

### **complaint**

Mrs L complains that the fees Santander UK Plc (Santander) charged her when she went into an unarranged overdraft are unfair and excessive. She wants Santander to refund all the charges applied to her account.

### **background**

Mrs L had a basic bank account with Santander without an arranged overdraft facility. She experienced some financial difficulties in 2011 and complained to Santander about the level of charges. She said that when her direct debits were not being met she was incurring charges of £25 which sometimes were more than the direct debit itself. She thought the charges to be excessive and unfair.

As a gesture of goodwill Santander refunded some of those charges in October 2012. The last charge incurred on her account was in January 2013. Mrs L complained and when Santander issued a final response letter to her in April 2013 it confirmed it had made the earlier goodwill payment noting that she was not generating overdraft charges at that time.

Mrs L complained again in October 2017 and said Santander hadn't dealt with her fairly, because it knew she was in financial difficulty. She said because charges were being applied on top of charges she was stuck in a debt cycle that was difficult to get out of.

Santander repeated what it had said before and felt it hadn't acted unfairly because when the direct debits were due to go out there weren't sufficient funds in the account. Because of that the charges applied were correct. So it said it wasn't going to refund anymore charges.

Our investigator looked into Mrs L's complaint and thought that Santander had correctly applied its charges in line with its terms and conditions (TC's). He thought there was no evidence that Mrs L had told Santander that she was in financial difficulties either. So he didn't think Santander had done anything wrong.

Mrs L disagreed so her complaint has come to me for a decision.

### **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 have summarised matters quite briefly but that is because we provide an informal service. So if I haven't mentioned something it is not that I've overlooked or ignored it, rather that I think it hasn't been relevant to the issues I need to consider. This approach is consistent with what our governing legislation requires of me, and lets me focus on those issues which I consider a fair outcome will turn, and not to become distracted by those which are peripheral.

I will not repeat our investigators background summary since it is accurate and full. However, I can see that in April 2013 Santander wrote to Mrs L concerning the charges which had been raised. It said the charges were correctly applied to her account and in line with the TC's. I have checked and can see that at that time Mrs L wasn't in a cycle of charges as the last charges applied were in January 2013.

I've also looked at the TC's of Mrs L's account and it is a basic bank account but it did have the facility for an unarranged overdraft. So each time a direct debit was attempted and there

weren't enough funds in the account to cover it, Santander was entitled to treat that as a request for an unarranged overdraft facility, and that means Santander was entitled to charge a fee in accordance with their TC's.

I know Mrs L says the charges are unfair and excessive, but our investigator has set out the position regarding fees and charges and there is very little I can add. Other than to say the Supreme Court decided that fees and charges can't generally be challenged for unfairness - provided they are set out in the TC's.

Mrs L has highlighted a section in the TC's which she says states that arranged and unarranged overdrafts are not available on a basic bank account. But I am afraid she has misread that document. What she is referring to is the interest, overdraft fees and paid item fees. The document she refers to does clearly shows that 'Unpaid Item fees' of £25 per item are payable. And that is what was charged here.

When a business knows their customer is in financial difficulties they are obliged to treat that customer sympathetically and fairly. But like our investigator I can't see that Mrs L ever told Santander that she was experiencing financial difficulties at the time, and I have seen that in November 2012 she received almost £5,000. And Santander has refunded some of the charges in any event. So I don't think there is evidence that Santander have acted unfairly towards Mrs L.

### **my final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 7 April 2018.

Jonathan Willis  
**ombudsman**