

complaint

Miss E complained about the bank charges on her account with Santander UK Plc.

background

In 2015, Miss E complained to Santander. She said that the fact she'd been incurring bank charges was contrary to the Lending Code and Banking Code of Business. She said the charges had left her in financial hardship and wanted Santander to repay all charges since 2012.

Santander wrote back to say it had tried to contact her but hadn't been able to. It asked Miss E to ring a Freephone number for its Financial Support team, and enclosed a leaflet about financial difficulties. Miss E wrote back to say 'I do not discuss my finances over the telephone.' She said she wanted £315 of charges plus interest at £1 day since June 2012, totalling £1,473 plus an ongoing daily rate until settlement.

Santander said it wasn't able to refund charges previously applied to Miss E's account. It said that the Supreme Court decision in 2009 had confirmed that fees couldn't be assessed for fairness, so they couldn't be challenged. But Santander said it was committed to treating customers sympathetically and positively, so it had referred her letter to its Financial Support team. It asked Miss E to ring this specialist team on a Freephone number.

Miss E wasn't satisfied and complained to this service.

The adjudicator thought Santander had treated Miss E fairly. He told Miss E about the Supreme Court decision, and explained that it meant current account charges can't be challenged on the grounds they are too high or unfair. He explained that businesses should help customers in financial difficulty, but this doesn't mean they always have to refund charges. He noted that Miss E said her financial difficulties started when she switched to her Santander account, but he noted that her previous statements showed her account was already overdrawn, and her income always fluctuated. He also said that the charges were levied correctly in line with the terms and conditions of the account.

Miss E wasn't satisfied. She said she'd taken legal advice, and although she accepted she was in breach of contract on her account on several occasions, she said Santander's charges were Penalty Charges and not recoverable at common law. She said she had become aware that the money banks lend on loans and overdrafts was created out of thin air, so she couldn't see how the daily charge for an unauthorised overdraft was fair.

Miss E said she'd now revised her claim and wanted repayment of overdraft fees for April to June 2015, plus interest from March 2015 to December, which she said was a total of £476.

my findings

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

The Supreme Court ruling in November 2009 ruled that current account charges did not generally amount to penalties. Nor could they be challenged on the grounds they are too high. So I don't agree with Miss E's view that Santander's charges are a "*penalty*."

I don't know what Miss E is referring to when she says she's been made aware that the money banks lend on loans and overdrafts "*is created out of thin air.*" I don't agree that this is how the banking system works. So I don't see that this is a valid reason for Miss E not to be charged fees.

Miss E has had the use of the money, and the overdraft fees relate to that. I have considered whether Santander has acted positively and sympathetically since Miss E told it about her financial difficulties. I find that it has. The bank gave details of its specialist team to support people with financial difficulties, and Miss E refused to get in touch with them. I note that Miss E told this service that she'd been to an advice organisation, which suggested she should take out a Debt Relief Order "*but I decided that Santander should just refund the unfair charges and contractual interest.*"

This isn't how it works. As explained, charges can't be challenged on the grounds that they are unfair. And I consider that Santander acted positively and sympathetically when it offered her help, which Miss E refused. I don't require the bank to do more.

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 Miss E to accept or reject my decision before 4 May 2016

Belinda Knight
ombudsman