

The complaint

Mr W complains that Santander UK Plc ('Santander' or the 'bank'), has unfairly removed a fixed payment mandate which he set up to repay his flexible loan facility ('flexi loan' or the 'account'). He also complains about Santander being unable to evidence that it sent him a letter in 2010 about changes to his account.

What happened

As both parties are familiar with the background to this complaint, I will provide a summary of this below.

Mr W has had a flexi loan since November 2001. His account was originally with Cahoot, but this was migrated to Santander in 2010. Prior to the migration, flexi loan account holders were allowed to increase the amount they borrowed – this was referred to as a 'drawdown'. In October 2002, Mr W requested a fixed direct debit monthly payment of £200 to be paid 'until further notice'. Subsequently, he made two drawdowns which impacted on the minimum repayment amounts he had to pay. From 2010 onwards, his monthly repayments started to decrease below £200. And by 2020, he was repaying just under £80 a month.

In 2020, Mr W complained to Santander about the fixed payment mandate no longer being in place. Santander rejected his complaint saying it acted in line with its terms and conditions. Mr W only referred this complaint to us in 2024. At this point, he had referred another complaint to us related to a Subject Access Request ('SAR') which he said showed Santander hadn't sent him a letter in 2010 about the changes to his account (the '2010 letter').

When Mr W referred his 2024 complaint to our service, Santander consented to us also looking at the complaint from 2020. However, our investigator didn't recommend upholding Mr W's complaints, so the matter was referred to me for a decision. I issued a provisional decision giving additional reasons as to why I wasn't intending to uphold the complaint. Santander agreed with my provisional decision, but Mr W disagreed. In summary, he said: some of my comments are contradicted by the information he received from the SAR; his complaint was also about Santander not being able to provide a record of the 2010 letter; a change of address form was never sent to him – in any event, his mother's address was used up until he changed his address, so he would've received the 2010 letter as well as statements from Santander if these had been sent; there's a significant number of assumptions being made about what he should have noticed in terms of the flexi-loan repayments being taken from his business bank account; and the matters giving rise to this complaint, have impacted negatively on his mental health.

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.

Mr W has provided further submissions in response to my provisional decision, which I've summarised above. I thank Mr W for taking the time to respond to my provisional findings. However, I can't see that he's provided any persuasive evidence or anything substantially

new, which changes my mind from the findings set out in my provisional decision. So, I remain of the view that this complaint should not be upheld. My reasons are set out below which largely repeat what I said in my provisional decision.

I should note at the outset that Santander has consented to our service looking at Mr W's complaints including the one he referred to it in 2020, which may have been time-barred. Given this, I will consider the merits of Mr W's 2020 complaint as well as his 2024 complaint. I should also note in reaching my conclusions, I've read the whole file, but I'll concentrate my comments on what I think is relevant. This reflects my informal remit.

In terms of the SAR complaint, from what I can see, as the 2010 letter was sent to Mr W more than six years before his SAR, I don't think it is surprising or unusual that Santander no longer has a copy. Businesses typically don't retain documents for more than six years and in some cases, for shorter periods than this. Mr W says Santander isn't consistent with what it has kept and what it has not. But all businesses have different retention policies for different types of documents. Whilst Mr W thinks banks have an 'atrocious' record when it comes to being transparent, my role is to make a decision on the particular facts of this case. And for the above reasons, I think Santander has acted fairly in reasonably in terms of how it responded to Mr W's SAR.

Turning to Mr W's main complaint, under Cahoots terms, customers could set up a fixed direct debit payment over the minimum monthly repayment amount, which Mr W did in 2002. Cahoot's terms allowed customers to set up this type of arrangement for a specified period, or on an ongoing basis, which would then only change if the customer changed it. However, Santander says that if the repayments changed due to further borrowing, leading to minimum repayments being higher, this would 'reset' the amount to be paid to the minimum repayment amount in line with the terms of the account.

Whilst I accept this may be the case if the minimum repayment needed to be more than the fixed direct debit amount, I'm not persuaded this would have 'reset' the fixed direct debit instruction once the minimum repayment fell below the fixed amount when Mr W's account was still with Cahoot. From what I can see from reviewing Mr W's repayments, at least on the face of it, it does appear that whilst his account was with Cahoot the fixed amount remained in place, even after further borrowing. But this seems to have changed following the migration of his account to Santander with his repayments falling below £200 from August 2010 onwards. The key question, therefore, and the main crux of Mr W's complaint, is whether Santander told him about this in 2010 following the migration of his account. I also need to consider what Mr W would likely have done even if he received clear information about his direct debit changes.

In terms of what Mr W was told about the changes to his direct debit, due to the passage of time, the information I have relating to this matter, is limited. From the information I do have, this does suggest Mr W was provided with some information about the migration of his account to Santander. The bank's system notes relating to Mr W's account record that in 2010, he was sent several notifications about the migration. One note stated: "*Notification that the UCL is migrating to Santander*" (UCL being the flexi loan). System notes indicate Mr W was sent notifications about the migration on 13 and 25 January as well as 19 March 2010.

