

complaint

Mrs H's complaint is that Santander UK Plc has unfairly pursued her for payment of two credit card debts. She says that Santander hasn't been able to provide the original credit agreements for either account.

Mrs H also says that Santander has incorrectly sent letters about the accounts to her mother's address and that she wasn't aware that charges would be added to her accounts.

background

The background to this complaint is set out in my provisional decision. I've attached a copy of my provisional decision and it forms part of my final decision.

In my provisional decision, I explained why I thought Santander was entitled to recover both the credit card debts from Mrs H. In summary, this was because I'd seen copies of the applications for both accounts – which were requested in Mrs H's name. And Mrs H hadn't disputed that she (or in the case of the second account, her husband Mr H) had borrowed (and used) the money owing on the accounts.

I also explained that I thought it was most likely that Santander had sent correspondence about the accounts to Mrs H's home address. I'd seen Santander's internal records that showed the addresses it held on file for Mrs H – and the only one it had was her home address. And I thought Santander had taken sufficient steps to make Mrs H aware of the position on both accounts as its records showed it had sent a number of letters, made phone calls and sent text message alerts.

I asked both parties to let me know if they had any further comments or evidence that they wanted me to consider. Santander didn't respond with anything further. Mrs H responded to say that she didn't accept the provisional 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.

Having done so, I still don't think I should uphold Mrs H's complaint.

I've carefully considered Mrs H's further comments. But she hasn't said anything substantially different from the points I'd already considered – and so there's nothing that leads me to change the conclusions I reached in my provisional decision. Mrs H maintains that she didn't apply for the second credit card online. And she says her husband, Mr H, told her that he applied for that card in his own name. But that isn't what the records show. Santander has sent us a copy of that online application – which clearly shows Mrs H as the primary account holder, and Mr H as an additional cardholder. Mrs H says Mr H could've applied for the card in her name fraudulently. I accept that's possible. But it's not the complaint that was brought to us, so it's not something I can look into now. Mrs H should contact Santander and/or the police if she feels she's been the victim of fraud.

Mrs H feels there's insufficient evidence to show that she's responsible for the debt, or that Santander made reasonable attempts to contact her about it. But I don't agree. Everything I've seen shows that the account was set up in Mrs H's name in line with the instructions

Santander received. The record of contact suggests that Santander made various attempts to make Mrs H aware of the situation on the two accounts. The accounts were used on a number of occasions, and payments were made to both of them to reduce the outstanding balances. I have no reason to believe that Santander has falsified any of the evidence it's provided to us. So I still don't think Santander set up the accounts incorrectly, or that it failed to make Mrs H aware of what was happening with them.

Mrs H says she can't agree that she's responsible for the debts without being given a copy of the credit agreement. As I've said previously, we can't decide the legal enforceability of a debt – that's up to a court. But for the reasons I've explained above and in my provisional decision, I think it's fair for Santander to try to recover the outstanding balances from her.

my final decision

For the reasons explained in my provisional decision and summarised above, I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 June 2016.

Ben Jennings
ombudsman

Copy of Provisional Decision

complaint

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background

Mrs H has two credit card accounts with Santander. The first was opened in her sole name in January 2014 alongside a current account. The second was also opened in January 2014. This account has her husband, Mr H, named as an additional cardholder.

Santander transferred the two accounts to its collections department in June and July 2014 respectively. The debt is now with a third party debt collection company.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

enforceability of the agreements

The legal enforceability of a debt isn't something we can decide – only a court can. But I've looked at the available evidence to decide whether I think it's fair for Santander to ask Mrs H to repay the debt – and I think it is. I'll explain why.

Santander says Mrs H applied for the first credit card account online while applying for a current account. It's sent us a record of the information Mrs H gave during the application. That record shows that Mrs H was asked whether she wanted to apply for a credit card, and that she answered 'yes'. So I think the first credit card account was opened in Mrs H's name at her request.

Mrs H doesn't believe Santander is entitled to pursue her for the outstanding balance on the first credit card account as it hasn't been able to provide her with a copy of the actual credit agreement – and can only send this application record. But Mrs H hasn't said that she didn't actually use the credit card – or have the benefit of the spending on it. So as Mrs H seems to accept that she's borrowed (and used) the money owing on the account, I think it's fair for Santander to recover the debt from her.

Santander says Mrs H also applied for the second credit card account online, with Mr H being added as an additional cardholder. And again, it's sent us a record of the information Mrs H gave during that application. Mrs H says this account belongs to Mr H – not her. But the application record shows that Mrs H entered her personal details as the first applicant, and that Mr H was added an additional cardholder. It also shows that Mrs H gave her current account details as a way of making the monthly payments. So I think the second credit card account was set up in Mrs H's name in line with her instructions. Again, there's no dispute about the usage of the card that led to the outstanding balance on the account. And so I think it's fair for Santander to pursue Mrs H for the debt.

letters sent to a different address

Mrs H says Santander stopped sending letters to her home address and sent them to her mother's address instead – so she wasn't aware that the accounts were in default. Santander says it sent all its correspondence to Mrs H's address – and that it was only the third party debt collection agency that sent any letters to Mrs H's mother's home.

I've not seen copies of the letters that Santander sent to Mrs H when she fell behind on payments for the two accounts. Santander says it doesn't keep copies of these. But it has sent us a copy of its internal records, which shows the addresses it held on file for Mrs H. And the address of Mrs H's mother doesn't appear on this list. There's only one address – and this is the address that Mrs H entered as her home address when she applied for the accounts. So from what I've seen, I think it's most likely that Santander sent its correspondence to Mrs H's home address.

Mrs H says she wasn't aware that charges would be added to her accounts. Santander doesn't have copies of the letters it sent to Mrs H when she fell behind on her payments. But it has sent us examples of the types of letters that would've been sent. And I think these clearly explained what would happen if the accounts weren't brought up to date – including charges, information being sent to credit reference agencies and other recovery action.

I've also reviewed Santander's record of contact with Mrs H. And I can see that these letters were sent to her – and that it also discussed things with her over the phone and sent her text message alerts. So looking at everything, I think Santander did enough to make Mrs H aware of the position of her accounts – and what would happen if they remained in arrears.

As the accounts weren't brought up to date, they were passed to a third party debt collection agency to recover the debt on Santander's behalf. I appreciate that Mrs H is unhappy with how this agency pursued the debt. I don't have copies of this agency's letters either, but I accept they may well have written to Mrs H mother's address. But there's nothing to show that Mrs H had been in contact with Santander (or that agency) to try to bring the account into order. So I think it was reasonable for the debt collection agency to take further steps to try to make contact – including writing to any addresses to which Mrs H was linked. It's regrettable if Mrs H's mother opened these letters in error – but as I don't think the agency did anything wrong, I don't think Santander needs to do anything to put things right.

my provisional decision

For the reasons set out above, I don't intend to uphold Mrs H's complaint.

Ben Jennings
ombudsman