

complaint

Mr A complains that Santander UK Plc has applied charges unfairly to his account and sold the outstanding debt to a third party debt collection agency.

background

Mr A had two accounts with Santander. His main current account had a monthly direct-debit payment going out to a media company.

Mr A said the media company debited an incorrect amount from his account in error which caused him to go overdrawn by around £20. He told us he then went abroad to work and asked for his post to be sent to his parents' address.

Mr A told us that he thought the current account had been closed. And he was only made aware that it was still open when he was contacted by a third party debt collection agency - pursuing an outstanding debt of around £400. Mr A wasn't happy as he didn't think the debt should be that much and he felt it shouldn't have been sold to a third party. So he complained to Santander.

Santander said they hadn't done anything wrong. They explained the charges had been applied to Mr A's account correctly - in line with the terms and conditions of his account. They said they'd tried to contact him numerous times about the outstanding balance. And when they weren't able to recover the outstanding debt it was passed to the third party debt collection agency. Mr A wasn't happy so he asked us to look into his complaint.

Our investigator didn't think Santander had done anything wrong. She said that she could only look to see if the charges had been applied correctly in line with the terms and conditions – which she thought they had. She also thought that Santander hadn't treated Mr A unfairly as they'd tried numerous times to contact him before passing the debt to a third party debt collection agency. And that this process was clearly explained in the account terms and conditions.

Mr A didn't agree with the investigator. He said he hadn't been aware of the outstanding debt or he would've paid the original overdrawn amount and the amount it had increased to was unacceptable. So he asked for his case to be looked at by an ombudsman.

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 reached the same outcome as our investigator, for broadly the same reasons.

Mr A feels the charges applied by Santander aren't proportional to the amount he went overdrawn by. Bank charges were the subject of court proceedings started by the Office of Fair Trading (OFT), which concluded with the Supreme Court's decision in late 2009. The Supreme Court ruling said charges for unauthorised or unarranged overdrafts can't be challenged on the basis that they're too high or unfair. This means I can't say the charges applied to Mr A's account were too high or unfair.

I think the account terms and conditions are clear that charges would be payable if Mr A's account went overdrawn by any amount. I've also seen account notes from Santander that Mr A had already had previous charges refunded in October 2012 – and was told that any

future charges wouldn't be waived or refunded. So I don't think the charges were applied incorrectly as Mr A was in an unauthorised overdraft when they were applied to his account.

I acknowledge that Mr A said he wasn't aware that the account was open or overdrawn or he would've paid the outstanding amount. But I haven't seen any evidence that Mr A took any steps to close his account or repay the overdrawn balance, instead he left to go abroad. It's the account holder's responsibility to ensure the contact details are correct on their account – and Santander could only use the details they had on file to tell him he was overdrawn. I've seen copies of letters and phone records from Santander where they tried to contact Mr A numerous times - so I can't reasonably say they've treated Mr A unfairly.

I recognise that Mr A is unhappy that the outstanding debt was passed to a debt collection agency. But I think Santander tried for a significant period of time using both post and telephone to get a response from Mr A - before they transferred the outstanding balance to a debt collection agency. As the terms and conditions of the account also say that if debt can't be recovered by Santander it will be passed to a debt collection agency, I don't think it was unreasonable for them to do this.

Mr A told us he feels that unfair fees have been added to the outstanding debt by the third party debt collectors, which has increased what he owed - but I haven't seen any evidence of this. The third party debt collectors have told us there haven't been any additional charges or fees added to this by them. And I'm satisfied that the outstanding debt that Mr A has been asked to pay was the outstanding amount from Santander.

Mr A said he's prepared to enter into a repayment plan with Santander - but as they've said in their letters to him, he'd need to contact the third party debt collector to arrange this as they're now managing the debt. If Mr A is in financial difficulty, he should contact the third party debt collectors to see what they can do to help – as they should treat him positively and sympathetically.

I understand that Mr A feels strongly about his case but that doesn't change my mind that Santander haven't done anything wrong.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 May 2018.

Jenny Lomax
ombudsman