

complaint

Mr S complains that Santander UK Plc unfairly expected him to repay a debt which he believed to have been written off.

background

Mr S owed money to Santander for a credit card debt. The debt was placed by Santander with a collections agent, but Mr S says that the collections agent then told him that his account had been returned to Santander.

Mr S says he wrote to Santander in May 2012 to ask how he could continue the repayment arrangement he had offered to the collections agent, but received no reply. Given that, he supposed that Santander was treating the debt as settled.

He then heard from a different firm of collections agents acting for Santander in relation to the debt, in December 2014. In the circumstances, Mr S considers that Santander should write off the debt and pay him compensation to reflect his distress.

Santander did not accept that it had done anything wrong. As things were not settled, Mr S brought his complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator noted that Santander had not sent a reply to Mr S's letter of May 2012, but had sent a statement a couple of months later – showing the payments he had made and including an account number and contact telephone number. No further payments had been made, but the adjudicator was not persuaded that Santander had forfeited its right to recover the debt.

The debt had since been sold to another financial business, and the adjudicator did not consider that Santander was obliged to take back the debt and write it off. In the circumstances, the adjudicator did not recommend that the complaint should succeed.

Mr S did not agree and said, through his representative and in summary:

- Having no contact for 29 months is not fair treatment. Most people would consider it fair to assume that the debt had been written off.
- He disputed the debt – his letter stated that Santander had no right to pass a debt that does not exist.
- Even if the statement sent to him contained payment information, he had previously had two payments rejected – one by Santander and one by the collections agent – and he had not paid Santander directly for some years.
- In any event, if it was fair for Santander to take 29 months to contact him then it is also fair for him to take 29 months to respond to any correspondence from Santander or its agents.
- Finding in Santander's favour will encourage disrespectful behaviour of this type.

my findings

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

Mr S had been making monthly repayments of £2.61 on his debt. After the debt was returned to Santander, he wrote to ask about how he could continue to do that but got no direct reply to that letter. Instead, Mr S was sent a statement a couple of months later which showed the payments he had made and gave an account number and contact phone number.

Mr S didn't hear anything further about the debt for over two years. I appreciate he took that to mean Santander had decided to write off the debt, but there's nothing to suggest that Santander had ever told him that. The statement that it sent to him gives no indication that it had written off his debt or intended to do so.

The debt was just under £3,500. I do not consider that the time which elapsed was such that Santander was obliged – either in law or in fairness – to write off the debt. I'm afraid that Mr S is mistaken in his view that the debt no longer existed and so Santander had no right to sell it.

The delay did not cause any increase in the debt or deterioration to Mr S's financial position. I accept that he was disappointed – but that was because of his own conclusions about the debt.

I have been very sorry to learn of Mr S's failing health and of the upset that this whole matter has caused him. The present owner of the debt has a duty to work with Mr S (or his representative) to arrive at appropriate repayment arrangements that take into account his financial position.

In terms of this complaint about Santander, I find that Santander is not liable to repay the debt or compensate Mr S.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 November 2016.

Jane Hingston
ombudsman