

## **complaint**

Ms M has complained that Santander UK Plc (“Santander”) mis-sold her a Reward packaged account.

## **background**

I issued a provisional decision on this complaint on 16 March 2018, explaining my thoughts on why the complaint should be upheld and what I thought Santander should do to put matters right for Ms M. I've attached a copy of my provisional decision and it forms part of this decision.

Following this, Ms M responded and apart from saying that she had a booklet that explained the account but didn't explain the account fee, had nothing further to say. Santander responded and in summary said:

- Although it can't show what was discussed with Ms M during the sale of the Reward account, the sales process at the time required its full range of accounts to be discussed with customers;
- Ms M's mortgage application documents show the repayments were initially arranged to be paid from the fee-free account Ms M held with another bank which she switched (to the Reward account) from;
- Ms M was aware of the general availability of fee free accounts, so there was probably a reason why Ms M opened a fee-paying Reward account instead of a fee-free account;
- Whilst she held the Reward account, Ms M benefited from both the preferential credit interest and the £100 fee-free overdraft benefit and preferential overdraft rates as well. So it's difficult to determine which one of the benefits may've been a priority to Ms M.
- Ms M kept the Reward account for 4 years, in which time she was sent annual eligibility statements which made it clear fee free accounts were available.
- Ms M has complained about the increase in overdraft charges that applied when Santander withdrew the Reward account. Santander says this shows Ms M was relying on the overdraft benefits provided by the Reward account.
- There are inconsistencies in Ms M's testimony about whether she used the Reward account benefits.

## **my findings**

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

We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me decide Ms M's complaint.

I have looked at the sales process document that Santander has provided. And I can see that it required the member of staff to provide a brochure to the customer, to establish the customer's needs and to introduce Santander's range of accounts. But I've not seen enough to say that this step of the process was actually followed in this case. On the contrary, based on what Ms M has said, on balance it seems that the member of staff focused on the next steps of the process - which required them to establish if the consumer would be interested in opening a Reward packaged account instead.

I have noted Santander's comments that Ms M was aware of fee free accounts, but as I've already said in my provisional decision, I don't think it's in doubt that Ms M was aware fee free accounts were available elsewhere. What is crucial in this matter was whether Santander made it clear to Ms M that she could open a fee-free account with it *and* that it gave clear, fair and not mis-leading information about the Reward account to Ms M.

In this case I'm still not persuaded that it did. As already established, the consumer already had many of the insurance benefits provided with the Reward account through another packaged account held elsewhere. So I've considered if she may've agreed to the Reward account for the banking benefits alone.

According to the information provided by Santander, in September 2009 the Reward account cost £10 a month and (alongside insurance benefits) offered a £100 interest free overdraft facility, a 12.9% overdraft interest rate (on overdrawn balances of more than £100). It also included an introductory offer of 6% on credit balances up to £2,500 for the first 12 months (reduced to 1% after 12 months), providing Ms M paid £1,000 a month or more into the account.

But according to the account information Santander has provided, Ms M could've applied for a fee-free account and still had the option to choose to receive either the 6% introductory interest rate on credit balances up to £2,500 for the first 12 months (reduced to 1% after 12 months) providing she paid in £1,000 per month or more. Alternatively, if Ms M switched accounts (which I understand she did), she could've instead opted to receive a 0% overdraft interest rate for the first 12 months (reverting to 12.9% after 12 months) if she credited £1,000 or more per month to the account.

As these figures were correct in September 2009, I accept they may've been different in August 2009 - when Ms M was sold the Reward account. But I've not been provided with anything that leads me to think that the comparison in credit and overdraft interest rates between the Reward account and a fee-free account wouldn't have been similar in August 2009.

Given the above information, had the account options and benefits been explained more clearly to Ms M, I think its unlikely Ms M would've agreed to pay £120 a year for the Reward banking benefits, when she could've received similar credit interest or overdraft interest rates on a fee-free account.

I understand that Ms M later went on to rely heavily on the overdraft, and so would've benefited from the Reward overdraft benefits at that stage. I'm also aware that Ms M has raised a separate complaint about suffering from financial difficulties - particularly when the Reward account was withdrawn from Santander's range. But while I appreciate that Ms M may have, in later years, used the Reward account overdraft benefits, I have to consider Ms M's circumstances and what I think is likely to have happened when the account was sold to her.

I have considered what Santander has said about Ms M's testimony regarding benefit usage. But I haven't seen any *significant* inconsistencies in what she's said that makes me question the plausibility of her complaint points. For example Ms M concedes on Santander's questionnaire that she claimed for lost keys in 2013, under the Key protection cover provided by the Reward account. But this was some time after the Reward account was sold to Ms M. And as Ms M says she wasn't presented with the option of taking out a free account with Santander, I can understand why she may've claimed on the policy if she was already paying for it.

So having considered everything, I don't think Ms M would've agreed to the reward account had Santander given Ms M clearer information about the Reward account and the other types of accounts that Santander offered and were available to her at the time.

So for the reasons outlined above and in my provisional decision, I uphold this complaint.

### **what Santander should do to put matters right**

Santander has already refunded all of Ms M's account fees. But as I think that Santander mis-sold the Reward account, I don't think what it has done already goes far enough.

