

## **complaint**

Mr L complains, in summary, that Santander UK plc has recorded incorrect information on his credit file.

## **background**

Mr L had a current account overdraft with Santander. In late 2009 the bank wrote to give him notice that it was withdrawing the overdraft but Mr L says that he did not receive the letter. The account was still overdrawn when the limit was cancelled. Mr L has subsequently repaid the debt in full. The information about the conduct of the account has been recorded with the credit reference agencies.

Our adjudicator did not recommend that the complaint should be upheld. She concluded that Santander was entitled to withdraw the overdraft limit, and it had given sufficient notice. As the account continued to be overdrawn charges were debited to the account, which increased the debt. She considered that Santander had recorded information that reflected the activity on the account correctly.

Mr L responded to say, in summary, that he was unaware that the overdraft had been withdrawn and he did not receive any statements. Consequently, every time he paid into the account the charges took the account overdrawn again.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

My decision does not consider whether the charges levied by Santander are themselves unfair, illegal or unenforceable. Following completion of the "test case" between the Office of Fair Trading and a number of banks, including Santander, the law on these types of charges has been clarified. Put simply, the Courts have ruled that these sorts of charges do not generally amount to penalties and cannot be challenged on the grounds that they are too high. As the bank's charges were levied in accordance with the account terms and conditions, I cannot order them to be refunded on the grounds that they were too high or unfair.

Mr L says that he tried to close the account towards the end of 2008 and calculated the amount to pay into the account to do this with the help of a staff member. I am satisfied that enough money was paid in to cover the 'exceeding overdraft' fee that was then charged but the account was not closed. Mr L accepts that he then used his debit card, in error, and, with the debit payments he made and further charges, the overdraft increased again. As he was not paying anything into the account, he was also being charged an underfunding fee. At this stage the account was within the agreed overdraft limit and Santander did not write to Mr L until towards the end of 2009, when it gave him notice that it was withdrawing the overdraft facility. Mr L says that he did not receive this letter and whilst I cannot comment on why, I am satisfied that it was sent. I also find that Santander sent a further letter a month later to say that the limit had been cancelled, but the account remained overdrawn.

In early 2010 Santander wrote to demand the repayment of the overdraft. I find that Mr L received this letter because he wrote in response to say that he had thought the account had closed, that the debt consisted of charges and he was concerned that he was receiving

threatening letters. Santander told him that the fees had been charged correctly, and in accordance with the terms, but refunded £25 as a gesture of goodwill. Mr L was then sent a further letter to tell him the account was being transferred to the bank's debt recovery unit and it was going to commence proceedings for the recovery of the debt. This letter also clearly stated that Santander would notify the credit reference agencies that the account was in default. I am not, therefore, persuaded that Mr L was not aware of the default or that it would be reported to the credit reference agencies.

Mr L says that he was not receiving bank statements, but I am satisfied that the type of account he held meant that these were available to him online. He would not, therefore, receive paper statements and Santander sent email reminders of when the statements were available. I consider that it was for Mr L to regularly check and monitor his own account.

I have carefully reviewed Mr L's credit file and the default was correctly recorded in 2010. Mr L made various repayment plans with Santander to clear the debt and it was fully repaid in early 2011. The report shows the balance reducing monthly and the account is now showing as satisfied. I accept that following the repayment a red marker continues to show each month. I find that this marker is a current account status code, which means that:

- an overdraft balance has been greater than the overdraft limit for more than three months and agreed repayments have not been made to bring the account in order;
- the lender has decided that the terms of the agreement have been broken and the account is now in 'default'; and
- the lender has closed the account.

In the circumstances, I conclude that Santander has correctly recorded the factual information about the conduct of the account with the credit reference agencies. It would not, therefore, be appropriate for me to require it to amend Mr L's credit file.

The information on the credit file shows the status and balance history and remains on the file for six years. However, it is open to Mr L to register explanatory or corrective information on his file, should he wish to do so, to explain the position from his perspective, for the benefit of any other financial organisations which might make credit searches.

### **my final decision**

My final decision is that I do not uphold this complaint.

Karen Wharton  
**ombudsman**