

Complaint

Mr K has complained about the overdraft fees and interest Santander UK Plc (“Santander”) applied to his current account. He’s said he was told that he’d only be charged if he exceeded the limit on his agreed overdraft.

Background and my provisional decision of 16 December 2021

One of our adjudicators looked at this complaint and thought that Santander shouldn’t have continued providing an overdraft to Mr K from November 2020 and it needed to refund all the interest, fees and charges it added from this point as a result. Santander disagreed so the complaint was passed to an ombudsman for review.

On 16 December 2021, I issued a provisional decision setting out my initial findings on Mr K’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started off by saying that I hadn’t considered whether the various amounts Santander charged Mr K over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with here.

That said, I did go on to say that while I wasn’t looking at Santander’s charging structure per se, it wouldn’t have acted fairly and reasonably towards Mr K if it applied these interest, fees and charges to Mr K’s account in circumstances where it was unfair to do so.

Mr K said it was unfair for Santander to charge him the fees it did because it led him to believe that he’d only pay interest, fees and charges if he exceeded his overdraft limit. And if he stayed within his agreed overdraft limit he wouldn’t pay anything at all.

I carefully thought about what Mr K said. I started my consideration of this matter by saying that I didn’t know what Mr K was told. But Mr K’s account was initially opened as a student account in 2011 and it was opened with an agreed overdraft facility. As Mr K was a student at this time, he would have benefitted from student overdraft terms and he wouldn’t have paid any interest, fees or charges as long as he kept with his limit. I hadn’t seen anything to suggest that Mr K did pay any arranged overdraft charges at this point.

However, Mr K’s student terms expired in July 2015. At this point he was switched to a graduate account. And as far as I could see Mr K’s overdraft facility was removed completely in November 2015. Mr K then made a new application for an overdraft facility in May 2019. But by this stage, he was no longer eligible for graduate terms and he’d been switched to one of Santander’s standard current accounts. As a result, Mr K’s new overdraft was provided on Santander’s standard terms where he’d pay interest/charges whenever he used it, even on an arranged basis. And the terms and conditions did clearly set this out.

I accepted that it was possible Mr K didn’t pay too much attention and instead assumed that his new overdraft would be provided on the same terms as his previous student one had been provided in 2011. But even if this was the case, I couldn’t hold Santander responsible

for this especially as Mr K continued using the facility even when he ought to have seen that he was being charged for doing so.

As this was the case, I set out that I hadn't seen enough to be sufficiently persuaded Santander misled Mr K into believing that he'd only be charged if he exceeded the limit on his agreed overdraft. And as the terms and conditions Mr K signed up to permitted Santander to charge Mr K in the way it did, I wasn't intending to uphold this part of the complaint.

Notwithstanding this, I also went on to say that it would nonetheless have been unfair for Santander to have charged or continued charging Mr K where it was aware, or it ought fairly and reasonably to have been aware he was experiencing financial difficulty. I noted that Santander had already refunded a significant amount of the charges applied in 2020 as a result of a review of its processes.

So I also looked through the transactions on Mr K's account to see if Santander ought to have been aware that Mr K might have been struggling and therefore needed to refund more of the charges it added to Mr K's account. And having done so, I didn't think that it did need to do that here. In doing so, I acknowledged that Mr K did use his overdraft regularly once it was provided in 2019 and he may have argued that this was in itself an indication he might have been struggling.

But while I wasn't seeking to make retrospective value judgements over Mr K expenditure, I didn't think that this was Mr K's main account. I said this because his salary didn't appear to have been credit to it and there didn't appear to be any bills going from it either. In effect, Mr K appeared to have been using this account to make non-committed, non-contractual and discretionary transactions.

I accepted neither of these things in themselves (or taken together) meant that Mr K wasn't experiencing financial difficulty. But there wasn't anything in Mr K's transactions in themselves which ought to have alerted Santander to potential financial difficulty. On the contrary what was going on on the account suggested that Mr K was using it for discretionary expenditure and that he had the capacity to significantly reduce his expenditure and ensure the facility could be repaid within a reasonable period of time.

So, in these circumstances, I didn't think that it was unreasonable for Santander to have proceeded with the interest, fees and charges it did add to Mr K's account. And I didn't think Santander unfairly charged Mr K in circumstances where it ought to have realised that he may have been experiencing financial difficulty. As this was the case, I didn't think that Santander needed to refund any of the interest, fees and charges, which hadn't already been refunded and I set out that I was intending to issue a final decision which didn't uphold Mr K's complaint.

I appreciate that this will be very disappointing for Mr K. But I hope he'll understand the reasons for my provisional decision and that he'll at least feel his concerns have been listened to.

Santander's response to my provisional decision

Santander didn't respond to my provisional decision or provide anything further for me to consider.

Mr K's response to my provisional decision

Mr K called us to confirm that he'd received my provisional decision. He said that he never received a refund in 2020.

My findings

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

I thank Mr K for his response. I know that Mr K says that he didn't receive a refund of some of the charges added to his account in 2020. I don't know how Santander communicated the result of its review into its historic practices was to Mr K. But what I can see and what's most important here is that Mr K's account transactions show Santander did make a credit for just over £200 entitled '*alert fee refunds*' on 12 August 2020.

So while it's possible Mr K may not have received a full explanation of what this was refund was for, I'm nonetheless satisfied that he was refunded a proportion of the charges added to his account in 2020.

Furthermore, I set out, in some detail, the reasons why I wasn't intending to uphold Mr K's complaint in my provisional decision. As neither party has provided any new arguments or information in relation to these matters, I've not been persuaded to alter my conclusions. And I'm still not upholding Mr K's complaint. I appreciate that this will be very disappointing for Mr K. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained and in my provisional decision of 16 December 2021, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 February 2022.

Jeshen Narayanan
Ombudsman