

complaint

Mr R's complaint is about the withdrawal of the authorised overdraft facility on his Santander UK Plc bank account and the fact a default was recorded on his credit file as a result. Mr R would like the default removed from his credit file.

background

I issued my provisional decision on this case on 6 July 2017. A copy of that decision is attached. To recap, I wasn't intending to upholding Mr R's complaint because I didn't think, based on what I'd seen so far, that Santander had done anything wrong here:

- The account's terms and conditions – which I was satisfied Mr R had been made aware of – allowed Santander to close the account or withdraw any overdraft allowance if Mr R wasn't using it as his "main or primary" account. He wasn't using the account in this way – he had an account with another bank that was used as his main account – so, in principle, Santander was entitled to withdraw his overdraft (and do so much sooner than it did).
- Santander reminded Mr R about this requirement and gave him notice that he needed to start making regular payments or it might remove his arranged overdraft. Mr R didn't do what Santander asked; he carried on using the account and went over the arranged overdraft limit a few weeks later.
- It was then agreed that Mr R would make three monthly payments to bring him back within his arranged overdraft limit (Mr R mentioned agreeing to make two payments of £50, but I was satisfied – based on the amount Mr R owed and Santander's notes – that the agreement was for three payments of £59).
- After Mr R made the first payment Santander wrote to him to tell him his overdraft would be expiring. I thought the timing of this could've been better given the arrangement that was made to bring Mr R back within his overdraft limit, but Santander was ultimately entitled to do this in line with the account's terms and conditions. So I didn't think it did anything wrong by withdrawing the overdraft.
- This left Mr R with outstanding arrears on his account. So I thought about whether Santander treated Mr R fairly in relation to the recovery of those arrears and, from what I'd seen, I thought that it had. Santander had put stops on the account and stopped charging Mr R fees so he didn't owe any *more* money. It also asked him to contact it to agree a repayment plan and made several unsuccessful attempts to call him to discuss things. Santander's notes of the discussion it eventually had with Mr R in branch showed repayment options were discussed and Mr R was told about a debt advice charity; it was agreed that Mr R would speak to his family to see if they could help and the account was put on hold for two months (presumably to give Mr R time to explore his repayment options). I thought about the fact these notes didn't match Mr R's recollections, but I was persuaded that these notes from the time were an accurate reflection of what happened. Further unsuccessful attempts were then made to contact Mr R before a default notice was eventually issued and a default registered shortly afterwards – this seemed reasonable to me given the attempts Santander had made to resolve the situation with Mr R.

I invited Mr R and Santander to provide any more comments or evidence that they wanted me to consider before reaching my final decision on this case by 7 August 2017.

Santander confirmed that it didn't have anything further to add.

But Mr R disagreed with my provisional decision. Although I've only briefly summarised what he told us below, I can confirm that I've read and considered what he said in full:

- When he originally complained he had no records from the time, so he was pulling everything together from his memory and letters during the complaint process – this explains why there may have been a few mistakes in some of the details he gave.
- He clearly remembers agreeing with Santander that making these three payments would put the account back in order and would allow him to keep his overdraft. So he thought Santander's letter telling him that his overdraft was being withdrawn was a mistake.
- He only cancelled the third payment because Santander broke its side of the agreed repayment plan. With hindsight, and now knowing what the implications of a default on his credit file are, he would've made the third payment anyway and tried harder to reinstate his overdraft.
- He disagrees that Santander's notes are an accurate reflection of the discussions in branch. He says the notes have grammatical and factual mistakes in them, and couldn't have been recorded at the time because the Santander representative didn't have a computer. He's also mentioned the clarity of some of the text in the notes (which he finds suspicious) and says the representative definitely didn't speak to him about a debt advice charity or discuss him speaking to family or friends for support.

my findings

I've reconsidered all the available evidence and arguments – include Mr R's response to my provisional decision – to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm still not upholding this complaint.

