

complaint

Mrs E has complained about the charges Santander UK Plc has placed on her current account. She's said that Santander hasn't treated her fairly and sympathetically even though she informed it of her financial difficulties. She's said the charges have contributed directly to her financial hardship. She therefore wants the charges refunded.

background

Mrs E's current account had various charges placed on it dating back six years. Throughout this time the charges have been for unpaid item fees, unarranged overdraft charges returned/unpaid direct debit charges and instant overdraft request charges. The account had no overdraft facility.

Mrs E has explained that since 2010 things have been difficult for her personally and this has affected her financial situation. She's said that she told Santander on several occasions that she was in financial hardship but it didn't do anything about the charges and has failed to be considerate to her difficult situation and treat her in line with regulations.

The complaint was investigated by one of our investigators who felt it couldn't be upheld. Having looked at Mrs E's statements dating back six years he was of the view that whilst the account was overdrawn on several occasions throughout this time it was brought back into credit without the intervention of Santander. He identified monthly credits from income and transfers from other accounts. He also felt that the charges applied for returned payment requests didn't generally take the account into the overdraft and Mrs E's general pattern of spending on normal transactions was what took the account into the unauthorised overdraft. Mrs E didn't agree with the assessment. She remained of the view that Santander was aware of her financial difficulties for years but failed to treat her appropriately or help her. As no agreement could be reached the complaint has been passed to me to review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the investigator and for broadly the same reasons. I know my decision will disappoint Mrs E so I will explain why.

A case decided in the Supreme Court means that I can't consider whether these sorts of charges are too high or are unfair. I can only look at whether they have been applied wrongly.

Having looked at what Mrs E has been charged over the years I don't think they have been applied incorrectly. The charges were, in my view, applied for legitimate reasons – for the use of unplanned overdrafts and also because established direct debits couldn't be honoured. So Mrs E exceeded her limits and failed to make established payment arrangements for which, under the terms and conditions of the account, charges can be applied. So in this respect, I can't say that Santander applied them incorrectly.

I've also considered whether Santander was told before 2016, or should have known before this time, that Mrs E was in financial difficulties.

Mrs E is correct in saying that when financial difficulty has been declared the business should treat the customer in a “positive and sympathetic” manner. There isn’t a set method for this because it does depend upon the individual situation but measures could include cancelling unaffordable direct debit payments or changing the account type.

But, this obligation is very much dependant on the business being told by the customer facing the difficulty that they are, in fact, in financial difficulty. I’m sure Mrs E can appreciate that it would be difficult for a business to suggest ways it can help if it hasn’t been told that there is a problem.

However, it could be argued that the way someone handles their account may indicate the financial difficulty. But, if the account is being used in a normal way and within agreed limits the financial difficulty can be difficult to identify without the customer actually saying something

I know Mrs E has said that she told Santander that she was in financial difficulty a long time ago but I can’t find any evidence that supports this. Santander has no records of Mrs E informing it of her financial difficulties at any other time except for 2016. It’s possible that notes weren’t made but I think this is unlikely. Also Mrs E hasn’t been able to provide any records of her contacting Santander before the time she made this complaint.

I can see, however, that when Mrs E raised this complaint in 2016 where she explained her financial difficulties Santander acknowledged she was in a cycle of charges and offered Mrs E to meet with its financial assistance team to see what could be done to help her.

Given Santander acted straight away in 2016 I see no reason why Santander wouldn’t have acted in the same way if Mrs E had told it previously of her issues. I think it’s unlikely that Santander would just fail to act.

I know that Santander refunded some charges in 2014 to Mrs E but there are no records of why this was. The only information the records state is that this was a one off, goodwill refund. Records also show that Santander provided Mrs E with information on how to prevent further charges at this time. It could be argued that Mrs E told Santander that she was in financial difficulties at this time. But I think this is unlikely. As mentioned above, Santander acted immediately after it was told of Mrs E’s difficulties in 2016 so I think it’s unlikely it would have failed to act prior to this. I think the only explanation could be Santander wasn’t made aware of the difficulties Mrs E was facing at that point in time and that the charges were refunded for another reason.

I have also considered whether there was a pattern of activity which should’ve alerted Santander to the fact Mrs E was in financial difficulty. I have looked at the entirety of Mrs E’s statements dating back six years and while I can see all of the charges I can also see that Mrs E brought her account back into credit on a regular basis, almost monthly. Over the years there were even periods when the account was fully and consistently in credit - for thirteen months between 2011 and 2012, for seven months between 2012 and 2013, for three months in 2014 and for five months in 2015. Also, I can see that Mrs E appears to have been in a position to still use her account normally for daily living and things such as eating out, buying carpets and keeping up with her loans. In light of this, I don’t think the activity on the account indicated that she was in financial difficulty so I don’t think Santander failed to notice any problems.

While I appreciate that things have been difficult for Mrs E over the years, given everything I've seen I just don't think Santander was made aware of her situation any further back than 2016 when she raised this complaint. I also don't think that Santander failed to notice that Mrs E was in financial difficulties and I think the charges have been applied correctly. I'm also of the view that when Santander was made aware of her situation it acted accordingly and tried to offer Mrs E help. I therefore don't think that in this case Santander has done anything wrong.

my final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 27 July 2017.

Ayshea Khan
ombudsman