

## **complaint**

Mrs P complains that Santander UK Plc sent her a new credit card when it shouldn't have. She wants it to clear the debt she owes as a result of spending she carried out on the card.

## **background**

Mrs P banks with Santander, and also has one of its credit cards. In May 2014, Mrs P fell behind with her credit card payments, and had a number of conversations with Santander about it. Santander stopped charging interest or fees on the debt (which was about £1,500) and Mrs P continued making monthly payments.

During this period Santander's notes recorded that Mrs P had disclosed she was suffering from bi-polar disorder, and that she wasn't using her card.

The account continued in the same vein, with monthly payments slowly reducing the balance but no new purchases being made. Then, in January 2018, Santander sent Mrs P a new credit card for the account as the previous one had expired. She proceeded to make a number of purchases over the following months, although the statements show she later returned a number of items for refunds. But overall Mrs P spent about £4,800 on her card.

She then complained to Santander. She said her bi-polar disorder meant she'd struggled with addictive behaviours including an inability to control her spending. This meant she'd had to be very careful about what money and credit she was able to access, which she said she'd told Santander about before. She said it shouldn't have sent a new credit card when her old one expired, especially as she'd not used the card for nearly four years.

Santander didn't think it was wrong for it to have sent a new card when the previous one expired, as there wasn't anything on its systems to indicate the usual process shouldn't be followed. But it acknowledged the difficult situation Mrs P found herself in due to her medical condition, and said it would stop charging interest or fees (and refund any recent charges). It said it would be willing to discuss an affordable repayment plan for the debt once Mrs P completed an income and expenditure form.

Santander acknowledged that around March 2018 it should have reinstated Mrs P's direct debit while repayment options were being discussed. It took it a few months to do so, and while this didn't result in any loss to Mrs P (as charges and interest had been frozen) it offered to pay her £50 to say sorry.

Our investigator looked into what had happened. She thought Santander ought to have been aware it should have done things differently with Mrs P due to the records of what had happened when she got into arrears in 2014. She thought Santander should have at least contacted Mrs P before sending a new card in 2018 and said it should pay her a further £300.

Santander agreed, but Mrs P didn't and she asked for an ombudsman to decide the matter. She explained the impact this additional debt had had on her and the additional stress and worry it had caused. She didn't think the compensation the investigator had recommended was fair compensation given everything that had happened.

I issued a provisional decision, saying I thought Santander needed to do more. I said:

The central issue for me to decide here is to what extent Santander was aware of Mrs P's condition and the way it might influence her relationship with debt, and whether that meant it should have stepped outside its usual processes when her previous credit card expired.

Mrs P says she'd discussed this with Santander before 2018, but Santander initially said it didn't know anything about Mrs P's condition and its impact on her until she complained recently. There's no definitive evidence showing a conversation about these issues took place earlier than 2018. But, on balance, I think it did. I say that taking into account:

- Mrs P spoke to various departments of Santander (its current account team, credit card services and collections) between May and August 2014.
- In April 2014 Mrs P changed her current account to one which didn't charge overdraft interest and also attempts to stop payments, in order to avoid the account going into an unarranged overdraft.
- The file notes from May 2014 record that Mrs P "*advised she has bi-polar*".
- In August 2014 Mrs P's account came out of Santander's specialist unit for customers in financial difficulty, resulting in a broad 'hold' on the account being removed. But the notes say Santander informed Mrs P at that time there was still a block on the card. Mrs P is recorded as saying she wasn't using the card.
- That's supported by there being no spending activity from March 2014 until the new card arrived in January 2018.
- There are no contact notes from August 2014 until 2018, and it isn't clear when and why that block was removed. But it appears a replacement card - due to be sent in August 2015 – was prevented from being sent out due to the block on the account.

So taking all this into account, I think that on balance Mrs P talked to Santander in 2014 about her condition, and the trouble it might cause her if she had access to too much credit. Santander seemed to take steps to help her with this at the time by blocking her account, and I've not seen any evidence to explain why that wouldn't have continued to be the case in 2018. Based on everything I've seen so far, I don't think Santander treated Mrs P fairly by sending her a new credit card. I think the evidence suggests it was aware – or ought to have been – that access to credit was something that was a trigger for Mrs P's addictive tendencies resulting from her medical condition. And so I don't think it should have sent her a new card without speaking to her first. It follows that Santander shouldn't have sent Mrs P a new credit card in January 2018.

The question remains how it should put things right for her. And I don't think that's straightforward in this case, and is something I've thought about very carefully. I'd like to emphasise that I've decided fair compensation in light of the very particular facts of this case. My decision doesn't set any kind of precedent and is a reflection of what I think is fair and reasonable given the unique set of circumstances surrounding what happened to Mrs P.

Mrs P has been left with a substantial debt which, given her financial circumstances, she'll struggle to repay. She wouldn't owe this money but for Santander sending her a credit card which I don't think it should have.

I've also taken into account that Mrs P owes this money because she bought things using the card – and so will have the benefit of the use of those things. But in this

particular case, I'm satisfied this is a benefit Mrs P didn't really want, and that her spending on the card was directly attributable to her medical condition.

I've also thought about the upset this experience has caused Mrs P. She's consistently and persuasively explained about the struggles she's had with her condition and the effect it's had on her personal life. As I've detailed above, the evidence supports her assertion that she'd taken a number of different steps to prevent herself getting into situations where her addictive behaviour could cause her harm. And I've also considered her actions after making the purchases on her card in early 2018. I'm satisfied that she very quickly attempted to mitigate the amount she owed on her credit card by returning those items she was able to for a refund.

Santander had already agreed to pay Mrs P £50, and our investigator recommended it pay her a further £300. I don't think that fairly compensates Mrs P for Santander's error and the impact it had on her. Mrs P wants Santander to clear the debt she's accrued since 2018, but I don't think that's the fair answer here, either. Bearing in mind what I've said above, Mrs P *has* received goods and services in return for the money she's spent on her credit card. And so I've taken that into account when deciding what fair compensation looks like.

Overall, the impact on Mrs P – and the amount of stress and worry she's been caused – is directly related to the debt she's accrued. And that's a debt she tried to avoid allowing herself to take out, and wouldn't have done but for Santander's mistake. In the particular circumstances of this case I think fair compensation would be for Santander to credit Mrs P's account with half the amount she's spent on her card since January 2018 (allowing for any refunds she's received).

In terms of repaying the rest of the balance, I'm pleased to see Santander has already been positive and sympathetic to Mrs P's situation by freezing charges and interest and offering to discuss a repayment plan. I'd encourage Mrs P to speak to Santander and go through her income and expenditure, if she's not already done so, in order to reach an agreement on repaying the rest of her debt.

Santander accepted my provisional findings, and Mrs P said she didn't have anything to add, either.

### **my findings**

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

As neither party has provided any additional arguments or evidence in response to my provisional decision, I see no reason to depart from my provisional conclusions. I therefore make the same findings here, and make them final.

### **my final decision**

For the reasons given here and in my provisional decision I uphold this complaint. Santander UK Plc should calculate the amount Mrs P has spent on her credit card since January 2018, deducting any amounts she has been refunded. It should apply a payment to her credit card account equal to half the resulting figure.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 7 June 2019.

Luke Gordon  
**ombudsman**