

complaint

Miss L complains that Santander UK Plc has recorded a default on her credit file, but she wasn't given clear information about it or options for repaying the debt.

background

Miss L opened a 123 Student current account in September 2013. This migrated to a 123 Graduate current account in December 2014. Miss L ceased funding her account in 2016 but continued to make payments from it creating an overdraft of around £1,500. The account was moved to Santander's collections department in February 2017, and the overdraft facility removed, as payments weren't being made into the account.

Santander spoke with Miss L in March 2017 and was told she wasn't working but was expecting to start a part time job. And so a 30 day breathing space was placed on the account and Miss L was to update Santander by 30 March 2017. She didn't do so.

On 5 June 2017, Santander contacted Miss L about her account and the balance still outstanding. During this call Miss L gave a new address and confirmed she could only afford to pay £5 a month towards the balance, and she was using a different account. Santander was looking for repayments of £100 a month and so it didn't set a payment arrangement for her. It explained she could pay the £5 a month and she should get in touch when she found work. She was also told making the payment wouldn't stop the default process and that she would be written to about that.

Santander didn't update Miss L's address details. So when the default notice was sent, it was sent to the wrong address. And as it had no payment proposals from Miss L the account was defaulted in August 2017 and the account passed to a third party collection agent. She entered into a repayment arrangement of £75 per month from July 2018. And it was at this time Miss L discovered her account had been defaulted. She complained to Santander about the default being applied as she didn't feel fairly dealt with. Santander didn't uphold the complaint as it said the default was a true reflection of the running of the account.

Miss L asked us to get involved. Our investigator looked into the matter and upheld the complaint. She wasn't satisfied Santander had met its obligations under the Consumer Credit Act 1974 as it hadn't sent her a default notice before applying the default – it had sent the notice to an incorrect address despite knowing Miss L was at a new address. The investigator also noted that no income and expenditure assessment was completed or others discussions had about repayment arrangements, so she concluded Santander hadn't treated her fairly. She upheld the complaint and asked Santander to remove the default and awarded £100 for the distress and inconvenience this matter caused.

Santander agreed to pay the compensation (and it has already done so). It also agreed the default notice wasn't sent correctly. But it didn't want to remove the default and simply record arrears information as it will stay on Miss L's credit history for longer.

This was explained to Miss L by the investigator, and she still wished to have the default removed. But Santander didn't agree to it and so the matter has been referred to me. In its final submissions Santander wanted to ensure that both we and Miss L were fully aware of the implications of the approach taken. It said:

- The outcome is fundamentally detrimental to the customer and will extend the period of detriment by a further six years from the date Miss L satisfies the debt.
- The outcome isn't possible to implement until the debt has been satisfied in full. The account was migrated to a different platform at the point of default and cannot be removed until the debt has been satisfied in full. If it is deployed now it will suppress all forward reporting.
- Its preferred option is to send Miss L a new default notice giving her 28 days to pay the debt in full; if the debt remains the default will remain, but if the debt is repaid it will remove the default.

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 uphold this complaint.

Santander agrees it didn't properly send Miss L a default notice. And it agrees Miss L has been caused distress and inconvenience by this and already paid her £100 as recommended by the investigator. The issue for me to consider is how to put this matter right.

Under the Consumer Credit Act 1974 a lender is not allowed to ask for the full amount outstanding until a default notice has been sent and the time has passed without action. As Santander didn't properly execute the notice it isn't able to ask Miss L for the full amount due; and as a by-product of that record the account as being defaulted.

It isn't clear from Santander's second point above that it has properly understood the investigator's recommendation. The investigator has asked Santander to remove the default from Miss L's credit history in relation to her Graduate 123 account. I'm not aware of anything in that process which would need 'deploying'. It would simply be a removal of the default record to be replaced with an arrears record –Miss L has confirmed her understanding that arrears will show for six years from the date she clears the arrears rather than the date of default.

I find it hard to believe that, given the many thousands of customers Santander has, it's never had to remove a default before. And it should be a straightforward process to amend a customer's credit history with them and credit reference agencies – after all amendments are made to that information all the time. I'm also disappointed that it said nothing about this until providing final submissions, despite being in regular contact with the investigator.

I've also considered its third option. But this discounts the possibility that a customer can come to payment arrangement that doesn't involve paying the full sum within the notice period. Many people in debt receiving default notices make repayment arrangements to make monthly repayments towards the debt and their credit records show they're in an arrangement to pay. So I don't consider the third option necessarily puts Miss L in the position she would have been in had the default notice been sent correctly. I am of the view the fairest remedy is to remove the default.

how Santander needs to put this right

I require Santander UK Plc to:

- Use its best endeavours to remove the default recorded against Miss L for her Graduate 123 account.
- If it is impossible (rather than Santander not wanting to) to remove the default then Santander should provide Miss L with an explanatory letter setting out the default had been recorded incorrectly by it.

Miss L can then use Santander's letter along with my decision should she decide to apply for any borrowing, so that prospective lenders will know the records aren't accurate. Miss L can also place an explanatory note on her credit history in relation to this, explaining the record is incorrect.

I also agree that £100 for the distress and inconvenience caused is appropriate in the circumstances and I understand this has already been paid by Santander.

my final decision

For the reasons given above, I uphold this complaint and require Santander UK Plc to put this right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 19 January 2019.

Claire Hopkins
ombudsman