

## **complaint**

Mr K complains about Santander UK Plc ("Santander") regarding fees charged on his account and how it dealt with him after he fell into financial difficulties. He wants Santander to refund all charges and interest.

## **background**

I set out the background to this complaint, and my provisional findings, in a provisional decision issued in December 2018. A copy of that decision is attached to this.

In that provisional decision, I explained why I thought the complaint should be upheld and set out a breakdown of what debt I thought Mr K should remain responsible for. I explained that I thought £425.56 of the outstanding debt was validly due from Mr K and that Santander should settle the remainder of the debt.

Santander has replied to my provisional decision accepting my findings.

Mr K has sent in some further comments, disagreeing with my view.

Mr K made a number of points, which I summarise below:

1. Mr K says that he re-sent his March 2014 letter to Santander numerous times after March 2014 and that it has yet to receive a reply;
2. Mr K says that not all of the charges on his account for the years going back to 2008 were refunded to him in 2013;
3. In my provisional decision I said that Mr K had left some direct debits in place after moving his income to another account. Mr K has said that this was not the case and that he cancelled all direct debits at the same time as moving his income elsewhere;
4. Mr K explains that the card payment which took him over his limit was not made by him but by a third party who used the card by mistake on Mr K's behalf. He feels that Santander should not have authorised the payment since it then incurred charges;
5. Mr K explains that the cheque which was presented for payment twice was issued by him in January, but not presented by the receiver until April. He feels that this should not have been presented again but returned to the drawer;
6. Mr K says that Santander has been aware of his difficulties since much earlier than 2014, and he thinks that Santander should have been aware that he was in financial difficulties because he received an income from the DWP;
7. Mr K says that Santander have never shown a duty of care or empathy towards him. He says that out of the blue he received the debt recovery letters after three years and that he has a debt marker against him which makes things more difficult; and
8. Mr K queries why only statements for the period 2012-2014 were provided to the ombudsman.

Mr K added that he did not think he had been dealt with fairly or reasonably by Santander.

## my findings

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

The arguments put forward by Mr K do not substantially change my view and I address these in turn below:

1. Mr K has said that his letter from March 2014 remains unanswered despite him having re-sent it numerous times. He is unable to find his proof of delivery for it and Santander has said that it did not receive that letter. I appreciate Mr K's mistrust that the letter was not received, but I have not seen evidence that it was received. I have accepted that Mr K alerted Santander to his difficulties earlier than that letter, so should have been treating him positively and sympathetically in any event.
2. Mr K has pointed out that charges refunded to him in 2013 did not reflect all charges that he had incurred since 2008. I accept this but it does not affect my view. In my provisional decision I stated that charges had been refunded on four occasions through 2013. I did not suggest that all charges incurred had been refunded.
3. Mr K has corrected my provisional decision about his cancelling direct debits. His last regular income into the account was 3 March 2014 and direct debits left his account on 4 March 2014 and 6 March 2014. I accept that these stopped at that point.
4. Mr K has set out how his card came to be used in error. I accept his account, and sympathise with the circumstances. He has said that he thinks that Santander should not have authorised the transaction but I do not criticise Santander for allowing the payment. Businesses are entitled to decide whether to authorise a transaction in excess of an account limits and so it is the responsibility of card holders to ensure that transactions are not attempted unless there are sufficient funds available.
5. Similarly, Mr K has described the circumstances of the cheque presentation. I understand that the cheque was not deliberately presented by Mr K when there were insufficient funds but, as above, I think it was his responsibility to ensure it was not presented, or that there were sufficient funds, rather than for Santander to return it.
6. Mr K has alluded to suffering financial difficulties much earlier than 2014. These were not raised in his initial complaint and so have not been put to the business. If Mr K wishes to complain about Santander's treatment of him and his accounts prior to the end of 2013 he will have to address this first with the business and then potentially refer that complaint to us later. I should note though, that I do not think that it necessarily follows that because someone is in receipt of a state benefit then they must be in financial difficulties. I understand that Mr K was managing his account well up until January 2014. Whether he should have been treated as someone in financial difficulties will depend on his circumstances and what Santander knew about them.
7. Mr K has said that Santander did not show a duty of care towards him and that he received notification of his debt out of the blue. Santander was only obliged to act positively and sympathetically once aware of Mr K's difficulties. Mr K has shown that he was aware of his overdraft balance and limit at the time and that he did not repay the balance. Without any action to repay the overdraft Santander would be likely to

pursue recovery of the debt and so I do not agree that the debt recovery was out of the blue. If any default was registered Santander would have needed to give Mr K warning of this. If it did not, it is open to Mr K to raise a complaint with Santander about that.

8. Mr K has asked why I have not reviewed all statements and charges on his account since it was opened. Mr K's complaint to the business focussed on the period since he encountered financial difficulties in late 2013 and so Santander provided statements for that period. I see that in his 2014 letter to Santander Mr K asked for all charges in the previous six years to be refunded but Santander has said it did not receive that letter and consequently did not reply. Charges prior to 2014 were therefore not considered within this complaint. I will ask Santander to address that point directly to Mr K.

The submissions made by Mr K do not affect my view on the issues covered by my provisional decision and so I adopt my provisional decision as my final decision on these issues. I realise that this will be disappointing to Mr K but I hope I have explained my reasons fully.

#### **my final decision**

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 March 2019.

Laura Garvin-Smith  
**ombudsman**