I appreciate why Mr R is so unhappy about what's happened here bearing in mind that he's ended up having a default on his credit file because of this outstanding debt. And I'm still of the opinion that that the timing of the withdrawal of Mr R's overdraft could've been better given the arrangement that had been made to bring him back within his limit. But I think it's important not to lose sight of the fact that, in using his Santander account in this way (i.e. not as his main or primary bank account), he wasn't complying with the account's terms. So Santander was entitled, in line with these terms, to withdraw his overdraft, and it could've done this much sooner than it did. Instead, Mr R continued to use the account, in breach of its terms of use, for around two years before Santander took any action.

I know Mr R recalls agreeing that making these three payments would allow him to keep his overdraft, but other than his recollections the available evidence simply doesn't support this. It just suggests that an arrangement was made to bring Mr R back within his overdraft limit and that he was made aware his overdraft was due to be reviewed. I haven't seen anything to persuade me that Mr R was specifically told his overdraft/overdraft limit would be kept as it

was indefinitely (or even just for the foreseeable future) if he kept to the agreement he made in May 2013. So, regardless of whether he ultimately kept to this agreement, I still don't think Santander did anything wrong in exercising its rights under the account terms and withdrawing Mr R's overdraft.

I've next thought about how Santander behaved in relation to the recovery of the arrears left on Mr R's account when the overdraft was withdrawn.

As I explained in provisional decision, the evidence from Santander suggests to me that it tried to work with Mr R to arrange an agreeable way of repaying his debt, including giving him time to explore his options, providing details of a debt charity and, importantly, stopping further unarranged overdraft fees so as not to increase his indebtedness.

I know Mr R disputes this though and, in particular, he's questioned the accuracy of Santander's notes. I've thought carefully about what he's said because I think these notes play an important part in explaining what happened here.

First of all, I don't agree with Mr R that some of the text in the notes being clearer than others is suspicious in any way – I don't know why that's happened, but it doesn't cause me to doubt the notes' authenticity. And I think the same about any grammatical errors in the notes – they have no bearing on whether the information in the notes is accurate. I do think a number of clear factual errors in the notes might bring into question their accuracy, and to that end I accept, as Mr R has rightly pointed out, that the cancellation date mentioned in the notes appears to be incorrect. But the notes don't seem to me to be "full of mistakes" as Mr R suggests.

There are of course comments in the notes that contradict what Mr R remembers happening – for example, him being told about a debt advice charity and agreeing to speak to his family to see if they could help. But that doesn't mean the notes are, on the whole, factually inaccurate – as I've explained previously, notes recorded at the time of an event tend to be a better reflection of what happened than someone's recollections years later. And even if they weren't recorded during the meeting but shortly afterwards (which I accept is entirely possible), I think they still carry more weight evidentially than what Mr R now recalls happening.

Ultimately I'm left with Mr R's recollections of what happened several years ago (and he's already conceded there have been a few mistakes in the details he's remembered) versus Santander's notes which may have minor errors (for example, the cancellation date) but which seem to have been recorded at, or at least around, the time.

I know Mr R will be disappointed by this, but I'm persuaded that Santander's notes are probably the most accurate reflection of what happened.

That means, based on the content of the notes and other supporting evidence that I've referred to here and in my provisional decision, that I'm satisfied Santander tried to work with Mr R to help him repay his debt, including giving him a two month break to explore his options, placing a hold on further unarranged overdraft fees so he didn't owe any *more* money and then not issuing a default notice until several unsuccessful attempts had been made to contact him (and this being many months after the debt first became outstanding).

All in all, I'm persuaded that Santander treated Mr R fairly and hasn't done anything wrong here.

I know Mr R feels he's been treated badly by Santander and will undoubtedly be disappointed by my decision. But by using his account in the way that he did he was knowingly in breach of its terms and so, irrespective of the agreement he made, Santander was entitled to review and withdraw his overdraft. And I think it treated him fairly in attempting to recover the outstanding debt that was left as a result of it taking this action.

my final decision

For all the reasons set out in my provisional decision and above, I'm not upholding Mr R's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 October 2017.

Kevin Wright
ombudsman

copy of the provisional decision dated 6 July 2017

complaint

Mr R's complaint is about the withdrawal of the authorised overdraft facility on his Santander bank account and the fact a default was recorded on his credit file as a result. Mr R would like the default removed from his credit file.

background

Mr R held a Santander bank account as well as an account with another bank. He decided to use his *other* account as his main bank account, including having his student loan paid into it whilst attending university. In 2011 he changed his Santander account to a Student account, which meant he was given an approved interest-free overdraft. He continued to use his other account as his main account though.

