

complaint

Mrs R has complained that Santander UK Plc ("Santander") mis-sold her a Premier 50 packaged bank account in 2010.

background

I attach my provisional decision of 3 April 2018, which forms part of this final decision.

In my provisional decision I set out why intended to uphold Mrs R's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, Mrs R confirmed that she agreed with my decision. She also provided further information on her medical conditions and her financial circumstances. Santander also responded to my provisional decision. And in summary it said:

- the Premier 50 account offered a preferential charging structure as one of its benefits. So an account which didn't charge fees would have been attractive and this benefit is likely to have been promoted at the time of sale;
- what Mrs R has said suggests that she was aware of the travel insurance and that she intended to rely on it.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've carefully thought about all of the further arguments that Santander has made. But having done so, I've not been persuaded to alter my conclusions. I'd like to explain why.

I have to say that I find Santander's points on Mrs R's financial situation to be somewhat contradictory. On the one hand, it appears to accept Mrs R's finances were distressed and so an account which restricted the amount she'd pay in charges would have been useful to her - so it would have been promoted to her on this basis. And on the other hand it says credits to Mrs R's account suggest that I overestimated just how distressed her finances were.

The first thing to say is that if Santander suggested to Mrs R that the account would be right for Mrs R because of the preferential charging structure then this would suggest that it was recommending the account to her. This is even if its sales process was designed to provide recommendations.

I say this because it would be clear that the account was being offered to Mrs R because of her financial circumstances – suggesting that some kind of review of her finances took place. So Mrs R was reasonably entitled to believe that, as she says, Santander was selling her the account on the basis it was the right one for her. And by doing this Santander would have been under an obligation to ensure the package as a whole was right for her – including (given the seriousness of them) checking with the insurer to see the extent it would have been prepared to cover Mrs R's medical conditions. I can't see any of that happened here.

I'm also mindful that, rather than assisting someone – such as Mrs R – who appears to have been struggling financially, it appears as though Santander's first instinct was to sell them a financial product their circumstances suggest they could ill afford. I appreciate that the

account might've limited the amount of paid items fees that a consumer incurs. But it seems to me that this amounted to Mrs R paying Santander a monthly fee for it to not lend her further money – she doesn't appear to have been in a position to afford - by not allowing payments she didn't have the funds for. I don't think that this was a fair and reasonable response to Mrs R's financial position.

I accept that Mrs R did credit funds into her account shortly after the sale. But it looks like these were earmarked to pay creditors. Mrs R statements show this is most likely to have been the case. And it's a few months before she does to return to a positive balance. I'd also add that I think it's unlikely that Mrs R would've had as much short-term lending as she did if her financial circumstances were as healthy as Santander is appearing to suggest.

I've also thought about what Santander has said about the travel insurance. My provisional decision did acknowledge that there was a possibility Mrs R agreed to the account in anticipation of her finances improving and ahead of future travel. But given just how distressed Mrs R's finances were at the time the account was sold, I didn't think it is more likely than not that this was case. And while Santander has referred to a flight booking, as far as I'm aware the airline concerned didn't fly to the destination that it is referring to Mrs R having taken the travel insurance for.

Equally given just how serious Mrs R's medical conditions were I, in any event, think that the travel insurance included on the Premier 50 account was unsuitable for her. This is especially when this is taken together with Mrs R's financial position. And as Santander appears to be suggesting the account was offered to Mrs R because of her circumstances (in other words that it was recommended), I think that Santander ought to have checked whether Mrs R's conditions would have been covered before she left the branch.

I'd also add that I disagree with Santander's assertion that a consumer doesn't need to be made aware of all the benefits during a sale. I think that a bank is required to make a consumer aware of all the benefits on a given package in order to have met their information needs.

While it might be the case that a consumer won't have lost out, even if their information needs weren't met, if they still wanted, needed and could use a significant proportion of the overall package, Santander hasn't shown me enough to persuade me that's the case here. And as this is the case, I've not seen enough here to be able to safely say that Mrs R was provided with clear enough information when she was sold the Premier 50 account.

Having carefully thought about everything provided (including the further points made by Santander), I still think that Mrs R wasn't provided with clear enough information when she was sold the Premier 50 account. And I also think that Mrs R lost out because of this. So I think that Santander needs to put things right.

my final decision

For the reasons set out above and in my provisional decision of 3 April 2018, I'm upholding Mrs R's complaint.

