

complaint

Mr M complains about the amount of charges Santander UK plc has applied to his account which he says are charges on charges.

background

Mr M says he has been charged about £300 by Santander over the last 12 months. He says its charges place him in an unarranged overdraft and he is then charged further fees which amount to illegal charges on charges. Mr M says he would like to challenge the legality of these actions in court.

Santander says the charges have been applied in line with the terms and conditions of Mr M's account which he agreed to when the account was opened. It says it's previously tried to help Mr M by refunded charges as a gesture of goodwill and has offered to help him by referring him to its specialist team.

Mr M brought his complaint to us but our adjudicator didn't uphold it. He thought the charges were applied in line with the account terms and conditions and that Santander had acted positively and sympathetically towards him. He also didn't think the charges could be challenged, following the Supreme Court decision, that they were unfair or too high.

Mr M maintains that a charge on a charge is unfair and refers to an article he wrote about that issue in 2006. He says the interpretation of the Supreme Court case in 2009 is a misconception and a charge on a charge is a penalty clause and can still be unlawful. Mr M also questions if the account terms and conditions are lawful.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I've come to the same overall conclusions as the adjudicator for largely the same reasons. I realise that Mr M will be disappointed by my decision and I appreciate how strongly he feels about this issue.

I've looked at the terms and conditions of Mr M's account which I think he would've agreed to when the account was opened. And I'm satisfied those terms and conditions set out that in certain circumstances charges and fees will be applied to the account. I can see that Mr M's account has entered an unarranged overdraft on occasions. So I don't think Santander made a mistake by applying account charges in those circumstances. I also think that, having looked at Mr M's account statements that charges were not taken until about 22 days after they were incurred which I think would've allowed time for money to be paid into the account.

As the adjudicator as explained following the Supreme Court case in 2009 these charges can't be challenged on the basis they are unfair or too high. I appreciate Mr M says that interpretation isn't correct and that he also questions if the account terms and conditions are unfair. But I'm satisfied that it would be for a court to determine both of those issues as well as Mr M's view that these charges amounted to a penalty clause and would be unlawful. I can see that Mr M says he is considering taking legal action about these issues.

Banks and building societies should treat cases of financial difficulties positively and sympathetically. In this case I'm satisfied Santander has done so. I can see that it has refunded charges as a gesture of goodwill and has given Mr M details of its specialist debt team.

Overall I'm satisfied Santander hasn't made a mistake and has tried to assist Mr M. So I can't fairly order it to do anything further in the circumstances of this complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 November 2018.

David Singh
ombudsman