Santander wrote to him in May 2013 to explain that he needed to start making regular payments to his account to avoid, amongst other things, the possible removal of his arranged overdraft. He didn't do this; instead he continued to use his account and went beyond the arranged overdraft limit. Mr R then agreed to make payments to bring the account back within the limit. A few months later the overdraft was withdrawn by Santander, and a default was registered on Mr R's credit file when the account arrears remained unpaid.

Our investigator upheld Mr R's complaint. He thought Mr R had agreed a way forward with Santander to deal with his overdraft and he'd kept to his side of that agreement. So Santander shouldn't have charged Mr R overdraft fees or removed his arranged overdraft. Consequently, a default marker shouldn't have been added to Mr R's credit file.

Santander disagreed with our investigator. It said that Mr R hadn't actually kept to what was agreed, and he'd been given notice that his arranged overdraft was expiring because he no longer met the criteria for having it. Santander also said it had tried to contact Mr R to bring the balance of the account down, and had issued a default notice to him before registering the default on his credit file. So, all in all, it didn't think it had done anything wrong.

my provisional findings

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

I think it's important to point out, first of all, that Santander's terms and conditions require (and required at the time Mr R changed to a Student account) customers to use their Student account as a "main or primary account". That means paying in their "main form of funding", which includes "student loan, grants, parental contribution, and/or income from any part-time employment...". The terms also explain that not meeting this requirement could lead to account closure and/or withdrawal of any overdraft allowance.

It doesn't appear to be disputed that Mr R wasn't complying with these terms. Indeed, it's clear from what he's told us that he was using his Santander account for the overdraft facility and his other bank account as his main account. So, in principle, Santander was entitled to withdraw the agreed overdraft and/or close his account much sooner than it did. I think it's important to bear that in mind when considering what Santander might've done wrong here.

I know Mr R doesn't remember being told about these terms when he changed to this Student account, but I think he probably would've been told that he needed to fund his account in this way – after all, this was a key condition of him having the account and the overdraft benefit that came with it. In any event, a couple of years after he changed to this account – on 1 May 2013 – Santander wrote to him to explain the following:

...regular payments are not being made to your account. As the Arranged Overdraft limit is partly based on the amount that you regularly pay into your Account, if you still want to use this service then you must set up a regular payment into the account as soon as possible. If you do not arrange for a regular payment to be made to your account within ten days of this letter, we will take action to restrict further spending...

If this situation is not resolved this letter will serve as 30 days notice that your Arranged Overdraft may be removed.

Mr R didn't arrange for a regular payment to be made though or take any immediate action following this letter (such as contacting Santander to say he didn't know he was supposing to be making regular payments – which again suggests to me that he did know about these terms). Instead, he continued to use the account's overdraft facility and went over the arranged limit a few weeks later.

A conversation then took place between Mr R and Santander on 27 June 2013. Despite this being after the 30 days' notice Santander had given, it hadn't yet removed Mr R's overdraft. The notes of that conversation are that three payments of £59 would be paid on the 5th of each coming month with the intention of bringing the account back within the agreed overdraft limit. The notes also say that Mr R should call if he had problems meeting this arrangement, that he was aware of the potential impact on his credit file and that he was also made aware his overdraft limit was due to be reviewed.

Mr R says he was actually only due to make two payments of £50. But I see from his statements that this wouldn't have brought him back within his arranged overdraft limit (three payments of £59 would have done this). So I think it's unlikely that's what would have been agreed. In fact, the two payments Mr R did make in July and August 2013 were for £59 in line with Santander's notes.

I think it's more likely that Santander's notes are an accurate reflection of what was discussed and that Mr R knew he was supposed to be making three payments of £59. So I don't agree with our investigator that Mr R kept to his side of the arrangement he made with Santander, and I think Mr R would've known this and the consequences of this (that he was still over his arranged overdraft limit) when he didn't make the third agreed payment of £59.

