

complaint

Mr J isn't happy with the way Santander UK plc has handled his current account. In particular he thinks the charges that have been applied are unfair and that a default shouldn't have been added to his credit file.

background

Mr J had an account with Santander that had an agreed overdraft limit of £500. There were fees for using this overdraft as well as further charges that would apply if he went over this limit. Between August and November 2012, a number of fees and charges were applied to his account because it was overdrawn and over the agreed limit.

Mr J contacted Santander in November 2012 and explained he wasn't working and wouldn't be able to bring his account back in line until January 2013. So it was agreed he'd pay £20 a month and then be in touch again in early January. But he only made one payment under this agreement.

In February 2013, he contacted Santander again. He said he'd forgotten to make the agreed payments in December and January and refused to make any further payments unless Santander removed some of the charges that had been applied. Santander wasn't prepared to do this. As Mr J didn't then make any further payments or get in contact again, the account was defaulted in April 2013 and this was recorded on his credit file. The debt was then passed to a number of debt collection agencies. The full balance has now been repaid.

Mr J says that the charges were applied to his account in error and Santander didn't treat him fairly when he was in financial difficulty. He says he was fully willing to repay the debt but Santander made this very hard because it wouldn't allow him to do it while the debt was with one of the debt collection agencies. He wants the default removed from his credit file because he doesn't think it represents how he handled the account, but rather how Santander dealt with things.

Santander agreed to refund £220 of the charges. But it said they'd been applied correctly in line with the terms and conditions, and the information on Mr J's credit file was an accurate reflection of the management of his account. It also offered a total of £135 compensation for the service Mr J had received.

Our investigator didn't think Mr J's complaint should be upheld. Mr J didn't agree, so it's been passed to me for a final 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.

charges and financial difficulty

Having reviewed Mr J's bank statements through the period, and looking at the terms and conditions of the account, I'm satisfied Santander applied the charges correctly. The account was overdrawn and the balance did go over the agreed overdraft limit on a number of occasions. So I don't think they were applied in error.

What I need to decide now is whether by continuing to add the charges to Mr J's account, Santander was treating him fairly.

A number of the charges applied from October 2011 onwards were refunded by Santander shortly after. From July 2012 there was no activity on the account, except for the charges being added – so the balance grew from £500 to £830 by November. Mr J has told us 2012 was very difficult for him financially. But despite being sent a number of letters about the charges, and fact his account was over the overdraft limit, he didn't contact Santander until November to tell it about his problems.

Banks do have a duty to consider circumstances of customers' financial hardship positively and sympathetically, but that doesn't necessarily mean they should refund charges or interest that have been legitimately incurred. Santander made an arrangement with Mr J that he'd pay £20 a month until January, which is when he said he'd be able to bring his account back in line. It also agreed not to charge him any further if he stuck to this agreement. But Mr J only made the first payment, so further charges were applied in December and February.

Mr J says he forgot to make the payments in December and January. But I can see Santander wrote to him a number of times during these months. And he didn't contact it again until February.

I think Santander treated Mr J fairly when he made it aware of his financial difficulties. Had he contacted it sooner in 2012, kept to the agreement that had been made, or contacted it when he realised he hadn't/couldn't keep to the agreement, I think it's likely a number of the charges would've been avoided. And he's also now had a refund of £220 of the charges.

should Santander have recorded a default?

It would be reasonable for Santander to record a default on Mr J's credit file if it'd decided the relationship had broken down. But we'd also expect it to treat him fairly. By this I mean that Santander should've given Mr J the opportunity to repay the outstanding overdraft.

Mr J knew his account was overdrawn and was over his overdraft limit. But he told Santander he wasn't prepared to pay anything into the account unless some of the charges were refunded. He was then sent two letters in February letting him know he needed to do something, such as get in touch. And then on 27 February he was sent a final request to repay the money. It explained he'd need to pay back the overdraft within 28 days or the next thing Santander would do was register the details of his debt with the credit reference agencies. By April, because Mr J did nothing, a default was recorded on his credit file.

So I think Mr J had the opportunity to repay the outstanding overdraft, and was made aware of the consequences of not doing so. Because he was unwilling to take any steps towards doing this, I think it's fair to say the relationship between him and Santander had broken down. So overall, I think it was reasonable for Santander to record the default on his credit file.

how things have been handled since the default was recorded

After the default was recorded, Mr J's account was passed to a debt collection agency in April 2013. This is what most banks would do in this situation and isn't unreasonable. It was then passed to another agency in November 2013.

Mr J did contact Santander shortly after this agency sent him a letter, saying he didn't want to deal with them and wanted to settle the account with Santander directly. At this time he was told he'd need to deal with the agency.

In January 2014 the account was passed to another debt collection agency. Santander's records show Mr J hadn't contacted either it or the previous agency since November 2013. So it doesn't seem he was caused any particular inconvenience during this time. But I can see he did contact Santander in April 2014 wanting to pay off the balance, and that around this time the account was requested back from the agency. The account balance was finally repaid in February 2015.

Although the notes from Santander don't support what Mr J has said about trying to repay the balance, and this being refused over a six month period, I accept this may have happened – Santander wasn't able to accept the payment until it had the account back from the agency and this seems to have taken some time. And I can understand why Mr J would've found this frustrating.

I've also seen that Santander didn't handle things particularly well when Mr J made his complaint in 2016. In particular it sent some letters to his old address and there was a delay in issuing a response to the complaint.

Santander has offered Mr J a total of £135 compensation for the poor service he received. I think this is fair and reflects the impact Santander's mistakes have had on him.

Mr J's told us he hasn't cashed either of the cheques he's been sent by Santander. It's up to him if he now chooses to do so now, and if he needs these cheques to be reissued, he should contact Santander directly.

my final decision

My final decision is that I'm not going to ask Santander UK plc to take any further steps to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 March 2017.

Claire Allison
ombudsman