

The complaint

Mr U has complained that Santander UK Plc (“Santander”) mis-sold him a fee-paying Reward packaged account in 2010 and a fee-paying 123 account in 2012.

Mr U says he was told having the two accounts was his only way of obtaining an overdraft.

What happened

Santander issued its final response letter and said that Mr U had complained too late about the sale of his accounts.

After Mr U referred his complaint to this service, one of our investigators assessed the complaint. They concluded that the complaint was not raised outside of the time limits that apply when using this service. The investigator then went on to assess the merits of the complaint, but they were unable to conclude that the accounts had been mis-sold.

Mr U disagreed with the investigator’s assessment, so the matter was referred for an ombudsman’s decision.

As this service had not received Santander’s file on the complaint, I issued a provisional decision on 27 August 2024, upholding the complaint. After I issued that provisional decision, Santander provided this service with its file and also maintained that Mr U had complained outside of the relevant time limits that apply when using this service.

Following this, I issued a decision on 4 September 2024, explaining why our service is able to consider Mr U’s complaint. I then issued another provisional decision on 9 September 2024 explaining why, following receipt of Santander’s file on this complaint, I was minded not to uphold Mr U’s complaint. I have included an extract of my provisional decision below, and it forms a part of this decision:

“What I’ve provisionally 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.

We’ve explained our approach to complaints about packaged bank accounts on our website, and I’ve used that to help me decide this complaint. I would also like to point out that where matters are in dispute and evidence is missing, as is the case here, I have to decide what I think was most likely to have happened, based on all the evidence that is available.

Having reconsidered everything that has been provided, I’m now currently minded not to uphold Mr U’s complaint. I will explain why.

Mr U says that he had a standard fee-free account and says he was led to believe that if he wanted an overdraft, the only way he could obtain one was by changing his account to the fee-paying Reward account.

In its final response letter, Santander says that the account was sold to Mr U on a non-advised basis and it would've provided Mr U with information about the account so that he could decide for himself whether to upgrade. Santander says that documentation issued at the time of sale would've made it clear that the monthly account fee was optional and that the monthly charge was specifically for the package of insurance and non-insurance benefits that were included with the account, rather than so that Mr U could have an overdraft.

In its response to my provisional decision, Santander has explained that due to how long ago Mr U's accounts were sold, it now has very limited information available to demonstrate what happened when Mr U upgraded his accounts. Santander has been able to show that Mr U had a £1,000 overdraft, but only since February 2015. It doesn't have information about whether Mr U had an arranged overdraft (and if he did, how much it was) before that date.

Mr U says that he only agreed to take out the Reward account to obtain an overdraft, but there is no evidence (other than his recollections) to show what was discussed. Nor is there any evidence to show whether he did take out an overdraft around the time of the sale of the accounts either. So in the circumstances, when deciding what most likely happened, I don't think there is enough evidence for me to safely conclude that the accounts were mis-sold.

To explain, for me to find in Mr U's favour, I would need to see some evidence that supports what he said happened. Just because Santander now no longer has records from that far back in time is not enough, in itself, to uphold Mr U's complaint. And other than the existence of an overdraft in 2015 – which was some years after Mr U took out the Reward account and the 123 Account – there is little that supports what Mr U has said.

I appreciate that in my previous provisional decision, I had found in Mr U's favour. So Mr U may question why the change in outcome. But I'd previously found in his favour only because Santander had not provided its file i.e. any evidence whatsoever, to support its final response on the complaint. Without seeing its file, I had no way of knowing what evidence Santander had in relation to the specific points that Mr U had made. But now that it has provided its file, I'm required to weigh up the likelihood of what Mr U has said happened against all of the information and evidence that is available. And it is the case that there is just not enough evidence for me to conclude, albeit on balance, that the accounts were likely mis-sold.

Overall, based on what I have seen, I think it's just as likely (if not more so) that Mr U had agreed to the Reward account and the 123 account because he was attracted to the benefits that they provided. I say this because firstly, I'm mindful that recollections can change and fade over time. And given that the events Mr U has complained about occurred around 14 and 12 years ago, I'm not able to place as much weight on Mr U's recollections as he would perhaps want me to.

