

## **Complaint**

Mr D complains that Santander UK Plc has chased him to pay back an overdraft debt it previously told him he didn't need to repay.

## **Background**

The background to this complaint and my initial findings are set out in my provisional decision dated 24 January 2020 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought Mr D's complaint should be upheld and what Santander should do to resolve it. I said I intended to tell Santander to pay Mr D £200.

## **My findings**

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

Both Mr D and Santander responded and confirmed they accepted the provisional decision. As both parties have accepted I see no reason to change the conclusions I reached in my provisional decision. I still think Mr D's complaint should be upheld and that Santander should pay him £200.

## **My final decision**

My final decision is that I uphold this complaint and direct Santander UK Plc to pay Mr D £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 March 2020.

Marco Manente  
**Ombudsman**

## Copy Provisional Decision 24 January 2020

### Complaint

Mr D complains that Santander UK Plc has chased him to pay back an overdraft debt it previously told him he didn't need to repay.

### Background

Mr D had an overdraft with a bank that was part of Santander. In 2013 a debt advice organisation got in touch with Santander and offered it £1 per month towards the debt.

Santander wrote back on 22 November 2013 and said:

*"We have received proposals via a third party debt advisor but due to the low level of contribution offered we are not able to agree a formal debt management plan. However, as you are experiencing financial difficulties we will stop our collections activity together with any interest and fees.*

*We will continue to send statements and notices required under the Consumer Credit Act 1974, including a Default Notice. We may also need to record your account as being in default with the credit reference agencies with which we share data in due course. However, we will not be asking for any other payments."*

Santander issued a default in February 2014 and says it's sent Mr D annual statements concerning the outstanding balance ever since. In November 2018 the debt was passed to a third party to collect and Mr D complained.

Santander responded on 22 January 2019 but didn't agree it had made a mistake. Santander accepted that it had told Mr D that it wouldn't ask for any further payments but said that was on the premise that he was dealing with a debt management company and would be making payments towards the outstanding debt outside a formal repayment plan. As no payments were made, Santander took the step of referring the debt to a third party for collection in November 2018.

Mr D referred his complaint to our service and it was passed to an investigator. He didn't uphold Mr D's complaint and said Santander had acted fairly by asking Mr D to repay the outstanding balance. Mr D asked to appeal so his complaint has been passed to me to make a decision.

### My provisional findings

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

I can understand why Mr D is so upset. Santander says its letter dated 22 November 2013 only said that it wouldn't ask for any further payments on the premise that Mr D was working with a third party debt service and would make payments towards the account. But that's not what the letter says. If Santander wanted to add a premise for its agreement not to ask for payments again in the future it should have made that clear. And, having read the letter a number of times, I'm satisfied that Santander failed to make its intentions clear to Mr D when it wrote to him. Whilst it may not have been the intention to write off Mr D's debt, I think his interpretation was reasonable.

But I have to balance that against the fact that Mr D did have an overdraft with Santander and didn't repay it in full. Generally speaking, if someone has borrowed money it's fair that they repay it.

In this case, Mr D says he didn't hear from Santander for over four years and that appears to be correct. He's told us that he moved several times and Santander says he didn't update his address. But, given Santander had written to Mr D in November 2013 and advised it wasn't going to ask for any

further payments then wrote to him in February 2014 to advise the account had been defaulted, I wouldn't expected him to update his correspondence information. As far as Mr D was aware, no further action was required. As a result, Mr D says he didn't receive any of the annual statements Santander sent and wasn't aware of the outstanding balance until November 2018.

I don't think Santander acted unfairly by passing the debt to a third party to collect. Ultimately, the debt remains unpaid and whilst Santander's letter was poorly worded I'm satisfied there was more than one interpretation. I don't think Santander intended to formally write off the outstanding balance when it wrote to Mr D on 22 November 2013. As a result, I'm not going to tell Santander to recall the debt from the third party or to stop its collections activity. Santander and the third party are obliged to ensure any payment arrangement it may reach with Mr D is affordable and sustainable.

I've thought about the fairest way to resolve this complaint. Having done so I've reached a different decision to the investigator. I think the complaint should be upheld as Santander's letter dated 22 November 2013 was very unclear and led Mr D to believe he wouldn't have to make any additional payments to the outstanding debt. As a result, after four years of no contact the request from a third party to pay the overdraft balance back was particularly frustrating and upsetting. Whilst I'm not telling Santander to waive the remaining balance, I do think a reasonable level of compensation for the distress and inconvenience this situation has caused Mr D is fair. As a result, I intend to uphold this complaint and tell Santander to pay Mr D £200 which I think fairly reflects the impact of the issues raised on Mr D.

### **My provisional decision**

My provisional decision is that I intend to uphold this complaint and direct Santander UK Plc to pay Mr D £200.

Mr D and Santander have until 24 February 2020 to send me any additional comments or information they would like me to consider before I make my final decision.

Marco Manente  
**ombudsman**