After the first payment was made – in July 2013 – Santander wrote to Mr R to tell him his overdraft was due to expire on 2 September 2013.

I do think the timing of this was unfortunate given that Santander had recently agreed a way for Mr R to bring his account back within his arranged overdraft limit. But the notes from June 2013 say that Mr R was made aware his overdraft limit was due to be reviewed despite that conversation and, as I've explained above, Santander was ultimately entitled to take this action in line with the account's terms and conditions (and could've taken it much sooner than it did). So I don't think Santander did anything wrong by choosing to withdraw Mr R's overdraft facility.

That said, I would still expect Santander to have treated Mr R fairly in relation to the recovery of the arrears that were left on the account as a result. So I've thought about that next.

In addition to the letter sent to Mr R explaining that his overdraft facility was being withdrawn a second letter was sent in September advising that stops were being placed on the account until the unarranged overdraft was repaid. This letter invited Mr R to contact it to arrange a mutually agreeable repayment plan.

Mr R says he wasn't at home at the time, but became aware of this letter a few days later after speaking to his mother – she'd received a call from Santander that day because it wanted to urgently speak to Mr R. But rather than contacting Santander as the letter suggested he says he decided to wait until he returned home a few months later to sort this problem out. In the meantime, Santander says it tried unsuccessfully to phone Mr R on four occasions to discuss this matter, and I see that it stopped charging fees for use of an unarranged overdraft – so Mr R didn't owe Santander any *more* money.

Mr R says he then went into his local branch in December 2013, but was told to go back to the branch where the account was set up to appeal the decision to remove his agreed overdraft facility – Santander's notes from the time confirm this.

He's told us that went into that branch in January 2014 and thought everything was sorted after he provided evidence that he was a student and agreed to pay his next student loan payment into the account. He says he was surprised to receive a phone call from Santander in June 2014 explaining that his account had defaulted.

But that doesn't reflect Santander's notes. The notes explain that Mr R was told his overdraft limit *wasn't* being reinstated and that, as he wasn't due to receive a student loan payment until March, repayment plans were discussed. It was agreed that as he had no income Mr R would speak to his family to see if they could help. The notes also explain that Mr R was told about a debt advice charity, and was advised his account would be placed on hold for two months (presumably to allow him to explore his income/repayment options). Assuming the notes are accurate, it sounds to me like Santander was treating Mr R fairly and giving him ample opportunity to find an agreeable way of repaying these arrears.

Notes recorded at the time of an event – like Santander's notes here – tend to be a better reflection of what happened than someone's recollections years later. Also, the two month holding period referred to in the notes seems to coincide with a two month break in Santander trying to phone Mr R about this, which again makes me think the notes are an accurate reflection of what happened.

Santander says it started trying to contact Mr R again towards the end of February 2014 and it looks like it called six times over a two week period. I understand it also tried to contact Mr R by post and ultimately issued a default notice on 19 April 2014 when it hadn't heard from him and no attempts had been made by him to repay what he owed. The default was then registered shortly afterwards, which I think was reasonable given that the debt had been outstanding for many months by this point and Santander had made a number of unsuccessful attempts to resolve the situation with Mr R.

Ultimately, it seems to me that Mr R's spending in 2013 took him beyond the agreed overdraft limit on his account, but he didn't keep to his side of the repayment plan he then agreed with Santander. He also hadn't been keeping to the terms of use of the account by not using it as his main account or making regular payments. So Santander was entitled to take the action it did in withdrawing the agreed overdraft facility. This of course left Mr R with the outstanding balance to repay and, from what I've seen, I don't think Santander treated Mr R unfairly in the way it handled that situation – it tried to work with him to arrange an agreeable way of repaying this debt, including giving him time to explore his options, providing details of a debt advice charity and stopping further unarranged overdraft fees so as not to increase his indebtedness.

I know Mr R will be disappointed by all of this, but I don't think Santander has done anything wrong here. So I'm not currently minded to uphold this complaint.

my provisional decision

For all the reasons set out above, I don't currently intend to uphold Mr R's complaint about Santander UK Plc.

Kevin Wright
ombudsman