

## **complaint**

Mr W complains that Santander UK Plc has not treated him fairly in that it mis-sold him an overdraft which he could not afford, applied unfair charges to account and did not treat him positively and sympathetically when he told it of his financial difficulties. He would like the bank to refund all charges and pay him further compensation for the distress and inconvenience he has experienced. .

## **background**

Mr W opened an account with Santander in September 2008. On opening, the account had an overdraft facility of £100. This was increased to £300 on 19 March 2014, and then to £350 on 26 March 2014. Mr W says the overdraft was not affordable, and that the charges which the bank applied to it were unfair and compounded his financial difficulties. He contacted the bank on several occasions, but says it was not sympathetic to his situation. He would like the bank to refund all fees and increase its compensation for the distress and inconvenience he says he has suffered.

Our adjudicator did not recommend that the complaint should be upheld. She considered that some of the complaint was outside what this service is able to investigate. She did note that the bank had refunded £635 of charges applied to the account, and in conjunction with its response in the calls she was able to listen to, considered this was a positive and sympathetic response to Mr W's situation.

Mr W does not agree, saying the bank should also make refunds which would be available to him – not just to refund charges which are then applied to the debt.

## **my findings**

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

Mr W has raised several issues as part of his complaint and I've dealt with these, below.

### *what this Service can look at*

As Mr W is aware, this service is limited in what it can investigate. Some of the matters he has complained about are beyond what we can look at. This means I'm not able to look at the part of his complaint about how he was treated in the Dudley High Street Branch as we didn't receive this part of his complaint in time.

Mr W has also said that the charges applied to his account are unfair. I can see why he's upset about them, but a decision by the Supreme Court in 2009 means I'm not able to say they're unfair if they were correctly applied. Because Santander has shown that the charges were put on his account as required by the terms and conditions, I can't find that they're unfair, or ask the bank to refund them.

### *poor customer service*

Mr W has said that Santander did not treat him positively and sympathetically (which it's expected to do) when he contacted it about his financial difficulties. I have listened to the available call recordings, and I consider that the bank does provide reasonable service in

each. I appreciate that not all recordings are available, but banks aren't required to make and keep recordings, so I can't say this is a mistake by Santander. I realise that Mr W has said there were problems with other calls but without further evidence that this was the case, I can't safely say that the bank treated him unfairly when he spoke to it. Santander has acknowledged that Mr W received incorrect information in one of the calls, and paid him £50 compensation for this error, which I consider to be fair and reasonable in the circumstances.

*positive and sympathetic response*

I appreciate that Mr W would like Santander to refund all charges applied to the account. I'm afraid I'm not able to ask it to do this. Banks aren't required to refund any charges where a customer is in financial difficulties. Santander has refunded £635 in charges, given Mr W information on how to manage his financial difficulties and information about available support services. I consider this to be a fair and reasonable response to Mr W's situation and I don't consider it needs to do more than this.

I appreciate that Mr W is upset that the refunds have been applied to the debt, and that he would prefer to receive them directly, but I can't order Santander to do this. It is simply refunding money to the account which was taken out of it in charges, and while there is an outstanding debt, the refund will go towards paying that down first.

I appreciate that Mr W says he only accepted the overdraft at the bank's insistence. But he did use it when he wasn't required to, and has had the benefit of it. Because of this, he is liable to repay the debt.

**my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 July 2016.

Catherine Wolthuizen  
**ombudsman**