

complaint

Mr H complains that the overdraft charges applied to his bank account by Santander UK Plc were neither valid nor legal.

background

The charges were applied in the period before Mr H's account was closed in 2012 and a default registered. Santander is attempting to recover the balance of over £1,300 at that time. Mr H is disputing this due to the bank charges that were applied. Santander has refunded £180 of charges as a goodwill gesture.

The adjudicator did not recommend that Santander do any more. She said that:

- A Supreme Court Judgment in 2009 said that bank charges cannot be challenged on the basis that they were too high or unfair.
- The charges had been applied in line with Santander's terms and conditions and tariff and she could not see any error had been made.
- Mr H would have received a copy of these terms and conditions when he opened the account and Santander said changes would have been mailed to him.
- The key features document for the account set out that fees and interest rates may change.
- Although Mr H said that not enough had been done to help him with his financial difficulties, he had not mentioned these to Santander.
- He had been using his account before it was closed and she couldn't see that it was the charges that pushed the account into unauthorised overdraft.
- Mr H had told her he was not now in financial difficulty.

Mr H did not agree and wanted his complaint to be reviewed. He said he was not asking for sympathy but an examination of how the charges were applied.

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 adjudicator has set out the legal position on these bank charges. And I agree that Santander was entitled to charge them for the reasons she's set out.

Santander says it first sent Mr H a letter from its collections department in December 2011 and has sent 10 in total. This was during a time when the account balance was over the agreed limit and items were being presented for payment when there were insufficient funds. Santander says that, as Mr H did not respond and bring his account back into order, it issued a default notice in August 2012 and closed the account in October 2012. This is consistent with what I've seen on his bank statements. Had Mr H discussed any financial problems he was having at the time then I've have expected Santander to deal with him positively and sympathetically. That might have resulted in lower bank charges and a workable payment arrangement. But he didn't and I don't have a basis to require Santander to refund any further bank charges now.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 May 2016.

Michael Crewe
ombudsman