

complaint

Ms H complains about how Santander UK Plc has managed her current account.

background

In late December 2017, Santander wrote to Ms H to say it was reducing her arranged overdraft. The overdraft would reduce from £1,000 to £150, and this change would take effect at the start of February 2018.

Ms H wrote to Santander to say that she wanted to discuss repaying the debt in instalments. Santander replied towards the end of January, to say that if her account fell into a negative balance after the overdraft was reduced, she could contact the collections team to discuss the options available to her.

Ms H then complained about the fees that Santander applied to her account for the last seven years, including the ones that had been applied since Santander reduced her overdraft. And Ms H said she'd been pushed into financial difficulties as a result of Santander's sudden withdrawal of her overdraft.

Santander said it wouldn't refund those charges. It said that charges couldn't be assessed for fairness, as a result of a 2009 court case. It said that the term of the contract allowing charges to be imposed wasn't unfair. And it said that it wasn't prevented from applying charges to Ms H's account just because she was receiving benefits.

Ms H wanted Santander to put the overdraft back, then reduce it in stages, by £50 at a time.

Santander sent a response that said it wouldn't reduce Ms H's overdraft in stages. It said that wasn't a facility that it offers. And it said that it had given Ms H notice of the reduction, so that she could prepare for it.

Santander also said that it had reduced Ms H's authorised overdraft because of information which was on her credit file.

Our adjudicator didn't uphold this complaint. He said that banks don't have to refund charges that are applied in line with the terms and conditions of an account, as these charges were. So he couldn't ask Santander to pay those charges back. He said that he didn't think that Ms H had told Santander about her financial difficulties before her complaint. He would expect a bank to behave positively and sympathetically when told about that. Santander has given Ms H the number for its financial difficulties team, and it has refunded charges to her in the past.

Our adjudicator also said that Santander's terms and conditions give it the right to change Ms H's arranged overdraft at any time. And it could ask her to repay the money on demand, although it would usually give 30 days notice. Because Santander had given Ms H that notice, our adjudicator said that it hadn't done anything wrong. And he said that Santander didn't have to reinstate the overdraft, so he couldn't say it had done anything wrong by not putting the overdraft back on and reducing it in stages.

Ms H didn't agree with that. She said that Santander was charging her fees now which was pushing her over her new overdraft limit. And she said that this was Santander's fault that she was incurring these fees. She wanted Santander to pay them back.

Ms H said that Santander knew when it withdrew her overdraft that it would put her account into arrears, cause financial difficulties and mean she would incur further charges. She sent us more recent statements for her account, which showed a significant number of charges on her account. Those statements also appear to suggest that Ms H has stopped using this as her main account.

Ms H wanted her case to be considered by an ombudsman, so it was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it in part. This is what I said then:

- First, I looked at charges which were applied to Ms H's account before her overdraft was reduced.
- Ms H asked Santander to refund all the fees and charges that had been applied to her account over the last few years. Santander refused to do that. Our adjudicator explained that this service can't ask Santander to refund fees and charges for an unauthorised overdraft on the basis that they aren't fair. A court case in 2009 decided that. I thought our adjudicator was right about that. And this service won't generally ask a bank to refund other fees and charges which are applied in line with the terms and conditions of a customer's account. These fees and charges were applied in line with the terms and conditions of Ms H's account. So I didn't think that Santander needed to repay any fees and charges which were applied before Ms H's overdraft was reduced.
- Then I looked at what happened when Ms H's overdraft was reduced.
- Santander sent us Ms H's bank statements going back to early 2012. Although Ms H hadn't been overdrawn throughout the whole of this time, she had been relying on having access to a large overdraft throughout this time, and particularly in the last two years.
- Santander wrote to Ms H, in a letter dated five days before Christmas. It said that it planned to reduce her overdraft by £850 on 1 February.
- Santander knew that Ms H was finding it more difficult to meet her financial commitments, and it wanted to reduce her borrowing. That's a reasonable thing for Santander to wish to do. And I appreciated that an overdraft should be repayable on demand, under the terms and conditions of Ms H's account. But in this case, Santander asked Ms H to reduce an overdraft that she had been relying on for over six years, by £850, in just over a month. And it did this at a time of year when people are often short of money anyway. I didn't think that was a fair and reasonable step for Santander to take. I thought that Santander made a mistake when it did that.
- Ms H asked Santander for some time to pay this money back. Santander's initial response to this request was to tell Ms H's that if her account fell into a negative balance after the overdraft had been reduced, then she could contact the collections team to discuss her options. Santander seemed to me to be saying that it wouldn't enter into any arrangement to help Ms H to reduce her debt before she got into trouble. I thought that Santander made a mistake when it did that. I thought that, given the exceptionally

longstanding nature of Ms H's overdraft, it was reasonable to expect Santander to engage with Ms H to find a way of reducing her borrowing in a more staged and manageable fashion. I didn't think that Santander had to accept Ms H's offer to pay back £50 per month. But I did think it shouldn't have reduced her available borrowing by £850 in one go, and told her it would only start to help her after she got into trouble with the account.

- Although Santander had sought to soften its tone somewhat since its initial response, the content of its response didn't seem to me to have changed. It hadn't offered anything to assist Ms H with reducing her overdraft. It reduced the amount available to her by £850. And although Ms H did manage to make a substantial reduction in her borrowing, Santander continued to apply charges for an unauthorised overdraft, as well as for various paid and unpaid items, since that date.
- I thought that Santander had acted unreasonably. I thought it should refund all the unauthorised overdraft fees and paid and unpaid item fees that Ms H has been charged since 1 February 2018 to her account. And, as compensation for the stress that this complaint has caused Ms H, it should pay her £200. I said that Santander could use that payment to reduce Ms H's debt to it in the first instance. If there was any money remaining once Ms H's debt is repaid, Santander should pay that to Ms H.
- In addition, if Santander has placed any negative markers on Ms H's credit record between 1 February 2018 and the date of my final decision, I said that it should remove those markers.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Ms H didn't reply. Santander wrote to accept my decision.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Santander said it still didn't think that it had acted incorrectly in removing the overdraft, but it did think that more assistance could have been given to Ms H when she raised her financial concerns and the impact the overdraft reduction was going to have on her account. So it was happy to agree to my proposed resolution. It would refund the unauthorised overdraft fees and paid and unpaid item fees charged to Ms H's account since February 2018. At the time when Santander wrote to us, it said that added up to £363. And it would pay £200 in compensation into Ms H's account.

my final decision

My final decision is that Santander UK Plc should refund to Ms H's account all the unauthorised overdraft fees and paid and unpaid item fees that Ms H has been charged since 1 February 2018. And it should pay Ms H £200.

Santander UK Plc can use that payment to reduce Ms H's debt to it in the first instance. If there's any money remaining once Ms H's debt is repaid, Santander UK Plc should pay that to Ms H.

And Santander UK Plc should remove any negative markers it has placed on Ms H's credit record between 1 February 2018 and the date of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 21 September 2018.

Esther Absalom-Gough
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