because there are significant amounts of non-committed, non-contractual and discretionary transactions on his account. I've also seen cash withdrawals from the account too.

I accept neither of these things in themselves mean that Mr B wasn't experiencing financial difficulty. And of course it's possible the cash withdrawals were being used to pay for essentials. But there isn't anything in these transactions in themselves which ought to have alerted Santander to potential financial difficulty. So, in these circumstances and in the

absence of being told anything by Mr B, I don't think that it was unreasonable for Santander to proceed with the charges. And I don't think Santander unfairly charged Mr B in circumstances where it ought to have realised that he may have been experiencing financial difficulty.

I've also looked at what Santander did when it was contacted by Mr B. From what I've seen Mr B contacted Santander in March 2018. I don't know what was discussed as there are limited notes from this time. The notes suggest Mr B was given a refund of some charges as a gesture of goodwill. It's possible this refund was provided after Mr B explained that he was in financial difficulty. But given Mr B said that he didn't know he had to tell Santander this until 2019, I'm afraid that I can't reasonably say it's more likely than not this is the case.

However I can see that Mr B called Santander to explain he was experiencing difficulty in June/July 2019. And at this point Santander refunded some of Mr B's charges. Mr B's account then returned to credit and I can see that he had a relatively healthy credit balance in some of the months following this. So it seems to me that Santander did treat Mr B fairly when it was notified of his financial difficulty and gave him an opportunity to take steps to ensure he wouldn't be charged further. As this is the case, I don't think that it needs to refund any of the other charges.

Finally I've seen what Mr B has said about asking Santander for an overdraft. But a bank is required to ensure that a consumer can afford to repay an overdraft within a reasonable period and potentially on demand before providing one. I don't know if Mr B did make a formal application for an overdraft but if he believes that Santander unfairly declined to provide him with one then this is a matter he'll need to take up with Santander in the first instance.

My final decision

For the reasons I've explained, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 November 2020.

Jeshen Narayanan
Ombudsman