

complaint

Mr and Mrs D complain about the charges that Santander UK Plc applied to their joint account because of a direct debit that they did not authorise.

background

Mr and Mrs D set up a direct debit to be taken from Mrs D's sole account. They said, instead of it being taken from that account, Santander wrongly allowed the merchant to attempt to take it from their joint account. This led to them being charged fees as there was not enough money in their joint account to cover the direct debit. This happened on three occasions before Mr D cancelled the direct debit on their joint account.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld. She said that it was for Santander to show that the direct debit had been set up on the joint account correctly.

Mr and Mrs D accepted the adjudicator's recommendation. Santander disagreed and said, in summary, that, as Mr D had deleted the direct debit mandate from its records, it was not fair to penalise it because it did not now have access to that deleted data.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr and Mrs D and to Santander in July 2013.

Subject to any further representations by Mr and Mrs D or Santander, my provisional decision was that I did not uphold Mr and Mrs D's complaint for the reasons set out below. Both Mr and Mrs D and Santander accepted my provisional decision and so I now make that my final decision.

my findings

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

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs D said they instructed the third party to set up the direct debit for payment to be taken from Mrs D's sole account. I accept this because Santander's records show that a direct debit was set up on Mrs D's sole account about a month before the first direct debit was taken from their joint account. But Santander said no payments were taken under the mandate for Mrs D's sole account and the mandate was cancelled some months later.

Mr and Mrs D said that they did not give the third party authority to set up a direct debit on their joint account and, therefore, Santander should not have allowed the direct debit payments to be taken from that account. They said because of this the charges levied by Santander for unpaid direct debits and for an unagreed overdraft were unfair.

Santander said that third parties often set up direct debits electronically and it is not involved in setting up the direct debit, or the collection of it. It questioned why the third party had not been asked about this. From Mr and Mrs D's statements it appears that there was a mandate on the joint account relating to this third party (mandate 18) but Santander said it

no longer had any information about this because Mr D cancelled this direct debit and deleted the data relating to it.

The question for me to decide is whether Santander was more likely than not responsible for the direct debit being set up incorrectly in the first place. I am sorry to disappoint Mr and Mrs D, but I do not consider that I can fairly reach that conclusion. Firstly, I think it was more likely than not that the third party merchant set up the direct debit electronically and so, Santander was not involved in this process. Secondly, it appears more likely than not that there was a mandate authorising payment to the third party from the joint account – mandate 18 – and it is not disputed that Mr D cancelled this mandate. Thirdly, it was Mr D who deleted the data from Santander's records. This would have provided information about this mandate and, therefore, I do not consider that it would be fair or reasonable to hold Santander responsible for this information not now being available. Having reached the conclusion that Santander was not responsible for the direct debit being set up wrongly in the first place, I cannot reasonably require it to refund the charges, as these were levied in line with the terms and conditions of the account.

Mr and Mrs D have also said that the charges were excessive, but in the test case on bank charges brought by the Office of Fair Trading, the Supreme Court concluded that, put simply, bank default charges and fees:

- do not generally amount to penalties.
- cannot be challenged on the grounds that they are too high.

and so I am satisfied that Santander was entitled to levy the charges it did.

my final decision

For the reasons I have explained, my decision is that I do not uphold Mr and Mrs D's complaint.

Kim Parsons
ombudsman