

complaint

Mr B complains Santander UK plc failed in its duty of care when it offered him an overdraft and also failed to explain the overdraft charges.

background

Mr B says when he went to his local branch many years ago to get an overdraft he wasn't told about the charges. He also says the charges are higher than other banks and he is in financial difficulties.

Santander has said Mr B can transfer his account to its collections department. If he agreed, he would need to pay it £31 a month as part of a managed process of clearing the overdraft. Whilst with collections no arranged overdraft fees would be applied. The account would also be subject to restrictions on use. Mr B has declined Santander's offer saying he can't afford £31 a month.

The adjudicator did not recommend the complaint should be upheld. In her view:

- it is not within our remit to set the pricing policies for the financial businesses we cover so she couldn't tell Santander its prices were too high;
- Mr B was informed about the charges when he applied for the overdraft and each time he complained about the charges (which happened in 2009, 2010 and 2011);
- a bank isn't required to refund charges because a customer is in financial difficulties; and
- the bank has not made an error in applying the charges.

Mr B disagrees. He says his solicitor says he has a strong case.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr B has said Santander failed in its duty of care when it offered him the overdraft in the first place. Santander hasn't provided details of the assessments it made at the time Mr B was first allowed an overdraft. Given banks are not required to keep records indefinitely and the overdraft was put in place over six years ago I am not surprised that there are no records for me to view. To decide if lending was irresponsible I really need to look at the circumstances which existed at the time of the lending. But where the records aren't available for me to do this I can look at other evidence and draw my conclusions from that evidence. I've looked at Mr B's bank statements for 2008. And from this I can see Mr B's account, whilst frequently overdrawn, was never more than £400 overdrawn and so never over the agreed overdraft. On the basis of the evidence I have I don't consider I can fairly conclude Santander breached its duty of care to Mr B when it offered him an overdraft.

I have looked at the charges applied and read the terms and conditions of the account. I can't see any evidence the charges have been applied incorrectly. I also agree with the adjudicator there is clear evidence Mr B was informed of the charges on a number of occasions.

As the adjudicator has explained, when a customer is in financial difficulties a bank has an obligation to respond positively and sympathetically – this doesn't mean it has to refund charges. Santander has offered to transfer Mr B's account to its collections department. It has also provided details of debt advice charities. I consider it has responded to the information Mr B has supplied about his financial difficulties positively and sympathetically.

I urge Mr B to continue to work with the bank and to give it information about his current financial position. I remind the bank of its on-going obligation to respond positively and sympathetically.

Mr B has said his solicitor says he has a strong case that the bank breached its duty of care. Mr B is not bound to accept my decision. If he does not, he will be free to pursue the matter against the bank by other means, including in court, if he wishes.

my final decision

My decision is that I do not uphold this complaint.

Nicola Wood
ombudsman