

complaint

Mr O has complained that Santander UK Plc has applied a default to his credit file in respect of his current account overdraft.

background

The background to this complaint, and my provisional findings, were set out in my provisional decision dated 22 March 2018. A copy of this is attached and forms part of this final decision. In my provisional decision I invited both parties to let me have any further comments and evidence.

Mr O hasn't replied to my provisional decision.

Santander responded to my provisional decision by saying that if the default is removed from Mr O's credit file and he settles the debt, there will still be adverse information on his credit file for six years after the date of settlement. I asked Santander to confirm that this would have been the position if the default had never been applied to Mr O's credit file. Santander has told me this is correct.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done this, I don't see any reason to change my provisional decision.

I've considered the information provided by Santander about the effect on Mr O's credit file if the default is removed and he settles the debt. On the basis of Santander's assurance that Mr O would be put in the same position he would have been in if the default had never been applied, I consider that Santander wouldn't be treating Mr O unfairly or unreasonably by recording the adverse information.

my final decision

For the reasons given above and in my provisional decision, my final decision is I uphold this complaint. I require Santander UK Plc to remove the default it's applied to Mr O's credit file and pay him an additional £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 May 2018.

Charles Bacon
ombudsman

Copy of provisional decision

background

Mr O has a current account with Santander. He stopped making payments into and withdrawals from the account in August 2016 because he'd reached the limit of his agreed overdraft. In March 2017 Santander debited an unarranged overdraft usage fee to the account. Mr O then contacted Santander to explain that he was unemployed and could only afford to make a nominal weekly payment to the account.

In August 2017 Mr O discovered that Santander had applied a default to his credit file in respect of his overdraft and he complained to Santander about this. Santander said it wouldn't have been able to set up a formal repayment plan for the amount Mr O was able to pay. It said it had been unable to send letters to Mr O because he had an overseas address. This included a default notice it issued in July 2017. It sent Mr O a cheque for £150 to compensate him for the error it had made by not sending him the letters. But it said the default had been correctly applied to his credit file.

Mr O wasn't happy with Santander's response and referred his complaint to this service.

our initial conclusions

Our investigator recommended the complaint should be upheld. She didn't think Santander had made it sufficiently clear to Mr O that he needed to set up a formal repayment arrangement. Because of this she thought Santander should pay him another £100.

Santander agreed to make the additional payment, but Mr O didn't agree with our investigator's recommendation.

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.

I've listened to a recording of the call Mr O made to Santander in March 2017. At one stage the adviser said she wanted to make Mr O aware of the effect leaving his account "*unattended*" would have on his credit file. I think the information given to Mr O wasn't at all clear. The adviser made no attempt to confirm if Mr O understood the information she'd given him about his credit file. Neither did she explain to him that he'd need to make regular payments of an amount more than he'd offered to avoid it being classified as in default. I think Mr O could reasonably have understood that he had fifteen months in which to set up an arrangement to stop his account defaulting.

In its letter to Mr O in response to his complaint, Santander said it would be a "*reasonable assumption*" that an arrangement had been agreed for the amount offered by Mr O. I've seen statements for Mr O's account up to August 2017. These show he made weekly payments into the account from the end of March 2017. Santander didn't send him any letters to say the amounts he was paying weren't sufficient. So I think it was reasonable for Mr O to think he was doing enough to stop a default being applied to his credit file.

Unlike some other types of loans, current account overdrafts don't normally require customers to make regular repayments. Instead, they're repayable on demand. Once a bank has made a formal demand for repayment the customer will be in default if he doesn't repay the overdraft in full or the bank agrees to repayment by instalments. But in this case, Santander didn't send any letters to Mr O so it didn't make a formal demand for repayment. I don't think Mr O can be considered to have defaulted on payment in the absence of such a demand.

In the above circumstances, I'm not at all satisfied it was reasonable for Santander to apply a default to Mr O's credit file and I think it should have been removed when he complained about it.

Santander has paid £150 to Mr O, but I think it's caused him additional unnecessary trouble and upset by failing to remove the default. I think it should pay him another £100 to compensate him for this.

I should make it clear that Mr O will still be responsible for repaying his overdraft. If, in the future, Santander sends him the required notification letters to make a formal demand for repayment he'll need to make arrangements for repayment that are acceptable to Santander. If he doesn't do this Santander will be entitled to reapply the default which will then remain on his credit file for six years after it's reapplied.

my provisional decision

Subject to any additional comments and evidence I get from the parties, my provisional decision is I would uphold this complaint. I would require Santander UK Plc to remove the default it's applied to Mr O's credit file and pay him an additional £100.