

complaint

Mr G complained because Santander UK Plc registered a default on his current account.

background

In 2011, Mr G's account was overdrawn. Santander's Collections department sent him a number of letters about this. Mr G didn't reply, and Santander withdrew his overdraft in the autumn, and defaulted the account in January 2012. Santander closed the account and sent it to a debt collecting agency.

In March 2012, Mr G complained to Santander. He was upset that his account had been defaulted. He told Santander he'd gone into a branch when he'd received the letters in late 2011. He said he'd told the branch he didn't have any income, and he said the branch had told him to sign on for Job Seeker's Allowance, so the payments would come into his Santander account. He said the branch told him that if the account was credited in this way, he wouldn't receive any more letters from Collections and the account would stay open. Santander checked with the branch, which didn't have any record of having told Mr G this. So the bank didn't uphold Mr G's complaint.

In 2015, Mr G complained again to Santander, asking for the default to be removed. He said he hadn't received the collections letters in 2011. He said this was because he'd been a student, away from his home address, and he had notified Santander of his student address in 2009. Santander said it had no record of a change of address being requested, and wouldn't remove the default. It said credit records had to be an accurate reflection of the conduct of customers' accounts. Mr G wasn't satisfied and complained to this service.

The adjudicator upheld Mr G's complaint. She noted that Mr G had paid Job Seeker's Allowance, and two other cheques, into his account in late 2011. She considered Mr G had always intended paying off his overdraft, and that he genuinely believed he had an arrangement in place after going into the branch when he said he did. She noted that Santander now said any valid arrangement should have been made with its Collections department, but said it wasn't fair to expect a consumer to distinguish between a branch and the Collections department. So she found that Santander should remove the default from Mr G's credit file.

Santander didn't accept the adjudicator's view. It said that when Mr G had made his 2012 complaint, he'd accepted he'd received the Collections letters, which was why he'd gone to the branch. The bank said there it had no record of any change of address in 2009 and Mr G hadn't provided any evidence when asked to do so. Santander also said that its branch had no records of making an agreement with Mr G, and branches don't make agreements like that but would have referred him to Collections to sort it out.

Mr G hadn't responded to the several Collections letters, which was why the bank had decided to remove his overdraft, default and close the account.

my provisional findings

I issued a provisional decision on this complaint. In the provisional decision:

First, I considered Mr G's complaint that he didn't receive the Collections letters, because he was away from home:

- I noted that when Mr G first complained to Santander in 2012, he told it he had received the letters, and that that was why he'd gone into a branch. His 2015 complaint is the first time there's a record of Mr G saying the letters went to the wrong address;
- It wasn't clear to me why Mr G went to a branch to discuss his account in late 2011, if he hadn't received the Collections letters;
- Transactions on Mr G's account for late 2011 show a number which took place near his registered home address – not in the university location in a different part of the country.

So I considered it was more likely than not that Mr G did receive the Collections letters in 2011 at his registered home address. And in any case, what's important is that Santander sent the letters, and the bank can't be held responsible for postal problems. So I didn't consider the default is invalid on these grounds.

Secondly, I considered what happened in the branch in late 2011. I accepted that Mr G did go into the branch, as he said, when he received the Collections letters. But there was also the question of what happened in the branch, and what Santander staff advised Mr G.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. I found it was unlikely that branch staff would have told Mr G, or any customer who walked in with a Collections letter, that everything would be fine with no further letters, if he got his Job Seeker's Allowance paid into the account. Also, all the letters from Collections made it clear that customers should ring a specific phone number to talk to one of the Collections team. The letters don't suggest going into a branch, and I accepted the bank's evidence that branches can't agree repayment arrangements for accounts in Collections. I found it much more likely that branch staff would have responded to Mr G coming in with a Collections letter by advising him to ring the number on the letter.

If Mr G was indeed specifically told by branch staff that they had set up an arrangement for him by him saying he'd get his Job Seekers' allowance paid in, I'd have expected to see some sort of record relating to it. The Collections letters clearly show a customer that the matter is serious, and I found it surprising that Mr G wouldn't have kept the documentary proof that he'd tried to prevent the consequences set out in the letters. So I didn't consider there was any such arrangement.

So my provisional decision was that I didn't find any grounds for requiring Santander to remove the default which it put on Mr G's account in January 2012.

Responses to my provisional decision

Santander had nothing more to add in response to the provisional decision.

Mr G didn't agree with the provisional decision and sent a detailed response. In summary:

- Mr G said that he went to the branch in late 2011 in order to tell them it would be nearly two months without making a payment. He said the branch told him late payment was acceptable, but he might pay a small fee.
- He said he went again in December 2011 and was again told a small penalty would be charged. He said that there was no "contract" signed.

- When I looked at whether Mr G received letters in 2011, I commented that transactions showed Mr G was in his home area (the address Santander had on file for him), not his university location. In response, Mr G agreed he was in his home area because he'd finished university in July 2011.
- Mr G said that if he'd received letters, he'd have called Collections. He said he had never had a single letter from Santander, and the first letter he received was from a debt collector organisation.
- Mr G said the default was affecting his life and that it was unjust.
- Mr G offered to try to obtain evidence about when he signed on as unemployed, and about job centre payments. But I explained that his case isn't about when / whether he signed on, and what payments he was given. I also wasn't persuaded that signing on would necessarily prove whether or not Mr G intended to pay off his outstanding balance.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes looking carefully at Mr G's letter in reply to the provisional decision.

Letters sent by Santander about Mr G's arrears

As I explained in my provisional decision, where evidence is contradictory, I reach my decision on the balance of probabilities. I think it's more likely than not that Mr G did receive the arrears and default letters from Santander, because:

- In Mr G's first complaint to Santander in 2012, he told Santander that he had received letters and that this was why he'd gone into the branch. At that time he told Santander that the reason he hadn't responded to the letters was because he thought the branch was dealing with it and everything was being sorted.
- I find it's more likely than not that the reason he went to a branch was because he'd received the letters.
- In his 2015 complaint, Mr G told Santander he didn't get any letters because he'd been a student, away from his home address. But he has now told us, and his account transactions suggest, that after July 2011 he was back at his home address. So it can't be that he didn't get the letters because he was away at university.

What happened in the branch

I'm not persuaded that, when Mr G went to talk to the Santander branch twice in late 2011, staff looking at the arrears on his account just said "*you might pay a small fee.*" On the balance of probabilities, I think it's likely that the branch would have told him to ring Collections. I think they would have said this, whether or not Mr G had brought letters with him, because of the arrears on the account.

And if the branch had indeed exceeded what it was allowed to do at local level, and had agreed an Arrangement with Mr G, I'd have expected to see some documentation. I'd have expected Mr G to have asked for this if it wasn't offered.

I also note that Santander had a responsibility accurately to report defaults, and Mr G's account was in default.

So I don't find any grounds for asking Santander to remove the default which it put on Mr G's account in January 2012.

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 G to accept or reject my decision before 15 March 2016.

Belinda Knight
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