

complaint

Mr L1 and Mr L2 have a business account with Santander UK Plc and complain that it withdrew part of the overdraft facility without giving notice.

background

Mr L1 spoke to Santander on 5 January 2016 about increasing the business overdraft. It was then £8,000 and he wanted to pay for internal repairs. He received a call on 11 January 2016 saying that the temporary overdraft was agreed. Santander considered that he had asked for the overdraft for three months. So it removed this in April 2016 and returned items on the account. Mr L1 says that he was not aware that the overdraft increase was only for this period especially as he had been charged an "annual fee" of £50. Santander has refunded the fee, and has also offered to refund bank charges of £87.51 and pay compensation of £50.

The adjudicator thought this was reasonable and did not recommend it did any more. He said that:

- He had listened to the phone calls and in the first Mr L1 had asked for an overdraft increase of up to £2,000 for a maximum of three months.
- In the follow up call Santander had not explicitly given the terms of the increase and it had not sent any written confirmation. But he was satisfied that based on the call of 5 January 2016 Mr L1 was aware of the terms.
- Santander will normally give 30 days notice of the removal of any overdraft but the account terms and conditions do not say it always has to.
- It said it did not do this as the increase was temporary.
- He noted that the balance on the account had already exceeded the higher limit and he thought it likely that charges would continue to have been incurred anyway.
- Santander had said that the calls Mr L1 had been receiving from its collections department while this complaint was being considered did not relate to this borrowing and it had also now removed his mother as a contact point for the business.

Mr L1 did not agree. He said that he did not see the first phone call as an application for an overdraft. He was under duress when he made comments about repaying any increase. He said that all overdrafts are temporary and he referred again to the annual fee which would not have been refunded unless he'd complained. He takes exception to the suggestion that the business account was not being operated in a proper fashion. He said that funds were always lodged to correct any exceptions to the limit. He doesn't think that the offer is reasonable as the business now has to operate on a cash basis and he cannot accept any card payments or online transactions.

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've listened to both phone calls. I can't know exactly what was in Mr L1's mind when he made the first call. But I don't think it was in any way obvious to Santander that he could be under duress. And I don't believe that anything it did or said could have put him in such a state of mind. Instead it asked him how much he wanted and when he could pay it back. He asked for a £1,000 to £2,000 increase and said a three month period would be ideal but he could perhaps pay it back more quickly. The second call lasted only about a minute.

Santander confirmed agreement to the temporary overdraft. To me he was clear what that meant especially as he didn't ask any questions about it.

If he'd expected something in writing - even though there was nothing to suggest that this would be sent - then I think it would have been reasonable for him to follow this up.

I consider the issue is whether Santander should have given 30 days' notice to change the overdraft limit. I don't see anything in the account terms and conditions that defines what a temporary overdraft is- as Mr L1 says every overdraft limit has an expiry date. But the conditions say that Santander can change an overdraft limit without the notice "*...where it would be reasonable for us to do so*".

In my view an agreement to an overdraft and the notice that it is to be withdrawn or changed are separate and happen at different times. I'd expect this approach to apply to the £8,000 overdraft limit the business originally had. And I see no good reason why it should not have applied to the increase. Based on the reference Santander made to a conversation with Mr L1 on 12 April 2016 and to its dealings then with Mr L2 the immediate reduction in the limit had not been anticipated. I consider that in the circumstances of this case notice should reasonably have been given.

Having said that I need to look closely at what the implications were for the business of not being given notice. In my view the adjudicator has reasonably referred to the way the account was operated before the limit was reduced. And what he chose not to draw out was that items- including cheques and direct debits- were returned unpaid before the overdraft limit was reduced. I've also looked at what happened when the overdraft limit was removed on 11 April 2016. Had this been strictly adhered to all further cheques and direct debits would have been returned until the account balance fell to the maximum of £8,000 overdrawn. But that's not what happened. As far as I can determine items were still paid against cleared funds up to a balance of £10,000 overdrawn over the following month. I appreciate that this was a difficult period for the business but I consider that it was in effect allowed a period of adjustment.

But I don't consider that the compensation offered is sufficient to reflect the additional distress caused by not providing the notice. I asked Santander if it would increase this to £150 and it agreed to do so. It has already refunded the arrangement fee and I agree that it should refund the bank charges.

my final decision

My decision is that Santander UK Plc should pay Mr L1 and Mr L2 £150 and refund bank charges of £87.51 as it has now offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L1 and Mr L2 to accept or reject my decision before 15 September 2016.

Michael Crewe
ombudsman