

complaint

Miss J complains about the bank charges that Santander UK Plc has applied to her account with it. She says the charges are unfair.

background

The adjudicator did not uphold this complaint. Miss J told the bank she was experiencing financial hardship. It responded by cancelling £85 worth of fees she would normally have been charged for going overdrawn. It also said it would cancel any fees she had incurred since her last statement and the date of its letter to her. It gave her advice and contact details of other organisations that could assist her to manage her finances.

Miss J remains dissatisfied with the bank's response. She has also mentioned that the bank didn't deal satisfactorily either with another complaint about bank charges that she made in 2007.

my findings

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

Miss J's current complaint

Miss J is doing her best to manage being in financial hardship. Clearly, having to pay bank charges makes this more difficult. She did the right thing when she contacted the bank to tell it about her money problems. Santander is required to respond positively and sympathetically to customers in financial difficulty. And I find that the bank did so when Miss J got in touch.

Santander was entitled to impose bank charges in line with its terms and conditions. But it agreed not to do this. It also extended the time during which no charges would be added to the account. It did so in order to break the cycle of debt which Miss J was struggling to manage and to give her a chance to seek financial advice.

The bank suggested other organisations that could help her. It told her about a different sort of bank account it could offer that might suit her better.

I consider that the bank made genuine attempts to assist Miss J manage her financial problems. I find that Santander did everything that it was reasonably required to do.

Miss J's 2007 complaint

Miss J's complaint about a previous dispute with the bank, also concerning bank charges, dates back some six years. At the time, a test case about bank charges was being considered in the courts. The bank sent her a final response on this complaint four years ago. She refused an offer that the bank made to settle the matter at the time.

She was entitled then to refer her complaint to the Financial Ombudsman Service within six months if not resolved. The bank's final response letter makes this clear. There is however no evidence that she referred this complaint to us, before she mentioned it in connection with her current complaint.

The adjudicator has told the bank Miss J has recently referred this issue to us. But the bank objects to us looking into this complaint now.

We operate under rules set out in the Dispute Resolution (DISP) Rules. Where a business objects, it is only in exceptional circumstances that we can consider a complaint brought to us more than six months after the bank has issued its final response letter. Miss J didn't refer her 2007 complaint to us for several years after the final response letter. And I have identified no exceptional circumstances which prevented her from referring it to us earlier. So I must conclude that Miss J's 2007 complaint is out of time under the rules I must apply.

We did also ask the bank to clarify whether the offer it made Miss J (that she previously rejected) might be made to her again. But the bank says it made this offer in 2007 and it's no longer available. I cannot require the bank to reinstate its offer.

We have however explained to Miss J that it has now been settled in law that bank charges cannot be challenged on the basis that they are unfair because they are too high. If the charges are set out in the bank's terms and conditions, then it can charge unauthorised overdraft fees when a customer goes overdrawn without prior approval. It must still treat fairly any customer who has financial problems and has gone overdrawn. But this does not mean that it must cancel all overdraft charges. Or not charge any more while the account remains overdrawn.

I hope this information assists her.

my decision

My decision is that I do not uphold Miss J's current complaint about bank charges. I do not have the legal power to consider Miss J's 2007 complaint because it has been brought to us out of time.

Susan Webb
ombudsman