

The complaint

Miss D complains that Santander UK Plc (Santander) should have defaulted her account in 2014.

What Happened

Miss D had a credit card from Santander. In December 2013, the balance was £1,578. She ran into financial difficulty and fell into arrears. In December 2013 she contacted a debt support charity (which I shall call A) for help - and entered a debt management plan (DMP). A payment offer of £17.16 per month was accepted. Miss D made payments to A from then on. On 5 March 2014, Santander sent to Miss D a Notice of Default with the arrears at £49.84 and the balance £1,543.98. From then on, Miss D's credit file showed either 'in arrangement' or 'DM' (meaning debt management plan). The payments of £17.16 were made regularly apart from period between August 2016 and Jul 2017 – when missed payments were shown on her credit file – as lower payments of £11 were made. With effect from June 2022, the agreed payments were reduced to £12.43 per month. As of January 2023, the balance was £71.63.

Miss D complained. She said she had run into financial difficulty in 2013-2014 and had dealt with her debts, which were then £23,000. Since then, she has made the agreed payments to her creditors – all of whom defaulted her account as she was in a DMP. She thought her account had also been defaulted by Santander in the same way - and had been told that by Santander. So – she was now upset that her credit file had been marked with missed payments throughout the period – event though she had made all the agreed payments to the debt charity A. Therefore, she said her credit file was affected for another six years from then on. She said she would've been better off by not making the payments and letting her account fall into default at the time – as her credit file would by now be cleaned up.

Santander said they'd made an error in a letter dated April 2014 as that mentioned the account had defaulted – when it hadn't. They said Miss D's account hadn't defaulted as she had continued to make the minimum monthly payments. They apologised for the error in the letter and sent Miss D a cheque for £50 by way of compensation.

Miss D brought her complaint to us and our investigator said Santander acted reasonably. He said Santander should pay another £100 for the poor service and the mistake in the letter. But otherwise, he said Santander were correct to not default the account as payments were being made. Santander said the account had never reached 180 days in arrears, so a default wasn't registered.

Miss D didn't agree, and she also said there couldn't be any missed payments (as shown on her credit file) as she had made the payments to A – who were responsible for sending the money each month to Santander (along with other creditors). She asked that her complaint be looked at by an ombudsman – and therefore it has come to me.

I reached a provisional decision which said:

I appreciate where Miss D is coming from. She says it was her fault she fell into financial

difficulty in 2013/2014 but faced up to her problems at the time and came to arrangements with all her creditors. She says all the payments have been made – and she is coming to the end of a long road with all of them. She says they all defaulted her accounts back in 2014 – as she was in a DMP, but Santander didn't – but she assumed they'd done the same. And if they had, the six years would now be up and she would have a clean credit file moving forward.

Santander argue that as Miss D made the minimum payments – they didn't default Miss D's account. An agreement of £17.16 per month was made – and as the minimum was 1% of the debt outstanding (which was £1,578), she effectively met the contractual minimum payments each month. And her credit file shows either 'DM' (in a DMP) or in 'arrangement'. And as these entries go up to the present time, they will remain on Miss D's records for another six years.

I asked some more questions and sought information from Santander; they showed us their customer notes, and letters sent to Miss D at the time. The customer notes show that in December 2013, the debt charity A contacted Santander. Miss D's disposable income was worked out at £291 per month and Santander accepted the offer of £17.16 per month. But we asked for letters sent at the time. Santander couldn't show us a letter which confirmed the payment agreement, but they did show us two letters from March 2014 – and these are important. One dated 5 March 2014 said *"We are writing to tell you that we plan to advise credit reference agencies that you have defaulted on your account because of your arrears balance. We will do this in 28 days' time if you have not repaid your outstanding balance or been in touch with us so we can come to an agreement to repay this amount in full....a default will stay on your file for 6 years..."*

And a letter dated 4 March 2014 said *"We have been approached by the Third Party company you have enlisted to help with your financial affairs...we understand you may be experiencing difficulties in repaying your outstanding commitments. We understand you will not be making the full payments to your credit card as agreed when you took the credit card out....there has been a breach of your agreement and I have enclosed a copy of our standard default notice for your attention"*.

Miss D has said she was told by Santander at the time that her account would be defaulted – and I think it is reasonable to say these letters confirm that. I think they are clear – that Miss D's account would be defaulted, and she was therefore reasonably entitled to think that would be the case. I also noted that they were sent some time after A had contacted Santander, and after two payments of £17.16 had been made – so Santander sent them in the knowledge of the agreed payments being made.

And – Miss D's account was then three months in arrears – when the letters were sent. Santander say they would normally default an account after six months' arrears. But guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. So – it was quite possible that Miss D's account could've been defaulted in March/April 2014.

Santander, in their final response, refereed to another letter dated in April 2014 which said Miss D's account had been defaulted – and said that was an error. But given the other strong evidence now produced, I don't think that is so relevant to Miss D's complaint. Miss D has also said she doesn't see how her credit file was showing missed payments between August 2016 and July 2017. Santander's records show she paid around £11 per month at that time – so it looks accurate. But the action I'm proposing will deal with that anyway.

And so – because of the letters sent to Miss D in March 2014; I think Miss D was entitled to consider her account had been defaulted at that time – in April 2014. And Santander should rework Miss D's credit file to show that. And advise the credit reference agencies. And because of the six-year rule, that means the default should have expired from Miss D's credit file in April 2020. It looks like there has been a late payment in April 2022. I think Santander are entitled to advise that to Miss D's credit file as they are obliged to.

It's clear from what Miss D had told us that she has gone through a long period of difficulty in terms of sorting out and repaying her debts. And so – to then be told that her account had not been dealt with in the way she was led to believe must have been very stressful and disappointing. She described to us also her current illnesses. Therefore, I think it is only reasonable that Santander pay additional compensation of £300 for what happened.

Responses to the provisional decision:

Miss D agreed, but Santander didn't. They said again that Miss D was in an arrangement for the period and made the agreed payments, so the account didn't go into default. They showed us the guidance from CRAs for defaulting accounts which said:

- Defaults should in generally only be recorded if an account is three months in arrears, and certainly if arrears reach six months.
- If an arrangement is agreed, then a default wouldn't normally be registered unless it is broken.

I now need to consider these further views and make a final 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.

I acknowledge what Santander have said in response to the provisional decision. But equally, they've only really repeated what I had considered when making the provisional decision. And – looking at the guidance Santander sent to us, it also says that a default may be recorded (if) *"The account is or has been included in a bankruptcy, CCJ, Individual Voluntary Arrangement (IVA) or similar..."* And – arguably, Miss D entering a debt management plan would be covered by this.

But I also come back to the main points of the provisional decision – that Santander wrote to Miss D – twice - in March 2014 to say they were defaulting her account.

And those letters were sent some time after the agency acting in the DMP had contacted Santander to propose the repayment programme in December 2013. So – the default letters were sent in the knowledge that the payment arrangement had been agreed. So – it doesn't appear that it did prevent Santander from saying they would default Miss D's account.

Therefore, while I'm grateful for the arguments that Santander have put forward, they don't change my final decision - which is unchanged from the provisional decision.

My final decision

I uphold this complaint. Santander UK Plc must:

- Re-work Miss D's credit file to show she defaulted in April 2014. The default will have

run off in April 2020. Credit reference agencies to be advised.

- Pay compensation of £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 3 April 2023.

Martin Lord
Ombudsman