Also, in 2010, the Reward account included a range of insurance, banking and other benefits. Included within the range of benefits was a £100 interest free overdraft facility, as well as lower rates of interest (compared to what a fee-free account charged at the time) on overdrawn balances above that amount - up to the arranged limit. So, I can't rule out the possibility that Mr U agreed to the Reward account

because he was told about, and attracted to, the benefits it provided - including the possibility of reducing his costs of using an overdraft, rather than it being the case that he agreed to it in the belief that he had no choice in the matter. I also note that Mr U had a fee-free current account before the Reward account. So I'm satisfied that he was aware that fee-free accounts were generally available.

Also, in terms of the 123 account, Mr U says that account was mis-sold as he was not told that fee-free accounts were also available for him to have with an overdraft. However, in 2012, when Mr U agreed to the 123 Account it cost £2 per month, but in return the account provided cash back at rates of between 1% and 3% on certain bill payments. It also paid credit interest at rates of between 1% and 3%, depending on how much was in the account.

Again, due to the lack of available evidence, I can't reasonably say that Mr U was misled into agreeing to this account. I say this because I think it's just as likely that Mr U agreed to the 123 account specifically to take advantage of the cashback and credit interest rates it provided. And given that the cost of the account was £2 per month at the time, it would not take much for the savings on the account to have outweighed the monthly cost. So again, I don't think there is enough evidence available for me to safely conclude that the 123 Account was also mis-sold.

I appreciate that the cost of the 123 Account did later increase, and so I recognise that it may not have been as good value for money for Mr U as it had been when Mr U first took it out. But that in itself doesn't mean it was mis-sold nor would it mean that Santander acted unfairly or unreasonably when Mr U changed his account.

My provisional decision

So based on everything that is now available, I'm currently minded not to uphold this complaint."

After I issued my provisional decision, Santander didn't respond, but Mr U did.

In summary, Mr U said that based on a balance of probabilities, the complaint should be found in his favour as he didn't use a single benefit of the account, other than the overdraft benefit. He maintained that he was told the Reward account was the only way he could get an overdraft. He also said that the sale of 123 account should also be upheld as the benefits used were 'automatic' and 'involuntarily' used. At most he says the benefit usage should be deducted from the refund of account fees.

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 reconsidered everything that has been provided, I still haven't seen enough evidence for me to conclude that the Reward or the 123 accounts were likely to have been mis-sold.

I note that Mr U maintains that he was led to believe that the Reward account was his only way to obtain an overdraft. But, as I explained in the provisional decision, there is no evidence (other than his recollections) to show what was discussed. Nor is there any evidence to show whether he did take out an arranged overdraft around the time of the sale of the accounts either.

Due to the lack of evidence, I don't know when Mr U first applied for an arranged overdraft nor do I know if he had one before the Reward account was sold to him. And I can't uphold Mr U's complaint simply because there is an absence of evidence of Mr U's overdraft history from the time of the sale. I say this particularly given that the sale of the Reward account happened a long time ago and also given that the Reward package was removed from Mr U's account (due to it being changed to a 123 Account) many years ago too. So I don't find it particularly surprising that Santander now can't provide such historical information about Mr U's account.

I note that Mr U says that he didn't use any of the account benefits and this is further evidence that he only agreed to the account because he thought he had to, to obtain an overdraft. However, as Santander's records don't go that far back, again I have no way of verifying whether Mr U did or didn't use the benefits provided by the account, in the time that he held the Reward account.

In terms of the 123 account, again there is a lack of evidence to show what occurred during the sale. Mr U says that he did not ask for it or 'use' the rewards included with the account. But, at the time the account only cost £2 per month, and provided cash back on a number of bill payments. I've not seen anything to suggest that Mr U was ineligible to receive the cashback provided by the account. And, given the low cost of the account and how easily it would've been for the rewards earned on the account to have outweighed the monthly cost, I can't rule out the possibility that Mr U agreed to it for that reason, rather than because he was misled into thinking he had no choice in the matter.

So in the circumstances, when deciding what most likely happened, I don't think there is enough evidence for me to safely conclude that the packaged account or the 123 account were mis-sold.

My final decision

Because of the reasons given above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 28 October 2024.

Thomas White
Ombudsman