

complaint

Miss E is unhappy that Santander UK Plc is asking her to pay back money it sent her in error.

background

I issued a provisional decision on this case on 28 March 2014, which explained why I intended to uphold the complaint. I invited the parties to let me have further submissions, if they wished, in advance of my final decision.

circumstances of Miss E's complaint

Miss E asked Santander to complete a dormant account search for her late grandmother. She showed Santander her grandmother's will and death certificate, her mother's death certificate, and a copy of her own birth certificate.

Santander confirmed that there was around £6,000 in a dormant account. It transferred the money into Miss E's account.

Santander then contacted Miss E to inform her that it had made an error. The money had been transferred from Miss E's father's account and not her late grandmother's dormant account. Eventually Santander debited Miss E's account for the full amount it had originally transferred to her in error. Because there were no longer sufficient funds in the account Santander set up an overdraft for Miss E to repay.

Miss E is unhappy with this – she says that Santander had no right to take the money and leave her with an overdraft to repay. She says that it initially told her that it would not be pursuing her for it. She says she has spent the money renovating her kitchen and cannot repay it. She is also unhappy that adverse data appears to have been recorded on her credit file as a result of Santander debiting the money.

Santander has proposed to offer Miss E the chance to repay the arrears with fees and charges suspended. It has offered £250 compensation and to reimburse the fees and charges it applied after the money was debited from her account. Santander has said that, depending on Miss E's offer of repayment, it is willing to write off some of the arrears.

Our adjudicator said that as Miss E has had the benefit of the funds the debt should be repaid. He was satisfied that when Miss E was informed of Santander's error she still had £3,640 of the funds in a savings account. He recommended that Miss E repay this amount in full, and the remainder of the arrears on an affordable basis. He said that if Miss E accepted this arrangement then the adverse data on her credit file should be removed.

my provisional decision

In summary, I said:

- I am persuaded that Santander made an error transferring around £6,000 to Miss E;
- I do not consider that Miss E should have to repay the money that she spent in good faith, as a result of Santander's error and before she was aware of that error;

- Miss E would reasonably have been aware of the error when she received Santander's letter on 22 March 2013;
- I believe that Santander's error caused Miss E to spend more on the kitchen than she would have at that particular time but I am not persuaded that all of the expenditure was a direct result of her receiving the extra funds;
- on balance (and after looking at Miss E's accounts) I conclude that she still had at least £2,200 of the money paid to her in error when she was informed of Santander's mistake on 22 March 2013 – I am satisfied that the remainder was spent in good faith on the kitchen renovations as a direct result of Santander's error;
- Miss E should repay the £2,200 (interest free) and Santander should write off the remaining balance;
- Santander should remove any interest or charges applied in connection with the amount it paid Miss E in error and arrange to have any associated adverse data removed from her credit file;
- both parties should negotiate a reasonable repayment arrangement between them; and
- Santander should pay Miss E £350 for her distress and inconvenience.

responses to my provisional decision

I invited the parties to let me have their further submissions.

Santander says that it accepts my provisional decision.

Miss E broadly agrees with the findings in my provisional decision and has said she is willing to repay the £2,200. However, she has raised the following points which she says are conditions of her acceptance:

- Santander agrees to write off at least £3,802.94, refund bank charges of £95, pay the compensation of £350 which can be used towards the debt, restore her account to the state it was before it was forced into overdraft (a credit of £72.42 which can be used towards the debt). This will leave a balance of £1,777.58 for her to repay as a personal loan on an affordable basis;
- Santander closes the current account;
- Santander clears all connected adverse credit information against her name within one month of the account being closed; and
- Santander acknowledges it is fully aware that she is a single parent and takes into account that she has no disposable income when arranging a monthly payment amount.

Miss E has also said:

- Santander can take her Santander shares towards the debt;
- Santander should provide her with a dedicated account manager as a single point of contact in connection with this matter so she does not have problems in the future; and
- Santander should clearly state on its system that the reason for the loan is '*Settlement agreed by Financial Ombudsman due to Santander error*'.

my findings

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

I will deal with Miss E's points grouped as follows:

clarification of figures

Miss E says that the amount Santander should write off as part of this settlement is £3,802.94. Miss E was paid £6002.94 in error. Therefore, by asking Santander to write off the amount paid in error except for £2,200 I can confirm that the result of my provisional findings is that £3,802.94 is written off.

As part of my provisional findings I expected that Santander would set up an interest free loan and restore the current account to the state it was before it debited the amount paid in error.

My original findings stated that any interest and charges should be refunded. Miss E has clarified that this amount is £95. I have looked through the current account information and am satisfied that this figure is correct. Therefore, these charges should be refunded when the account is re-worked. Miss E has also noted that her current account had a credit balance of £72.42 before it was debited of the amount originally paid to her in error. After looking at her statements I am satisfied this figure is accurate.

Miss E also says that the £350 compensation for distress and inconvenience and the original £72.42 current account balance can be used to reduce the loan. Therefore, I consider that Santander should use these amounts to reduce Miss E's outstanding liability.

adverse credit information

While I would expect Santander to remove adverse credit information as soon as it can, the complete removal of adverse information from Miss E's credit records will also depend on the actions of third party credit reference agencies. Therefore, I am not satisfied it is fair and reasonable to impose on Santander the conditions which Miss E has suggested.

current account closure / system information and account manager

I consider that when the relevant time comes, it is more appropriate for Miss E to liaise with Santander to request her account is closed so that it can follow its normal account closing process. Furthermore, I am satisfied that it is down to Santander to decide how it records any settlement or dispute on its own systems. Therefore, I will not be making directions on these matters.

Furthermore, while I would hope that Santander would make it easy for Miss E to contact them in connection with any settlement and outstanding liability I am not satisfied that it is appropriate for me to direct it to give her a personal account manager as she has requested. This is something it may choose to do as part of its own commercial decision making process.

repayment plan and shares

It is up to the parties to discuss a suitable repayment arrangement based on Miss E's personal circumstances. As part of this complaint it is not for me to make a determination on the payment arrangement or decide what Miss E can afford. However, I remind Santander that it does have to be positive and sympathetic to Miss E's particular circumstances and any financial difficulty she may have. As I have already stated in my provisional decision – if Miss E considers that Santander has not been positive and sympathetic in arranging repayment she may complain to this service about this specific matter.

I am not satisfied that it is appropriate for me to make a finding on whether or not Santander should accept Miss E's shares as part payment for the outstanding liability. For one thing it is unclear what these may be worth. I consider that the parties may come to their own arrangement on this if they wish to do so.

Miss E's submissions have not persuaded me that I should alter the substance of my original findings. However, I have clarified them as a result of her comments, so that the parties have greater certainty when resolving this matter.

Miss E and Santander have not challenged the other findings in my provisional decision, and I see no reason to depart from them here. Therefore, subject to the clarification already discussed, the outcome of this decision remains the same.

my final decision

I direct Santander UK Plc to:

- write off £3802.94 of the £6002.94 it paid to Miss E in error;
- allow Miss E to repay the remaining £2,200 as an interest free loan;
- restore Miss E's overdrawn current account to the position it was in before it debited the £6002.94 - removing any resulting interest and charges (being at least £95) and using any resulting positive balance (being at least £72.42) towards the interest free loan;
- amend Miss E's credit file to remove any adverse information associated with the payment made to her in error; and
- pay Miss E £350 for her distress and inconvenience and use this towards the interest free loan.

Santander and Miss E should agree a reasonable repayment plan for the outstanding balance.

**Mark Lancod
ombudsman**