

complaint

Mr M and Ms N complain that the charges on their account are unfair and continued even though Santander UK plc knew they were trying to repay the overdraft. They also complain that this has adversely affected Ms N's credit file.

background

Mr M and Ms N had an agreed overdraft facility on their account with Santander. The bank removed the facility on 1 October 2009 and an arrangement to repay the debt was agreed.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. He concluded that the charges could not be refunded on the grounds that they were unfair and that Ms N's credit file was an accurate reflection of the account conduct.

Ms N responded to say, in summary, that she did not miss any payments – her credit file should show an arrangement to pay was in place ("AP"). She said that during a phone conversation with Santander since the complaint had been referred to us, it agreed this and paid her £175 compensation, but her credit file had not been amended.

my provisional decision

I found that the bank's charges were levied in accordance with the account terms and conditions and that, following the Supreme Court's decision in the "test case", there is no compulsion on banks to refund charges on the grounds of their fairness. Santander had agreed to refund fees that had been wrongly charged on 1 October 2009, but it had not refunded the full amount and I found it should arrange to refund an additional £90.85.

Turning to Ms N's credit file, I considered this should be amended to reflect that an arrangement to pay was in place in June, July, October and December 2009 and that the late payment markers should be removed. I considered the bank had not treated Ms N fairly in recording missed payments on her credit file for October, November and December 2009. It had not made it clear enough that the overdraft facility was going to be removed and that a new repayment arrangement had to be made. Ms N continued to make the agreed monthly repayments of £65 and I did not consider it fair that missed payments should be recorded on her credit file. I considered the bank should pay Mr M and Ms N a further £100 for the distress and inconvenience caused.

The bank responded to say that they would settle in accordance with my provisional decision and had nothing further to add.

Mr M responded to say, in summary, that:

- Santander has not provided a copy of their credit agreement.
- They were never told their credit files would be affected.
- They have been unable to obtain credit and the stress has led to Mr M being unable to work for an extended period.
- They want all adverse information on their credit files removed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The overdraft facility was set up in accordance with the terms and conditions of the account. I understand the adverse information recorded on Mr M and Ms N's credit files will affect their ability to obtain credit, and I can appreciate this has been a stressful time for them. But I cannot order the bank to remove the arrangement to pay markers because these are an accurate reflection of the conduct of the account. I therefore find no basis to depart from my earlier conclusions.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement of it, I order Santander UK plc to:

1. Refund fees of £90.85, backdated to 1 October 2009.
2. Amend Ms N's credit file to show that an arrangement to pay was in place in June, July, October, November and December 2009.
3. Pay Mr M and Ms N £100 for the distress and inconvenience caused.

Elizabeth Dawes
ombudsman