

The complaint

Miss S complains Santander UK Plc ("Santander") closed her account after 30 days' notice in December 2023 because of a fraud marker which had incorrectly been registered against her by another bank in 2021. Miss S is also unhappy Santander demanded full payment of her overdraft which she couldn't afford to pay off, and which has subsequently fallen into default.

To put things right, Miss S wants Santander to reinstate her account so she can repay her overdraft in line with her affordability.

What happened

The details of this complaint are well known by both parties, so I won't repeat them again here in detail. Instead, I'll focus on setting out some of the key facts and on giving my reasons for my decision.

Following a review in which Santander discovered Miss S had had an adverse CIFAS marker applied against her by another bank (Bank M) in March 2021. Santander then notified Miss S that it would be closing her account with immediate effect and in 30 days' time. Santander restricted Miss S' account but it still allowed credits to be paid into it and regular payments like direct debits, to go out.

Unhappy with Santander's actions, Miss S complained. Santander didn't uphold Miss S' complaint about the closure of her account. Santander informed Miss S it had taken these actions due to the CIFAS marker applied against her which it had discovered. Miss S explained that she had started proceedings against Bank M to have this removed. Santander explained that it must act on this adverse information, but if the marker is removed, Miss S will be able to appeal the decision.

In November 2023, after the closure notice was given to her, Miss S received her salary into her account which took her out of her overdraft balance. Miss S had direct debits on the account which she had not arranged, at that point, to be cancelled. These direct debits then began to debit the account in line with their date of payment.

Miss S then transferred around £979 which was the remaining credit balance on her account on 29 November 2023. Miss S says she didn't think her direct debits would be paid from the account, so she took out her funds when her salary was paid.

Other direct debits then went out of Miss S' account leading to it going overdrawn for around £966. Santander sent letters to Miss S in January 2024 asking her to repay her overdraft debt of around £996 within 14 days'. Santander then sent Miss S a default notice, and later in February 2024 said it had defaulted her account and credit reference agencies will be duly notified.

Santander say Miss S should have been aware that direct debits were still active on her account as nine had already been paid out. And that it appears Miss S didn't contact the rest of the companies that were due to debit her account to make alternative arrangements. So

despite knowing she had taken funds from the account, her direct debits were still being debited given the account had not at that time been closed.

Santander say it paid ten more direct debits from Miss S' account after she withdraw her funds. It adds that Miss S has therefore benefitted from these funds and should repay it the debt she owes or set-up a repayment plan. Miss S had the opportunity to contact Santander's collections team and was sent several letters making her aware she needed to repay the debt, or the account would be defaulted. But as Santander didn't receive a response, it defaulted Miss S' account in March 2024, and the debt was written off to an external agency.

Miss S referred her complaint to this service. She explained to one of our Investigator's that:

- The CIFAS marker is now being removed by Bank M
- Miss S couldn't access her banking app or online banking when her account was restricted by Santander. And she could only access her wages by calling Santander and having them transferred to a nominated account
- She was sent around £949 by Santander following wages going in of £2,700. Miss S assumed some of her bills had been paid and the overdraft with Santander was settled. So the money she had transferred represented what was hers after meeting any payment obligations
- Santander wanted the overdraft paid off in seven days and has now passed it to debt management
- Miss S had no other account at the time, and is now having to use her mother's

Santander explained that it hasn't written off Miss S' debt and she is required to pay it back. And it now understands the CIFAS marker has been removed, but at the time of closing the account it wasn't aware there was a dispute with Bank M.

Our Investigator attempted then to resolve the complaint informally with Santander saying they didn't think it had acted fairly, that it should have given 90 days' notice to close, and more should have been done to reverse the default it had applied given Miss S' circumstances and the CIFAS being removed. They also said Santander was put on notice by Miss S in December 2023 that they were disputing the application of the fraud marker. Santander didn't agree it had done anything wrong and said the fault lay with Bank M.

Our Investigator then sent both parties their recommendation to uphold the complaint. In summary, their key findings were:

- Santander was entitled to close Miss S' account based on the information they had at the time. But they can't see any reason as to why Miss S was prevented from using her account in the usual way and by accessing her online banking during the notice period
- Santander gave Miss S 30 days' notice, but it should have given her two months' notice. So Santander should pay Miss S £200 for the distress and inconvenience she's suffered in having to rearrange her finances in the way she did, and not having access to her online banking during the notice period
- There isn't any evidence Miss S responded to Santander's debt collection letters. So Santander acted fairly given overdrafts are generally repayable on demand – and it

has offered Miss S to set-up a repayment plan on more than one occasion

- As Santander was entitled to close the account, they won't be asking it to reinstate it and reconstruct the overdraft balance

Santander didn't agree with what our Investigator said. Santander said it hasn't made an error and acted in line with its policies and terms of account. And that the fault lay with Bank M who should compensate Miss S.

Santander added that due to the overdraft debt the account remained open past the 30 days' notice period, and direct debits were still being attempted. So this demonstrates that even with a longer notice of closure period, it's unlikely Miss S would have sorted her finances out in time. And Miss S didn't need access to her online banking given rearranging the direct debits is something she needed to do with the merchants directly.

As there was no agreement, this complaint was passed to me to decide. I then sent both parties my provisional decision in which I said I was planning on upholding this complaint in part. For ease of reference, here is what I said:

Provisional decision

"I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything Miss S and Santander have said before reaching my decision.

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 am planning to decide to uphold this complaint in part. I'll explain why.