Mr W says he doesn't recall receiving anything from Santander and he is not convinced the system notes show Santander notified him of the change regarding his direct debit. I appreciate Mr W's views on this matter but due to the passage of time, I don't think he can say with any certainty what the contents of any letter or notice would have been and/or whether he received it or not. Overall, given the summary of the system notes I've seen, I think Mr W was told about the migration of his account to Santander and I consider it's more likely than not that he, along with other customers, would have been told about any significant changes to the way their accounts would operate under the administration of Santander.

I should also note that even if it wasn't made clear to Mr W in the 2010 notifications, I can see there was other information available to him that would have shown him his fixed direct debit had been reset to the minimum monthly repayment, meaning he would have needed to arrange to reset this with Santander if he wanted to continue making overpayments on his account. On the point about what information Mr W had about his flexi loan account, I should start by saying I can't be sure he was receiving the flexi loan statements prior to 2020. From what I can see Santander had an address for Mr W up until 2013, which he had not lived at since 2005. In December 2013, Mr W did provide an updated contact address, but Santander said it didn't receive the 'change of address' form it sent to him, so the address was not updated.

But even if Mr W wasn't receiving the flexi loan statements, he did have access to his bank statements from which the repayments were taken. These statements would have shown monthly repayments being paid towards the flexi loan account including the following repayments: August 2010 - £199; August 2011 - £180; August 2012 - £163; August 2013 - £148; August 2014 - £134; August 2015 - £121; August 2016 - £110; August 2017 - £99; August 2018 - £90; August 2019 - £81. So, in the absence of what he may have been told in the 2010 notifications, or sufficient evidence to show he was receiving flexi loan statements, I still think Mr W did have information available to him to show he was no longer paying the fixed direct debit amount of £200 from August 2010 onwards.

Mr W says because the repayments were being taken from a business bank account which had 'thousands of pounds paid from it', he hadn't noticed the flexi loan repayments decreasing. However, given the prolonged period of just under ten years over which Mr W says he hadn't noticed the amount he was repaying each month, I'd need to be persuaded beyond his testimony, that he did not check – or could not have reasonably checked – his bank accounts statements for all of this time. This was a business bank account which if, as Mr W says, had thousands of pounds running through it, I would've expected some checks on personal expenses coming from it at least yearly for accounting purposes.

Further, I can see evidence of Mr W conducting some checks during this ten-year period long before he raised concerns with Santander in late 2019. In December 2013, Mr W made a note of a phone call he had with Santander during which he was told what the balance was. He noted this figure in a follow up letter to Santander on the day of the call. So, given the length of time over which repayments were taken from Mr W's nominated bank account, and the evidence of him conducting at least one check directly with the bank, I'm not persuaded, on balance, that he did not check – or at the very least, could not have reasonably checked – his flexi loan repayments during the whole period in question.

Further, even if I were satisfied that Mr W didn't notice the amount of the repayments for a period of ten years, I can see even once he knew he wasn't paying £200 each month, and in fact, was paying significantly below this amount, he didn't take any action to rectify the situation. When he called Santander in late 2019, he says he started to receive flexi loan statements. I can see the earliest of these statements is February 2020 and this shows the repayment due for that month was £77. But from what I can see Mr W still didn't take any steps to pay above the minimum repayment amount. So, I'm not persuaded that Mr W would have continued to repay the fixed amount of £200 even if he'd been notified of this earlier. And I can't fairly or reasonably conclude based on all the available evidence, which as I've said is limited due to the passage of time, that Santander was the cause of the losses Mr W says he has suffered as a result of not overpaying on his flexi loan account.

In response to my provisional decision, Mr W said his complaint was also about Santander not being able to provide a record of a letter being sent in 2010 despite members of its complaints team telling him it was likely any notice sent would have been by letter. He says he shouldn't have to repay the outstanding balance if Santander can't show a record of a

letter being sent in 2010. Mr W adds that if a letter was sent to the address Santander had for him, which he says was his mother's address, this would have been received. For completeness, I note Santander's records don't say how the notifications were sent. It simply indicates three notifications about the migration were sent to Mr W between January and March 2010. So, this could have been by email or uploaded to Mr W's then Cahoot account. I don't think Santander not having a record of how, or where exactly, the notifications were sent, is unreasonable given Mr W's SAR was made fourteen years after the migration and almost ten years after his first complaint.

Mr W referred to assumptions I made about him noticing the repayments being taken from his business bank account. Where the information is incomplete or contradictory, I've based my decision on what I think is more likely to have happened in light of the available evidence which as I've said, in this case, is limited. But as I've set out above, in addition to the information available to Mr W via the business bank account, I also took into account the information he received from Santander in 2013 about his outstanding balance and also the flexi loan statements, which he doesn't dispute receiving from, at the latest, early 2020.

Finally, I acknowledge what Mr W has said about the impact of this issue on his mental health. I'm of course sorry to hear this is the case. I also appreciate Mr W doesn't feel I have reached my decision taking into account everything he says, but I can only reassure him that I have. My role is to come to a decision which is fair and reasonable in all the circumstances of the case, which is what I've done after reviewing all the evidence and information available to me. And whilst I know this will be a disappointing outcome for Mr W, I don't think there is sufficient evidence to support upholding his complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 April 2025.

Yolande Mcleod
Ombudsman