Usually where we think a packaged account has been mis-sold - in addition to a refund of the account fees - we also require businesses to pay interest at 8% simple per year on those fees. This is to reflect the fact the consumer hasn't had use of the money they paid in account fees.

But in this case I can see that Ms M's account was overdrawn for most of the time she held it. So rather than it being the case that Ms M hasn't had use of the money she was paying the account fees with, she was paying Santander overdraft interest on the Reward account fees she was charged. I think the compensation due to Ms M should reflect this.

So, in addition to the account fees that have already been refunded, Santander needs to do the following to put matters right:

- add simple interest at Ms M's overdraft interest rate on each of the Reward account fees Ms M paid, from the date they were paid to the date they were refunded to her\*

\*a tax deduction should not be made from this award as it reflects a refund of what Ms M was actually charged rather than a compensatory amount that we'd typically require.

### **my final decision**

For the reasons set out above, I uphold Ms M's complaint and require Santander UK Plc to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 10 May 2018.

Thomas White  
**ombudsman**

## **COPY OF MY PROVISIONAL DECISION**

### **complaint**

Ms M has complained that Santander UK Plc ("Santander") mis-sold her a Reward packaged account.

### **background**

Ms M was sold a Reward packaged account in August 2009. It was later downgraded to a fee free account in 2013 when Santander discontinued the Reward account.

Our adjudicators assessed the complaint and didn't uphold it. Ms M disagreed and asked for an ombudsman's decision.

In its final response letter, Santander didn't uphold the complaint but as a gesture of goodwill did offer to refund all of the Reward account fees Ms M paid. I understand Ms M has since received this money.

Where this service finds a packaged account has been mis-sold, in addition to a refund of the account fees paid by the consumer, we usually require the business to pay interest on those fees as well. So in this decision I will consider whether a further award is warranted.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me provisionally decide Ms M's complaint.

I've thought carefully about everything I've seen on this complaint, including the assessments made by the adjudicators and all of the responses we've received from both parties. Having done so, I'm intending to uphold Ms M's complaint. I'd like to explain why.

Ms M has said that she switched a current account from another bank to Santander because she was taking a mortgage out with Santander and she wanted a separate account with Santander to pay her mortgage from. Ms M says that the Reward account was the only current account presented to her during the meeting.

Santander says that Ms M was switching from a fee free account with another bank and so must've been attracted to the Reward account. But [Santander] appears to accept that Ms M already had a packaged account elsewhere which replicated some of the account benefits.

Looking at the circumstances, it's not in doubt that Ms M had a fee free account and this was closed when the Reward account was opened. So I think Ms M might have been aware fee free accounts were generally available. But that doesn't change the fact that Santander ought to have made Ms M aware of all the accounts it offered, not just the fee paying ones, on the assumption that Ms M would've been aware that free accounts were generally available.

Santander has provided a copy of Ms M's signed application form for the Reward account. Having looked at the form, there isn't anything to suggest that any other current accounts were offered or discussed with Ms M.

Santander says another form would've been completed during the sale, but it doesn't have the completed form due to how long ago the sale took place. I think this is understandable. I have, however, seen a sample copy of the form Ms M was likely to have completed (or at least signed once

it had been completed by the staff member), and I can't see that it made it clear that Ms M could get a fee free account either.

I have considered the possibility that the member of staff did discuss Santander's range of current accounts and Ms M chose the Reward account. But Santander hasn't provided me with enough to be able to safely say that this is what most likely happened. Whereas Ms M has provided plausible and consistent recollections of the sale that the reward account was the only current account discussed with her – although she says savings accounts were also discussed at the time.

So based on everything I've seen I don't think Ms M was given enough information about the range of accounts Santander offered, such that she would have known she had the option of opening a fee free account with Santander.

Santander has already refunded Ms M's account fees on the grounds that she already had a packaged account with another bank. And Ms M has said that she kept her packaged account so didn't have a need for the benefits provided by the Reward account.

Given the above, I think it's unlikely Ms M would've agreed to the Reward account, had she been given clearer information about alternative fee free accounts.

### **what Santander should do to put matters right**

Santander has already refunded all of Ms M's account fees. But as I think that Santander mis-sold the Reward account, I don't think what it has done already goes far enough.

Usually where we think a packaged account has been mis-sold - in addition to a refund of the account fees - we also require businesses to pay interest at 8% simple per year on those fees. This is to reflect the fact the consumer hasn't had use of the money they paid in account fees.

But in this case I can see that Ms M's account was overdrawn for most of the time she held it. So rather than it being the case that Ms M hasn't had use of the money she was paying the account fees with, she was paying Santander interest when paying her Reward account fees. I think the compensation due to Ms M should reflect this.

So, in addition to the account fees that have already been refunded, Santander needs to do the following to put matters right:

- add simple interest at Ms M's overdraft interest rate on each of the Reward account fees Ms M paid, from the date they were paid to the date they were refunded to her\*

\*a tax deduction should not be made from this award as it reflects a refund of what Ms M was actually charged rather than a compensatory amount that we'd typically require.

### **my provisional decision**

For the reasons set out above, I'm planning to uphold Ms M's complaint and to ask Santander UK Plc to put things right by doing what I've said above.

I now invite Ms M and Santander UK Plc to give me any further information they want me to consider, before I make my final decision. This must be provided to us by 3 April 2018.

Thomas White  
**ombudsman**