Account closure and notice period

Banks in the UK, like Santander, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

Santander is entitled to close an account just as a customer may close an account with it. But before Santander closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account, which Santander and Miss S had to comply with, say that it could close the account by giving her at least two months' notice. And in certain circumstances it can close an account immediately or with less notice.

The CIFAS marker was applied against Miss S by Bank M around two years before Santander discovered it. Santander didn't have any other concerns about Miss S and her banking activity. Miss S also immediately explained that it had been applied in error, and as

she now knows about it, she will challenge Bank M.

Taken together, I'm persuaded that in these circumstances Santander shouldn't have closed Miss S' account and applied restrictions in the way it did. By giving her less than two months' notice and restricting her account, albeit partially, I'm persuaded this is tantamount to an immediate closure. Santander said as much in its closure notice.

So though Santander was entitled to close Miss S' account, it should have done so by giving her unrestricted access and two months' notice. I'm persuaded given the reasons above that this would've been a fair application of its terms and conditions.

It's unlikely however by giving 60 days' notice, Miss S would have been able to mount an appeal which Santander suggested given Bank M agreed to remove the CIFAS marker on 28 March 2024. But equally, Santander's final response in which it said she could appeal the closure didn't specify up until what point. So I think it was reasonable for Miss S to rely on this to reinstate her account once she resolved the marker issue with Bank M.

It took Miss S a little over three months to resolve the CIFAS issue with Bank M which required this service's intervention. I don't think this is unreasonable nor that she didn't act with haste. I will come back to this point later in my decision.

Overdraft debt and default

Santander's notice of closure letter dated 13 November 2023 doesn't say anything about direct debits continuing to be paid on the account up until closure. Nor does it say exactly what restrictions applied. Santander has clarified to this service that regular payments and credits would've been permitted. It also appears Miss S couldn't use her mobile banking app nor any other form of online banking.

Miss S has explained why she withdrew some of her money as the account was in credit by that much. She's also said she wasn't sure if direct debits would be taken and so assumed they had been cancelled given the closure. I don't think this is an unreasonable position given Santander didn't explain what restricting the account meant in Miss S' case. And Miss S couldn't check her balance and transactions using online banking.

It's unfortunate the direct debits were then taken which led to her account going back into an overdraft balance. I do accept Miss S has benefited from the use of this overdraft facility given payments were for goods and services she uses and pays for through direct debits. But, given the reasonable anxiety of losing her job, which such a marker could impact, and the inability to pay off over £900 in such a short space of time which Santander demanded, I can see why she failed to address this matter and agree a repayment plan.

I also think, and importantly, that had Miss S been given two months' notice of closure with unrestricted access to her banking services, she wouldn't have removed any credit funds until closure. This would've meant that her balance at the end of that period would have been a true reflection of what money she had in credit. She would also have had an opportunity to complain to Bank M about the application of the CIFAS marker and what she needed to do to get it removed.

Because of these reasons, I'm persuaded on balance that Santander should reconstruct Miss S' overdraft balance as it should be at the point of closure. It's not clear if Santander has sold the debt to an external debt management company as it also said that the debt isn't written off and Miss S needs to make a repayment arrangement. So to put things right, Santander should either:

- (a) If the debt is with Santander: remove any default markers and adverse credit with credit file agencies, and agree a repayment arrangement with Miss S in line with its normal collection processes; or*
- (b) If the debt is with an external debt management company: buy back the debt and reconstruct the debt internally at Santander at no cost to Miss S. And then agree a repayment arrangement with Miss S in line with Santander's normal collection processes. Santander should also remove any default markers and adverse credit with credit file agencies before doing so*

In summary, I'm persuaded that in the circumstances of this complaint this would be a fair resolution to the overdraft debt and its repayment to Santander. In reaching this conclusion, I'm aware that overdraft debts are generally repayable on demand. But Miss S is having to repay it in this way because of the fault of an external financial provider, and for not being told clearly enough what restrictions applied on the account, and not being able to review the transactional status of her account.

Fair compensation

Santander should have given Miss S two months' notice of closure, and in not doing so I'm persuaded that the adverse impact to her has been more than it should have been. For the reasons above, I'm planning on awarding Miss S £300 compensation for the distress and inconvenience she's suffered.

I won't be asking Santander to reinstate Miss S' bank account given I think it was entitled to close it, albeit with two months' notice. Miss S should be able to get another account now that the CIFAS marker has been removed. And it's at Santander's discretion if it wishes to offer her a new account given what it now knows about the adverse fraud marked being applied incorrectly"

The deadline for both parties to respond has now passed. Miss S hasn't responded. Santander says it's happy to settle the complaint in line with what I said in my provisional decision.

I will now decide this complaint.

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 have decided to uphold this complaint in part. I am doing so for the reasons in my provisional decision – as above.

Santander say it has arranged for Miss S' debt to be recalled and it now requests for her to contact it to make arrangement to repay the balance. Santander add that it will need to wait until Miss S has repaid the debt before it can rectify her credit file, as whilst there is still an amount outstanding, this will continue to report to the credit reference agencies.

Having carefully considered this point, I'm satisfied Santander is acting fairly in putting things right for Miss S.

Putting things right

So, to put things right, Santander must do the following, if it hasn't done so already:

- Recall the debt and reconstruct the debt internally at Santander at no cost to Miss S. And then agree a repayment arrangement with Miss S in line with Santander's normal collection processes. Santander should also remove any default markers and adverse credit with credit file agencies once Miss S has repaid her debt
- Pay Miss S £300 for the distress and inconvenience she's suffered

My final decision

For the reasons above, I have decided to uphold this complaint in part. Santander UK Plc must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 9 January 2025.

Ketan Nagla
Ombudsman