

The complaint

Mr R complains about account fees which have been applied by Santander UK Plc and not paying him any cashback.

What happened

Mr R holds a bank account with Santander and says they started charging an account fee when his account has always been free. And, he says they've never made any cashback payments to him. Mr R complained and Santander explained the account fee is part of the terms and conditions and is something which would've been set out in a key facts document sent to Mr R when he first signed up to the account. Santander said they're unsure why the account fee wasn't charged previously but Mr R has benefitted from this. Santander explained the reason Mr R wasn't receiving any cashback was because he hadn't been meeting the criteria.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr R and Santander on 1 August 2022. In my provisional decision I said as follows:

"My starting point is the terms and conditions of Mr R's current account. This says "The fee for maintaining the account is £1 per month." A later revised version of the terms and conditions says the fee for maintaining the account changed to £2 per month from October 2020. Both terms and conditions say the monthly fee is taken to cover the previous month and "The monthly fee will be taken every month from your account (including any months you do not qualify for cashback)..." and "Once you have met the cashback criteria for the first time, you will begin to be charged the monthly fee."

Santander say the terms and conditions allow them to charge a monthly fee regardless of whether the account holder meets the cashback criteria. Santander also say Mr R opened the account in December 2018 and should've always been charged the fee but they're unsure why he wasn't charged this until December 2020. They say this means Mr R's account was open for two years before he was charged and has therefore benefited by £27. I accept the terms and conditions do allow a monthly fee, but I don't agree Mr R has benefited by £27 over those two years. I say this because the terms and conditions, before and after October 2020, say the fee will only start to apply once Mr R has met the cashback criteria for the first time. And, from account and transaction information I've seen, Mr R met the cashback criteria for the first time in January 2021 – and I can see Santander aren't disputing this.

So, given Mr R first met the cashback criteria in January 2021, he shouldn't have been charged a fee until February 2021 – as the fee covers the previous month. So, over the two years Mr R wasn't charged a fee, I don't believe a fee was due in any event. This also means Mr R has been charged a fee for December 2020 and January 2021 when one shouldn't have been due as he hadn't yet met the cashback criteria for the first time. So, Santander have charged Mr R a total of £4 unfairly. But, given that Mr R has now met the cashback criteria for the first time, I don't think it's unreasonable for Santander to continue charging the monthly fee.

I understand Mr R is also concerned about not receiving cashback from his account. The terms and conditions set out the criteria to qualify for cashback, and this includes paying in at least £500 a month and logging into their online banking at least once every three months. Santander don't dispute Mr R has met this. But, the criteria also includes setting up Direct Debits for specific products and the account and transaction information shows Mr R didn't do this until January 2021. And, cashback was therefore paid to Mr R the following month. So, given Mr R wasn't meeting the full criteria for cashback on the months when it wasn't paid, I don't think Santander have acted unreasonably.

I understand Mr R queries what law or regulation permits Santander from breaching their own agreement and then look to apply those terms two years later. I hope Mr R will feel reassured with my reason on why he shouldn't have been charged the fee over those two years in any event. But, I don't think it's fair to expect Santander to not apply a fee going forward. There's no clause within the terms and conditions which suggests the account is free once the cashback criteria has been met. And, even if there has been an oversight by a business in not applying a fee for a period of time – when one should've been applied – I don't think that should automatically mean the business shouldn't apply the fee once they identify their oversight. While Mr R asks for any relevant legislation, I think the important and relevant information here is the terms and conditions – which allow Santander to charge a fee.”

So, subject to any further comments from Mr R or Santander, my provisional decision was that I was minded to uphold this complaint.

Following my provisional decision, Santander have responded to say they agree with my recommendations. Mr R has responded to say there was no requirement for a fee up to January 2021 but there was then no provision within the terms and conditions which allows Santander to charge a fee without notice to him. Mr R also says Santander can't prove they notified him of their fee increase from £1 to £2. Mr R feels Santander should now remove any fees and give him 30 days' notice of any fees which apply to his account so this will give him time to decide if he wishes to remain with Santander. Mr R feels Santander should also pay compensation for the worry and anxiety caused.

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 see no reason to depart from my provisional decision. So, I've decided to partly uphold the complaint for the reasons set out in my provisional decision and copied above.

I wish to reassure Mr R that I have carefully considered the points he has raised but I've addressed only those which I believe are relevant to my decision. I acknowledge Mr R's point about giving him notice but I believe Santander have notified Mr R of their fees. Firstly, there's the original terms and conditions sent to Mr R when he opened his account which confirm a fee is payable. Then there's the updated terms and conditions which explain the fee increase. I note Mr R says Santander can't prove this was sent to him, but Santander have provided a copy of the updated terms and conditions sent to all customers – so I believe this was sent. In any event, I can see the terms and conditions relating to Mr R's account are also available on Santander's website – so I think Santander have given notice of the fee increase. And, given that I believe Santander have given notice to Mr R, I don't

think it's fair in the circumstances to ask them to cancel all fees to date and provide 30 days' notice of the fees they wish to apply on the account.

I acknowledge Mr R's request for compensation and I wish to reassure Mr R I've carefully considered this. I think what's important here is to place Mr R back in the position he would've been in had the error not occurred – and that's achieved by asking Santander to refund the £4 he has paid for December 2020 to January 2021. But, that's not to say it was unfair for Santander to claim the account fee beyond this point. I understand Mr R feels a fee isn't due, but I've addressed why I believe it is. So, for about two years, no fee was charged so I can't say there's been any impact on Mr R. The two months he was incorrectly charged with be resolved by the refund. And, that's why I've partly upheld the complaint. And, the fees beyond this point, have been correctly charged. Taking this all into account, I won't be asking Santander to pay compensation. I do acknowledge Mr R has strong feelings about Santander continuing to charge him but, given that he has met the criteria to be charged, I don't think it's unfair for Santander to charge a fee.

Putting things right

I've taken the view that Santander have unfairly charged Mr R £4 for account fees which weren't due as he hadn't met the cashback criteria to begin charging him a fee until January 2021. So, Santander should refund Mr R £4.

My final decision

My final decision is that I partly uphold the complaint. Santander UK Plc must refund £4 to Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 October 2022.

Paviter Dhaddy
Ombudsman