

complaint

Mr A complains about overdraft charges applied to his account by Santander.

background

Mr A opened an account in 2004 and the bank's records show that from August 2008 it had an arranged overdraft limit in place which Mr A made frequent use of. Mr A says he never agreed an overdraft facility and the bank has acted in error in making the charges which he wants refunded. He also says the charges have affected his ability to obtain credit.

Our adjudicator did not recommend that the complaint should be upheld. She noted that the overdraft limit was clearly set out on the monthly statements and Mr A had made frequent use of the facility. She considered that Mr A was aware of the facility and if he had considered it had been wrongly applied, he should have contacted the bank. She also noted that the terms and conditions of the account allowed Santander to make payments he authorised even if they made the account overdrawn without its agreement, and she could not say the bank had acted wrongly in doing so. She also considered Santander had applied its charges correctly and in line with the account's terms and conditions.

Mr A did not agree. In summary, he says he wants proof of when the terms and conditions were agreed. He never requested the overdraft and it is still not agreed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), 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.

Having done so, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

Due to the passage of time Santander cannot now locate a copy of the application form completed by Mr A. I consider that this is not unreasonable as a bank only has to retain records for six years, not indefinitely.

But I am satisfied, on balance, that when Mr A opened the account he agreed to its terms and conditions – and this means that he is bound by all the terms and conditions of the account from time to time. Furthermore, the agreed overdraft facility was shown on the account's monthly statements and Mr A has made frequent use of it. I am also not persuaded that he was unaware of it. I am satisfied that the bank has correctly applied its charges in line with the account's terms and conditions.

Consequently, I do not consider it would be fair or reasonable to require Santander to make a refund of any charges as Mr A suggests.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should

Mr A not accept my final decision, then any rights he may have to take action in the courts against Santander are unaffected and he will be free to pursue his arguments in any court action that may arise, if he so wishes.

my final decision

My final decision is that I do not uphold this complaint.

Stephen Cooper
ombudsman