Santander UK Plc should pay Mrs R compensation in line with the instructions set out in my provisional decision of 3 April 2018.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs R to accept or reject my decision before 29 May 2018.

Jeshen Narayanan
ombudsman

Copy of Provisional Decision

complaint

Mrs R has complained that Santander UK Plc ("Santander") mis-sold her a Premier 50 packaged bank account in 2010.

background

One of our adjudicators looked at Mrs R's complaint. And he didn't think the Premier 50 account was mis-sold. Mrs R disagreed and asked for an ombudsman to look her complaint.

my provisional findings

I've considered all the available evidence and arguments and I've provisionally decided what I think is fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me provisionally decide Mrs R's complaint.

I've carefully thought about everything I've seen on this complaint. Having done so, I'm intending to uphold Mrs R's complaint. I'd like to explain the reasons for this.

Santander says the Premier 50 account wouldn't have been recommended as its sales process didn't involve providing recommendations to consumers. And Mrs R hasn't been able to tell us much about any discussion at the time of sale either. In these circumstances, I haven't seen enough to be able to say that Santander recommended the Premier 50 account to Mrs R.

So Santander didn't have to check if the account was right for Mrs R. And it was up to Mrs R to decide whether the account was right for her taking into account what the package included. But Santander did have to give her clear enough information on things such as the monthly cost, the key benefits, and the key limitations and exclusions on them so that Mrs R could do this. And I haven't seen enough to be able to say that Santander did that here.

To explain, I don't know what Mrs R was told at the time or what information she was provided with. I've seen a generic Premier 50 Current Account declaration. But as it's not been signed by Mrs R I've got no way of knowing what part, if any, it played in the sale. What I do know is that when Mrs R took the Premier 50 account it cost £10 a month. And the main benefits it included were travel insurance, card assist and identity theft assistance. So I think that clear enough information would've highlighted these things – as well as the key limitations and exclusions. And this way a consumer would've been able to decide if they'd use the enough of the benefits to make it worth their while paying the £10 monthly fee.

Santander has provided me with copies of Mrs R's statements from around the time she took the Premier 50 account out. And having looked at them, I can see Mrs R was regularly exceeding her overdraft, was incurring paid item fees and was borrowing from a number of different short-term lenders. So it seems to me Mrs R's finances were distressed, money was tight and she was borrowing from whoever would lend to her just so she could make ends meet.

I also haven't seen anything to suggest that Mrs R was interested in or had a need for identity protection or card assist either. And while I've seen Mrs R's comments about the

travel insurance and it being unsuitable for her (which I'm inclined to agree with), Mrs R's finances at the time of the sale suggest to me that travel is unlikely to have been in her contemplation at that stage – although I do acknowledge did go on to travel some time later.

I accept that it's possible Mrs R agreed to the account in anticipation of her finances improving and ahead of future travel. But given just how distressed Mrs R's finances were, I don't think that this is most likely the case. And as Mrs R appears to have had little need for the other benefits, I can't imagine she would've committed to this additional cost when she couldn't really afford to had she been provided with clear enough information on the account. As this is the case, I've not seen enough here to be able to safely say that Mrs R was provided with clear enough information when she was sold the Premier 50 account.

Having carefully thought about everything provided, I, at the moment, think that Mrs R wasn't provided with clear enough information to decide if the Premier 50 account was right for her in her circumstances. And I currently think that Mrs R has lost out because Santander didn't provide her with clear enough information when selling her the Premier 50 account. This means that Santander should put things right.

what I think Santander should do to put things right

To put things right, I propose that Santander should put Mrs R back into the position she would've have been in, if she hadn't taken out the Premier 50 account. So Santander should:

- refund and pay to Mrs R the fees she paid for the Premier 50 account; and
- add interest at 8% per year simple on each of the fees from the date they were paid to the date of settlement[†];

If Santander is able to work out any *additional* savings Mrs R has made from holding the account **and** it can show these calculations to her, it may, if it wants, deduct this additional saving from any compensation that is paid.

[†]HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mrs R a certificate showing how much tax it's taken off if she asks for one.

my provisional decision

For the reasons given above, I intend to uphold Mrs R's complaint and say that Santander UK Plc pay Mrs R redress as set out above.

If Santander or Mrs R have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 17 April 2018.

Jeshen Narayanan
ombudsman