

The complaint

Mr S complains about the way Santander UK Plc dealt with him when he tried to sort out the overdrawn balance on the joint account he held with his ex-wife. He feels Santander treated him unfavourably compared to its response to his ex-wife, and that the bank hasn't been fair in considering his repayment proposals.

What happened

In January 2019 both Mr S and his ex-wife approached Santander bank separately to seek advice about managing an outstanding overdraft of £1,900.00 on their joint account, and to discuss charges and fees being waived.

Mr S complained that during a call to the bank he was told that the account may be frozen and closed as he and his wife were no longer married, making the account fraudulent. Mr S said this caused him a great deal of stress as he used the account to pay his mortgage and utility bills – and that he was unable to get an appointment to discuss his concerns for a further fifteen days.

He says that his ex-wife was able to speak to staff in branch the following day and was told that she may be able to remove her name from the account in certain circumstances, and that the account would remain open. Mr S felt this was unfair.

Mr S attended the branch but felt the options offered to him weren't helpful, and that because the staff at the branch were mainly female, he had been discriminated against because he's male. He said that a number of options were discussed, such as his suggestion of using a 0% balance transfer to clear the overdraft, and the prospects of a loan. But when he asked if the debt could be split in two and moved to a different account, he says he was told that this wouldn't be possible, and that the remaining overdraft could attract bailiff action.

Mr S said that Santander suggested that he use his £2,000.00 savings from an ISA to pay off the debt, but he said he didn't want to use this as he kept this for emergencies for himself and his son. He went on to say that he had been asked to consider a 'debtors plan' but found this insulting as he understood this to mean an assessment of his ability to pay.

Mr S said that he was forced into re-mortgaging his home to pay off the overdraft and that he still felt he should only have had to pay half the debt. Overall Mr S felt unfairly treated by Santander.

Since Mr S made his complaint to the bank, his ex-wife has sadly passed away.

Santander said that they hadn't responded formally to Mr S as the issues he raised had been previously answered. They said that while they weren't able to comment on whether they had treated Mr S any differently to his ex wife, they had offered solutions based on the options available to him at the time. But that they were limited in what they could do on a joint account. They explained that if there is a dispute over an overdraft on a joint account a dispute block can be put on it, but this means the account is frozen and it won't be able to be

used for things such as direct debits which concerned Mr S as he was still using the account. They explained that a Debtor's Plan may have been discussed if Mr S said the charges were unaffordable. But the only way they can look at stopping the charges is when the account moves to the collections team. They said that they had told Mr S that both he and his ex wife were both liable for the overdraft on the account. They explained that to get an appointment in his branch would depend on how busy the branch is and the right manager being available to speak with him.

Mr S didn't agree with Santander and brought his complaint to us saying that they hadn't answered his complaint - and that he felt it was unfair for him to have to pay the overdraft and fees.

Our investigator's view was that the complaint shouldn't be upheld for the same reasons as the bank, and as Mr S didn't agree he asked for his complaint to be given to an ombudsman to decide.

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've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so it is my intention not to uphold the complaint, and I will explain why. I am aware that Mr S has asked several questions and raised several points throughout the life of the complaint. While I am unable to address and answer every point made, I would like to reassure Mr S that I've carefully considered everything he's said.

While I understand that Mr S has complained that he was treated less favourably than his wife, I think that's probably down to the differing nature of their enquiries. From what Mr S has said, he was looking to have a discussion with the bank about repaying the overdraft, examining his liability for the balance and looking into whether they would waive any charges. His ex-wife, on the other hand, appears to have made a rather more basic enquiry, which didn't require a formal meeting. I'm not persuaded that amounts to evidence of discrimination as Mr S suggests. I understand why Mr S would find it extremely stressful to think that the account may be frozen and treated as fraudulent. I've listened to Mr C's initial call to the bank, and looked at the call logs supplied by the bank after being transferred to the branch.

The first call does mention that Mr S was able to seek legal advice and that he could place a dispute on the account while an investigation took place, but that this would mean that a block would be put onto the account. It also says that Mr S was looking into taking on the debt and removing his ex-wife's name from the account. A second appointment was booked in February.

I don't consider there's enough evidence to enable me to say Santander misled Mr S about what would happen to the joint account, though there might have been a bit of a misunderstanding. Where joint account holders are in dispute – such as where the parties are separated – it's not uncommon for banks to suspend use of the account pending the outcome of any financial settlement. It doesn't appear to me that the account was under threat of closure or that it was ever blocked. I believe that what was suggested was most likely with a view to protecting the account in what might have appeared to be a dispute.

I understand that Mr S may not agree that it was fair of Santander not to automatically waive the fees or charges when he asked for help managing the account. And I accept that Mr S

may have felt insulted when the bank offered what he referred to as a debtor's plan. But while I appreciate Mr S has strong feelings in this respect, a bank isn't obliged to refund or suspend charges or interest on an overdraft simply because it would be cheaper for the account holder if they did so. Banks may do so as a response to a borrower in financial difficulty, subject to their understanding of the borrower's financial position and ability to pay.

In the circumstances, and considering that Mr S had adequate funds in another account to clear the overdraft, I feel Santander acted fairly by suggesting both the plan and the use of funds held by Mr S. While I can understand why Mr S may have been reluctant to use his savings, I don't feel that it was unfair for the bank to consider this as a possible solution and when considering financial hardship.

Given that Mr S has told us that many options were discussed during the appointments with the bank, together with the call logs and appointment note provided by the bank, it seems that the bank attempted to offer solutions and answer any questions Mr S had while the account remained open to allow Mr S to decide on a solution that best suited himself.

Paying the balance

Mr S has said that he signed up to the terms and conditions when he first opened the account many years ago when Santander was Abbey National. The bank was able to explain that any notifications of changes to terms and conditions would have been sent out to Mr S by post, so I am satisfied that the current terms and conditions apply to Mr S and the management of his account.

I have taken into account two areas of the terms and conditions when considering if it was fair for the bank to ask Mr S to pay the full overdraft:

"Terms and Conditions

What should I consider? Joint accounts. A joint account means joint responsibility so each person can use the account without the other person knowing. Therefore, if other people cause a problem on the account, you're also responsible for it.

If you have an Arranged Overdraft on your joint account, or if your account goes into an Unarranged Overdraft, you should be aware that the other account holder will be responsible for any money owed on the account.

What if one of you dies? If one of you dies, a joint current account and savings account will automatically be converted into the sole name of the surviving account holder. "

I have thought about whether it was fair and reasonable for the bank to ask Mr S, prior to his ex-wife passing away, that he clear the balance in full. I'm satisfied that it was. I accept that the terms and conditions are clear in as much as a joint account means joint responsibility. So, Mr S would be right in saying that his ex-wife would be equally responsible. But that doesn't diminish Mr S's responsibility for the balance. It just means they were both liable to pay it in full.

As only Mr S had accessed the account for some thirteen years, I feel that it was reasonable for Santander to ask Mr S to clear the overdraft when they did. This is not to say that in the event that Mr S did not do so, that the bank would not also have pursued his ex-wife for the entire balance prior to her passing. Considering all the points raised I see no reason as to why this would change after Mr S's ex-wife passed away and the sole responsibility be placed on Mr S. I believe that the bank acted fairly in these circumstances.

My final decision

I understand that my decision will not be what Mr S wanted, but for the reasons I have outlined above I am not upholding his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 May 2020.

Sarah Watts
Ombudsman