

complaint

Mr H complains that Santander UK Plc allowed his account to go overdrawn when he had no arranged overdraft facility on his account. He's unhappy it applied charges to his account and sold the outstanding debt to a debt collection agency when the balance was in dispute.

background

Mr H had a current account with Santander with no arranged overdraft facility. In November 2012, his account became overdrawn when a direct debit payment and other transactions left his account. As he didn't have sufficient funds to cover this transaction he went into an unarranged overdraft.

Mr H brought his account into credit in December 2012. But on 1 January 2013 a card payment left Mr H's account, which caused him to go overdrawn again. On 4 January 2013 Mr H's account was debited with £95 to cover the cost of his unarranged overdraft usage for the previous month. His account remained overdrawn until 7 January 2013 when a credit of £170 was made to his account. This pattern continued until March 2013 and, in April 2013, £95 of unarranged overdraft usage fees and charges debited Mr H's account.

Because Mr H's account remained overdrawn for a long time Santander closed his account and sold it to a third party debt collection agent, which resulted in a default mark being applied to his credit file. In September 2018, Mr H received a letter from a debt collection agency who told him Santander had sold his debt to it. It said he owed almost £500. But Mr H disputed this debt and said it shouldn't be that much. He felt his debt shouldn't have been sold to a third party. When he complained to Santander it said it hadn't done anything wrong because the charges had been applied correctly - in line with the terms and conditions of his account. It also said it had tried to contact him numerous times about the outstanding balance. And when it wasn't able to recover what was owed it was passed to a debt collection agency.

Mr H wasn't happy with this so he referred his complaint to us. He told our investigator he disputed the debt outstanding and said Santander shouldn't have defaulted his account or sold it to a debt collection agency. He wanted our service to remove this adverse entry from his credit file and award compensation. But, as our investigator didn't think Santander had done anything wrong or treated Mr H unfairly, he asked for his complaint to be reviewed by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. While I sympathise with Mr H's situation, having considered everything that he and Santander have said, I've reached the same conclusion as the investigator for broadly the same reasons. I know Mr H feels very strongly about this matter, which is understandable. And I appreciate the reasons why he has brought his complaint to us. But what I must determine here is whether Santander acted fairly and reasonably.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I must base my decision on the balance of probabilities. I've read and considered all the information provided by Mr H and Santander, but I'll concentrate my decision on what I think is relevant to decide the complaint. If I don't comment on any specific point it's not because

I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr H says Santander was wrong to allow his account to go overdrawn when he had no arranged overdraft facility. He says it shouldn't have applied fees because it shouldn't have allowed payments to leave his account when he didn't have funds available to cover those transactions. He believes that he went overdrawn due to fees incurred. But I can see his account went overdrawn because he spent more than the available balance. It was his responsibility to ensure that funds were available to cover transactions that were likely to leave his account to avoid him entering an unarranged overdraft situation.

When there aren't sufficient funds available to pay a transaction it's Santander's policy to either allow the transaction to be paid or to reject it as unpaid. It's also its policy to charge a customer each time a transaction is attempted whether it's paid or rejected. If paying a transaction causes an account to go into an unarranged overdraft by £12 or more a daily fee of £6 is applied to the account.

Santander has provided a copy of terms and conditions for Mr H's account. I know Mr H opened his account with Santander almost 10 years ago. So it's reasonable to expect the terms and conditions to have changed over that time. Mr H says he doesn't believe he's agreed to any terms and conditions but he'd have had to accept the terms and conditions to proceed with his application before opening his account. And he continued to use his account after it was opened so I'm satisfied he gave his consent to the terms and conditions that applied while he was using his account.

The terms I've seen clearly state that a customer is treated as having requested an unarranged overdraft if they don't have enough money in their account to cover a payment from it. So I think it would've been clear to Mr H that if he tried to make payments when he didn't have enough money in his account Santander would treat him as having requested an unarranged overdraft. And I'm satisfied it acted in accordance with those terms in allowing direct debits and payments to leave his account when Mr H didn't have funds available to cover these transactions.

