

## **complaint**

Mrs E complains about charges Santander UK Plc ("Santander") added to her bank account for going into an unauthorised overdraft. She says she was in financial difficulties and the bank shouldn't have charged her.

## **background**

Mrs E had two bank accounts with Santander. Due to changes in her personal circumstances, Mrs E unfortunately began to struggle with her finances. Her account was quite often overdrawn and Mrs E exceeded her authorised overdraft limit on quite a few occasions.

In January 2013, Mrs E entered into an arrangement with Santander called a "manage down" on one of her accounts. As part of this arrangement, Santander agreed to stop making charges if Mrs E went over her overdraft limit. This was to help her get back on her feet. But Santander says that Mrs E didn't stick to that agreement. So it returned her to a normal service. This included restarting charges. And it continued to charge Mrs E fees on her other account.

Mrs E complained to Santander. She said the bank shouldn't have charged her the unauthorised overdraft fees because she was in financial difficulty. Santander agreed to refund her £95 to one of the accounts. It also offered her £25 for any distress she'd been caused. But it didn't think it had done anything wrong in respect of the other account.

As Mrs E didn't accept this offer, she brought her complaint to us. One of our adjudicators considered the complaint. She recommended that Santander increase its offer. She thought the bank was aware that Mrs E was in financial difficulties from around January 2013. And it should have treated her positively and sympathetically by not charging her fees. Ultimately, the adjudicator thought Santander should refund Mrs E for all the charges made after this date (a total of £685). Santander agreed to this. And, in addition, it offered £150 for the distress caused by the matter.

Mrs E doesn't accept Santander's offer so the complaint has been passed to me. Mrs E wants all charges refunded, including those made before January 2013.

## **my findings**

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

I can understand Mrs E's position. She's clearly been fighting hard to get her finances back on track. But I'm sorry to tell her that, having considered everything, I agree with the adjudicator that Santander's offer is fair.

Banks are generally entitled to charge fees for their services. This includes fees for unauthorised overdrafts. But banks should also take into account the Lending Code which sets out good industry practice. This says that banks should treat their customers positively and sympathetically if they learn they are in financial difficulty.

I've looked carefully at Mrs E's bank statements over a lengthy period. I agree that, on a monthly basis, she regularly spent time in her overdraft. And sometimes she went into an

unauthorised overdraft. But that's not unusual in my experience. And, generally speaking, Mrs E managed to keep her balance within the account limits. So overall, I don't think it was unreasonable for Santander not to notice Mrs E was in substantial financial difficulties.

It's only towards the end of 2012 that the position becomes worse. And this is when Mrs E contacted Santander to say she was in difficulties and needed help. So I think that this is when the bank needed to take positive steps to help Mrs E (such as freezing fees).

For those reasons, I think Santander's offer to refund all fees after this time – along with £150 for the unnecessary stress caused – is fair.

Both the accounts are now closed. But they have an outstanding balance. So Santander's offer was based on the refund of fees being used to pay down that debt (known as "set off"). But this must be done fairly. And I was concerned that, because Mrs E says she's fallen behind with priority debts, this wouldn't be fair. We've spoken with Santander and the bank has agreed that the money should go directly to Mrs E. As Mrs E will understand, this means that the money she owes to Santander won't be reduced.

### **my final decision**

For the above reasons I direct Santander UK Plc to:

- Pay Mrs E £685 as a refund of fees.
- Pay Mrs E £150 for distress caused by this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 21 October 2015.

Ross Crawley  
**ombudsman**