

complaint

Mr M complains that following an account switch to another bank he didn't receive Santander UK Plc's letters advising he had an outstanding balance. As a result, Mr M's credit file has been affected. Mr M also complains about how Santander's handled a Subject Access Request (SAR).

background

In April 2018 Mr M arranged to move his account away from Santander and the switch completed at the beginning of May 2018. But there was an outstanding balance on Mr M's account of £194.75.

Santander says it wrote to Mr M on six occasions asking him to repay the funds owed. Mr M says the first letter he received was in August 2018 and he then called Santander to discuss the outstanding balance.

Mr M requested a SAR in August 2018 but didn't receive the information he wanted. Mr M also didn't receive a call back from Santander and a repayment plan was incorrectly offered to him.

Mr M complained and Santander agreed to pay him £75 in relation to the service he'd received. But it didn't agree it'd made a mistake when recording information on Mr M's credit file so it didn't offer to make any changes. Mr M referred his complaint to this service and an investigator looked at what'd happened. He thought Santander had written to Mr M about his account balance several times and that the information on his credit file was accurate so didn't ask it to make any changes.

Mr M remains unhappy and has said he's investigating problems with his post. Mr M has asked to appeal the investigator's view so his complaint's been passed to me to make a decision.

my findings

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

I'd like to start by explaining that the rules about how businesses handle information (including responding to a SAR) are set by the Information Commissioner's Office (ICO), the regulator. I know Mr M has made a number of complaints about how Santander's handled his SAR request but if he remains concerned he'll need to refer those issues to the ICO. The Financial Ombudsman Service isn't able to look at complaints of that nature.

What we can look at is whether Santander has treated Mr M fairly when recording arrears with the credit reference agencies when his overdraft wasn't repaid. To decide, I've looked at the evidence available, including the letters and information Santander sent Mr M, as well as his comments and all the information he's provided when bringing his complaint. Having done so, I've reached the same decision as the investigator. I'll explain why.

I know this point's already been made by Santander and the investigator but it's important to the complaint. After Mr M switched his account to another bank Santander wrote to him several times asking him to repay his overdraft. I appreciate Mr M says his post isn't reliable but I'm looking at Santander's actions. And I'm satisfied it did send Mr M the correctly addressed letters I've seen. Mr M's said he thinks letters of this nature should be sent via a recorded delivery service. But there's nothing in the account terms that says Santander will write to its customers in that way when the account's overdrawn and the industry rules don't require that step.

Mr M's recently told us he's investigating problems receiving post. While that maybe the case, it doesn't affect the outcome here. My role is to look at whether Santander communicated with Mr M in a fair and reasonable way. Mr M didn't tell Santander he was having difficulty receiving post or ask to communicate in a different way to make sure he was receiving important information, so I've not found it's made a mistake by writing to him.

Santander recently responded to Mr M's concerns about the problems he's had receiving his post but didn't agree to remove or amend the information it's reported to the credit reference agencies. As I've said above, I'm only able to look at Santander's actions when assessing this complaint and I haven't found any evidence of errors when sending Mr M important information about his overdraft. As I haven't found Santander made a mistake I don't have grounds to tell it to change the information it's reporting.

I've looked at the account balance and can see it's made up of transactions completed on Mr M's behalf by Santander. As Mr M had arranged to transfer his banking away from Santander it's reasonable that it went on to ask him to clear the outstanding balance (that exceeded his arranged overdraft limit) when it wrote to him.

I know Mr M's recently asked about when Santander can ask him to repay his overdraft. The current account terms Santander has on its website say it can ask for an overdraft to be repaid in full on demand. That means the overdraft doesn't have a specific term but is repayable when Santander says so.

Mr M's recently raised the legal principal of *frustration of contract* with Santander and it's responded explaining why it doesn't agree it should be taken into consideration in this case. The Financial Ombudsman Service is an informal dispute resolution service. So whilst we have regard for the law, we decide cases based on what's fair and reasonable. And in this case, I'm satisfied Santander's acted fairly and reasonably by writing to Mr M about the funds he owed.

I'm sorry to disappoint Mr M but I've not found any evidence of a mistake by Santander in the way it corresponded with him. Santander's sent Mr M a £75 cheque for the service he received when raising his concerns. If the cheque wasn't deposited or is no longer available Mr M can contact Santander directly for a replacement. I've looked at what happened and I'm satisfied that's fair in all the circumstances. As a result, I'm not telling Santander to take any further action to resolve Mr M's complaint.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 February 2019.

Marco Manente
ombudsman