

complaint

Mrs H has complained that Santander UK Plc ("Santander") mis-sold her a 123 fee paid bank account in 2013.

background

Santander has accepted it mis-sold the account. And it refunded the fees Mrs H paid in an attempt to put things right. It has since said that it's also prepared to pay interest on this and also any overlimit fees that were directly caused by the 123 account fee. Mrs H is unhappy with this. She's said Santander should refund all the authorised and unauthorised overdraft fees she paid because she didn't receive the cashback she was promised.

One of our adjudicators has looked into Mrs H's complaint already. He didn't think that Santander should pay Mrs H any more in compensation. Mrs H didn't accept this and asked for an ombudsman to look at her complaint and make a final decision.

my findings

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 how we handle complaints about fee paying bank accounts on our website. And I've used this approach to help me decide Mrs H's complaint.

Having carefully thought about everything I've been provided with, I think that what Santander has already done to put things right is fair and I won't be asking it to pay Mrs H any more money. I'd like to explain why.

I should start by saying that the way Santander has agreed to calculate what Mrs H is owed for having being mis-sold her 123 account is in line with what we'd generally tell a business to do where we decide a fee paying bank account was mis-sold. Mrs H says Santander should also refund the all the interest and charges she paid when using her overdraft. She's suggested she only used her overdraft as much as she did because she was told the more she spent on her account the more cashback she'd receive. So her overdraft usage wouldn't have been as much as it was if she hadn't been mis-sold the account.

I've carefully thought about what Mrs H's said. But I can only ask a business to compensate for any additional (or consequential) losses a consumer may have suffered, where I think it's the mis-sale that's directly responsible for those additional losses. In other words, in order to agree Santander should refund any additional interest and/or overdraft overlimit fees, I have to see that Mrs H wouldn't have paid these, but for the 123 account having been mis-sold in the first place. So this is why we normally look at the account on a month by month basis to see if there are any instances where it's the packaged account fee that caused a consumer to go over their limit or caused any other charges. This is because in these instances it is clear that it's the account fee which is responsible for the additional loss – if the account fee hadn't been charged the consumer wouldn't have gone over their limit, or into an unauthorised overdraft and had to pay the additional fees and charges as a result. Santander has said it will pay back any additional fees that were directly caused by the monthly fee for the 123 account. So I'm happy it's done what I would expect it to do.

Mrs H has said that this isn't enough because she only used her account as much – and therefore her overdraft – as she was told the more she spent the more cashback she'd

receive. I don't know what Mrs H was told at the time. But I've looked through her statements and it seems to me that Mrs H was using her 123 account for her routine day to day spending. So it's difficult for me to say that Mrs H increased her spending just because she thought she'd receive cashback on her purchases.

I accept that it's possible Mrs H may have made these payments using a different account or by a different method. But even then it would be far too speculative for me to be able to safely say it's most likely that's what Mrs H would've done if she hadn't been mis-sold the 123 account – especially as she was already a Santander customer prior to the account change. And, in any event, Mrs H can't have thought that Santander would refund 100% of the amount of the purchases she was making. I say this because if she did, I think she would have contacted Santander to query why she wasn't receiving this cashback much sooner given just how overdrawn she was.

From what I've seen, it looks as though the overdraft charges Mrs H paid were made up of authorised and unauthorised overdraft fees. And it looks like Mrs H's overdraft usage meant that Santander was entitled to charge these fees. As previously explained, I'm unable to say that Mrs H only made the payments she did because of what she was told when she sold the account. So this means that I can't safely say a fee or charge would've been avoided unless I can see it was the account fee that was directly responsible for any additional charges in any given month. And Santander has already agreed to refund any fees paid as a result of this. So overall I've not seen anything to suggest that Santander should pay Mrs H any more than what it has already agreed to.

I want to reassure Mrs H that I've looked at all the information provided about her complaint. And I've thought about everything she's said. But having done so, I don't think that Santander has treated her unfairly. I think what Santander has already done to put things right is fair and it doesn't owe Mrs H any more money. I appreciate that this isn't the outcome Mrs H was hoping for. But I hope that she'll understand the reasons for my decision and will at least feel her concerns have been listened to.

my final decision

For the reasons I've explained, I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 31 October 2016.

Jeshen Narayanan
ombudsman