

complaint

Mr D complained about charges which Santander UK Plc applied to his account. He also said the bank broke the lending code.

background

Mr D has complained about charges to Santander and to this service before. This decision only looks at what's he's complained about since his previous complaint.

Mr D was unhappy because on 29 March 2016, Santander debited £28 for an arranged overdraft usage fee. He said this took him into higher charges for an unarranged overdraft.

Santander replied and said the charges applied for 29 March 2016 were for Mr D's statement period from 8 February to 7 March. It said the usage fee for an arranged overdraft was £1 a day, and Mr D had used his for 28 days of the statement period. The bank wouldn't refund the charges. It said the charges were valid, and it had already refunded Mr D on previous occasions as a gesture of goodwill.

Mr D wasn't satisfied and complained to this service. He said this had taken him over his arranged overdraft limit, so he'd have to pay £6 day while he was over this limit. Mr D also said that Santander was supposed to follow the lending code, including acting sympathetically and positively when considering financial difficulties.

On 29 April, Mr D's account was debited with £22 for his arranged overdraft fees, plus £54 for the days when he'd been in unarranged overdraft.

The adjudicator didn't consider Santander had unfairly or incorrectly applied charges. He said that although banks are required to treat customers positively and sympathetically if they're in financial difficulties, this doesn't mean they have to stop applying all charges. The adjudicator also gave Mr D information about free debt advisory services.

Mr D was very unhappy with this. He said the adjudicator hadn't considered the lending code and he didn't have a legally binding agreement with the bank.

my findings

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

Mr D's account was debited with the arranged overdraft fee on 29 March. This did mean the account went over the limit and into unarranged overdraft. But that doesn't mean the fee was wrongly charged.

First, the arranged overdraft fee was debited in line with Santander's terms and conditions. These terms and conditions form part of a legally binding agreement which Mr D did have with Santander. The fee was debited because Mr D had used his arranged overdraft.

Second, Mr D had been using his overdraft for quite a long time, so he knew how it worked. I note that fees are debited around 20 days after a customer gets his statement showing them. So Mr D would have known the £28 was going to be debited, and when this would happen. What really led to the account going over the limit was that Mr D had been making

other payments. I think it's reasonable to expect Mr D to have taken the pending charge into consideration when he was making those other payments, if he didn't want to go over into unarranged overdraft.

As Mr D will know from his other complaint to this service, in 2009 the Supreme Court ruled that bank charges couldn't be challenged on the grounds of fairness. So this service can't consider whether the amount of the charges was fair or unfair – only whether they've been accurately applied. And I find that Mr D's charges were applied accurately in line with the terms and conditions of his account.

Mr D also complained that Santander broke the lending code. In particular he mentioned acting sympathetically and positively when considering financial difficulties. I've seen no evidence that Santander broke the lending code. I see it referred Mr D to its financial assistance team. There are also several occasions when the bank waived or refunded charges. And as the adjudicator pointed out, banks don't have to stop charging all fees when a customer's in financial difficulties. So I don't agree that Santander broke the lending code.

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 Mr D to accept or reject my decision before 11 August 2016.

Belinda Knight
ombudsman