

## **complaint**

Mr K complains about charges applied to his account after he believed he had closed it. He received no correspondence from the bank concerning the charges because, believing the account was closed, he did not notify the bank when he moved house.

## **background**

Mr K thought he had closed his current account in February 2011. In April 2011 he moved house. As the account was overdrawn at the time he purported to close it, the closure did not take place. As a result charges were applied to the account which Mr K was unaware of as he did not notify the bank of his new address.

The adjudicator did not recommend this complaint should be upheld. He concluded that it was Mr K's responsibility to monitor and manage the account to ensure that it had been closed and no charges had arisen, and to provide new address details to the bank. He also concluded that the amount of the charges could not be challenged as they had not been applied in 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. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

While I have sympathy with Mr K who intended to close his current account and is upset at the charges that have been applied, I agree with the adjudicator that the account was not closed in February and could not be closed as it was not in credit at that time. Clearly, Mr K intended to close his account. However, there is no evidence that he had been informed the account had been closed. On the contrary, not only was the account in debit and consequently incapable of being closed, but a direct debit was still in place in relation to the account. This suggests Mr K had not taken all the steps necessary to close the account at that time.

I agree with the adjudicator that responsibility for monitoring and managing the account lay with Mr K. While he may have wished to close the account, I do not consider it reasonable to expect this to occur without further checking or communication with the bank. Also given the direct debit was still in place in relation to the account, I consider it remained Mr K's responsibility to ensure he had sufficient funds in the account to cover the money that was to be debited. Similarly, it was Mr K's responsibility to keep Santander informed of his address.

Turning to the charges applied to the account, and as the adjudicator explained, in the Office of Fair Trading "test case" the Supreme Court ruled that such charges cannot be regarded as penalties and are generally not able to be challenged on the grounds that they are too high as long as they are clearly set out by the bank. Accordingly, unless the charges have been misapplied by the bank, it is not possible to challenge them. I do not consider the charges were misapplied to Mr K's account. Therefore, regrettably for Mr K, I do not find Santander was in error in applying the charges and interest. These were applied in accordance with the terms and conditions of the account because it was overdrawn and remained so for several months.

Finally, I note Mr K says Santander did not make sufficient attempts to contact him once the account was overdrawn and charges were applied. While I understand Mr K's position, I do not consider Santander to have been at fault in relying on the information held on file as to Mr K's address. While I accept Mr K's argument that if the debt collection agency could track him down why could Santander not have done so much sooner, I am not able to find that Santander was in error in sending statements and default notices to the address it held for Mr K and taking no further steps to "track him down". As set out above, it is not for the bank to track its customers, but for the customer to keep the bank informed of how they can be contacted.

### **my final decision**

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

Zoe Copley  
**ombudsman**