

complaint

Mr N complains that Santander UK Plc set up an overdraft without his agreement, following an error. He wants the bank to refund the charges it has applied.

background

In August 2010, Mr N went to his local Santander branch to withdraw cash. But Santander debited the wrong amount to his account, taking it briefly overdrawn. The bank immediately reversed the error and put the account back in credit. It then processed the correct amount. Santander didn't apply any charges for the incident. And Mr N operated his account in credit for several months afterwards.

But the following March, Mr N went back to the branch. He says that on this occasion, the cashier wrongly gave him a receipt for £500 when in fact, he was withdrawing that amount. Mr N believes the bank made an error that created an overdraft on his account, though he never requested or signed an overdraft agreement. Santander refunded some charges at that time. However, Mr N's account remained overdrawn, and the bank has applied more charges¹. It has declined Mr N's request for a further refund.

Our adjudicator couldn't find any evidence to support Mr N's belief Santander had made an error by crediting his account with £500. And she didn't think the bank had changed any transaction dates, as Mr N suggested. The adjudicator felt the bank had treated Mr N fairly by treating the overdraft mainly as authorised borrowing, rather than unauthorised. So she didn't recommend that Santander refund further fees.

Mr N maintains his view that the overdraft had been created following branch errors, rather than at his request. He doesn't think it fair that Santander charges him in the circumstances. He says the bank agreed that he could repay the overdrawn balance by monthly instalments without charge.

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 there is a dispute about what happened, I have based my decision on what I consider most likely to have happened in the light of the available evidence.

There doesn't seem to be any real link between the events in 2010 and Mr N's current situation. The bank corrected that error straight away, and Mr N's account wasn't treated as overdrawn for charging purposes. The authorised overdraft was set up in March 2011. So it seems more likely that events at this time had a greater bearing.

Looking at the account statements for March 2011, I can understand Mr N's confusion. At the same time as his £500 branch transaction, an online trading company took a £500 debit card payment from Mr N's account. That company recredited the money the next day. But the account statement doesn't support Mr N's view that the branch cashier wrongly deposited money to his account. It shows Mr N withdrew the money, as he says he did. And in any event, a deposit wouldn't create an overdraft. However, I can see that Mr N made

¹ Mr N's account statements indicate that some of Santander's charges are for unauthorised borrowing, and others for use of an agreed overdraft facility.

some more withdrawals a few days later, taking his account overdrawn. Santander waived its charges in relation to that incident.

But by mid-April, Mr N's account was regularly – though not significantly – overdrawn. This doesn't seem to have been because of a bank error. Put simply, Mr N was not depositing money as often as he had before. At the same time, his spending remained fairly constant. Santander was obliged to comply with Mr N's debit card payments, as these had already been authorised. It could have refused Mr N's other withdrawal requests, including his bill payments. Alternatively, Santander could have treated all of Mr N's withdrawals as requests for additional borrowing. That is what it did. Santander didn't need a specific signed request from Mr N in order to decide whether to provide an overdraft, authorised or not. It was entitled to treat his instruction to pay as a 'tacit request' for borrowing.

I'm conscious the bank has refunded a proportion of its charges already. But that doesn't oblige it to make further refunds. Mr N cannot expect to have indefinite use of the overdraft facility without the bank charging him. I've not seen any persuasive evidence that Santander agreed Mr N could repay the balance in monthly instalments without charge. And Mr N hasn't been making any such payments anyway. If Mr N wants to avoid future charges, he will need to repay the overdrawn balance.

my final decision

My final decision is that I do not require Santander UK plc to take any further action in relation to Mr N's complaint.

Niall Taylor
ombudsman