The terms and conditions make it clear that fees will be charged in such scenarios. So, I think the fees applied by Santander are in line with those terms. And I also think Mr H ought to have known the way he was using his account meant he would incur fees. I say this because he was overdrawn at times from November 2012 until April 2013. So, from looking at his account he'd have seen Santander charging fees for each month his account had been overdrawn.

Santander said it sent Mr H several letters about the overdrawn balance on his account. It requested that he make contact to discuss repayment or his financial situation if he was unable to pay the balance owed in full. Mr H hasn't said he didn't receive these letters. Instead, he said he told Santander he was suffering financial difficulties at the time as he'd become unemployed. But there's no evidence that he contacted it at all. Santander says it has no records and I think it most likely that if he'd discussed his financial situation with it, there'd be a record of such conversations.

While I can understand that Mr H must have been under a great deal of stress on losing his employment it was his responsibility to communicate with Santander to resolve this situation. Before it defaulted his account, it proactively tried for a significant period of time to get a response from him. And it took appropriate steps to offer support and explain what would

happen if his account wasn't brought up to date. It follows that I can't say it acted unfairly when it defaulted his account and passed it to a debt collection agency. By this point the account had remained in an unarranged overdraft for a prolonged period of time and there'd been no response from Mr H. I understand that after this action was taken no further interest or charges were added to Mr H's account, which is fair and reasonable.

Mr H wants the default information to be erased from his credit file. But, I'm satisfied that Santander was right to default his account and has reported this information properly. Financial businesses should make sure that the information they report to credit reference agencies is accurate. As Mr H hasn't maintained his account in line with its terms and conditions I can't say Santander acted unfairly and unreasonably in reporting this information. So I can't ask it to remove it as it's a true reflection of what happened.

I recognise that Mr H is unhappy that the outstanding debt was passed to a debt collection agency when he is disputing the balance. But this is in accordance with the terms and conditions I've seen. These clearly state "we can transfer all or any of our rights in relation to your account... This includes us appointing an agent to recover debts, or transferring our rights to a third party for any monies owed by you to us." So, it's clear Mr H was warned this could happen. I'm satisfied Santander was entitled to transfer or sell the collection of the debt or sell it to a third party. It acted reasonably and didn't do anything wrong in doing so.

This is a commercial decision it's entitled to take if it wishes – especially where no repayment plan had been agreed and there's been no contact from a customer to discuss their account. And it's common practice for businesses to take this action so that agents can take over, as they are generally more able to be more flexible with the payments and amounts they're able to accept without any further charges or interest being applied.

Mr H believes that, because his debt has been sold to a debt collection agency, Santander should've deleted his details. But Santander is only recording information about the conduct of Mr H's account from when it was still administering it – which is what I'd expect a business to do. Those records won't disappear just because Santander has sold his debt, as it's entitled to still record historic information about an account. I can see that our investigator has already signposted Mr H to the Information Commissioner's Office, which deals with data privacy issues, should he wish to pursue this issue further.

Lastly, Mr H has raised a number of legal points as to why he thinks this debt isn't enforceable by Santander, or the agents who are now asking him for payment. This service is a quick and informal alternative to the courts and we don't have the same powers. So I can't say whether or not the contract here is enforceable or not in the way Mr H would like. But Mr H borrowed money when he used his overdraft, so I think it's fair for Santander to ask him to pay it back. If Mr H feels that this isn't legally right, then he'll need to raise that through the appropriate legal channels. But he should seek advice before doing so.

I appreciate the reasons why Mr H brought this complaint to our service. And I sympathise with the difficulties he found himself in. But I don't think Santander has done anything wrong here and, because of this, I won't be asking it to do anymore.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 March 2019.

Julie Robertson
ombudsman