

complaint

Mr K complains about Santander UK Plc ("Santander") for withdrawing his overdraft and registering a default against him. He wants Santander to remove the default from his credit file and to agree a repayment plan.

background

Mr K began his university studies in 2012. He held a student bank account at another bank and a 16-18 account at Santander.

When Mr K went to close his 16-18 account he spoke with bank staff and he says was encouraged to open a student account with Santander.

Mr K says that he told Santander staff that he had another student account elsewhere and that his student funding was paid into that account. He says he was told that that was fine and that he would be able to have an interest free overdraft with Santander until a year after he graduated.

On this basis Mr K opened the account in November 2012 and was issued with a £250 overdraft limit.

Mr K received a £50 credit for opening the account and used the account to make payments using his overdraft facility. In December 2012 and January 2013 he made deposits, totalling £1250 into his account. This caused Santander to increase his overdraft limit to £1500, which it did in January 2013.

Mr K used his account over the next couple of months, gradually reducing his credit balance.

In March 2013, Mr K withdrew £1500, sending the account overdrawn by more than £1000. Mr K used the account for some further transactions over March and then made a significant deposit in April, bringing the account back into credit.

Over the spring and summer of 2013, Mr K made withdrawals from the account, using up the majority of the overdraft, and then made a deposit into the account in July, leaving a small credit balance.

After this Mr K used the account for payments and withdrawals, making only small deposits, so that by August 2013 his balance was close to his overdraft limit.

Santander contacted Mr K indicating that it would withdraw his overdraft facility. Mr K's overdraft was cancelled in August 2013, but following contact from Mr K the overdraft was reinstated in September 2013.

Mr K continued using his account, with the balance remaining near to his overdraft limit, with few deposits into the account, until August 2014, when Santander again cancelled his overdraft. After contact from Mr K the overdraft was reinstated.

Mr K then continued to use his account in a similar way, with withdrawals or payments taking him close to, and sometimes exceeding, his overdraft limit, and with few deposits into the account.

In September 2015, Santander cancelled Mr K's overdraft again and began applying charges and fees for unauthorised overdraft use.

After contact from Mr K these charges were refunded in September 2015, but further charges were then applied in November and December 2015. No deposits were made into the account (other than refunded charges) after September 2015.

Santander sent a final demand and default notice to Mr K in early 2016. As the account remained overdrawn the account was defaulted in March 2016 and the account was passed to recoveries.

Mr K's debt was subsequently sold to a third party.

Mr K complained to the business in April 2018. He said he believed he had been mis-sold the account. He said he was not made aware of the debt recovery action and default and he wanted the default removed from his credit file.

Santander sent Mr K its final response letter in April 2018. This rejected his complaint and directed him to the terms and conditions which he would have agreed to when opening the account.

Mr K was not happy with this response and contacted us.

One of our adjudicators has looked into this matter and set out her view to the parties. This was that she did not think that the account had been mis-sold and that Santander had not done anything significantly wrong. She therefore did not recommend Santander do anything further.

Mr K was not happy with that view and asked for an ombudsman decision. He feels it is unfair that Santander did not permit him to keep his interest free overdraft until after he graduated even without the required income, because he had told Santander he had another account which received his student funding. Mr K has now cleared his balance but wants the default to be removed from his credit file.

my findings

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

Whilst I sympathise with the position Mr K has found himself in, I have to look at what Santander did and whether this was reasonable, before looking at the impact that any action (such as defaults) has had on Mr K.

I understand that Mr K discussed, during the account opening process, that he received his main income into another account. He feels that because he was allowed to open the account on this basis that Santander should have kept the overdraft and account in place until Mr K had had a year after graduating to pay off his overdraft.

I do not agree. Opening a bank account is always subject to terms and conditions and features, such as an interest free overdraft, are something that businesses can offer to customers on the proviso that the customer complies with the corresponding terms.

Santander's terms and conditions set out that if customers do not maintain regular payments into their accounts then Santander may close the account. The terms also say that for some account features there may be a minimum income level needed (for students this was £500 per academic term).

Santander was entitled to close the account on notice at any time, or to vary the terms that applied to the account, in the same way that Mr K was entitled to leave Santander if he chose to, or if the account did not meet his expectations.

Santander required a regular income into student accounts of £500 per term in order to maintain preferential features, such as an interest free overdraft, or a particular interest rate. It was entitled to enforce that requirement so long as it gave Mr K reasonable notice.

Santander has provided evidence of letters that were sent to Mr K at his correct address. These amounted to more than 20 letters, sent between November 2013 and January 2016, advising that the account needed to receive a regular income in order to remain fully open, or that action was being taken to restrict the account.

Santander had previously withdrawn the overdraft facility on two occasions before it was finally removed in September 2015. Mr K had on these occasions contacted Santander and discussed keeping the overdraft in place.

Santander had reinstated the overdraft on those occasions, but this does not mean they were obliged to do so again.

The correspondence sent to Mr K is very clear that he needed to pay more into his account to keep it open. Mr K did not do so, and so Santander withdrew the overdraft facility, leaving Mr K having to repay the balance. Santander then wrote to Mr K about this balance, and warning that a final demand and default would follow if he did not reduce his balance.

Mr K did not reduce his balance and so the default was registered. I do not think this was unreasonable

Mr K has said that he was not aware of the intention to register a default, but the evidence shows that proper notice was sent, to the correct address. I do not think it likely that all of the letters sent to Mr K were mislaid and so I think it likely that Mr K received some notice that he needed to take action to bring his account into line.

In any event, he knew that Santander may withdraw services (as it had done so in 2013 and 2014 and Mr K had acted then to have them reinstated) yet he did not address his account between March 2016 and his complaint in 2018.

I think that Mr K was aware that he needed to make payment into his account to keep the account features, and that he was informed of Santander's intention to default the account after it had been inactive for a period.

I therefore agree with the adjudicator's view that Santander has not done anything significantly wrong and I do not uphold this complaint.

I realise that this decision will be disappointing for Mr K but I hope the above makes clear why I have reached this view.

my final decision

For the reasons set out above I do not uphold Mr K's complaint and do not ask Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 April 2019.

Laura Garvin-Smith
ombudsman