

complaint

Mr W complains that Santander UK Plc has not treated him fairly in that it allowed his account to go into unarranged overdraft, despite his explicit instructions to the contrary. He says this has resulted in charges being applied to the account which he has not been able to repay, causing him distress and inconvenience and affecting his credit file. He would like Santander to refund charges and prevent the account from going into overdraft in the future.

background

Mr W opened a current account with Alliance and Leicester ("A&L") and says that at the time, he made it clear to the A&L representative that the account was never to be allowed to go into overdraft. He says he was therefore distressed to discover that it had gone into unarranged overdraft on several occasions, and that he was charged fees as a result. Mr W says this was contrary to the contract agreed between him and the bank and that he has not been able to repay the fees, meaning further charges have been applied, causing him financial hardship. He says the bank continues to harass him for repayment by telephone, causing him distress.

Our adjudicator did not recommend that the complaint should be upheld. She considered that the account terms and conditions made it clear that if Mr W made unfunded payments, then the bank would put an unarranged overdraft in place to cover any shortfall, and apply charges accordingly. Because the bank had acted in line with this term of the account, she considered it had acted reasonably. Mr W does not agree, saying the terms and conditions she has relied upon were from a different bank and that they do not apply to his account.

my findings

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

Mr W has raised several issues in his complaint, and I've dealt with these separately, below.

unarranged overdraft

Mr W says that when he opened the account, he insisted that it should not be able to become overdrawn. A copy of the original terms and conditions on the account is not available to examine. But Santander has said that these would have allowed for future variation by the bank, and that the most recent terms and conditions make it clear that if the account holder attempts to make a payment without enough money to cover it, an unarranged overdraft will be set up, and certain charges will be applied. Evidence from the bank also shows that in April 2015, Mr W attended a branch to complain about the unarranged overdraft and charges, and was told that these were consistent with his terms and conditions.

I don't doubt that Mr W made it clear to the bank when opening the account that he did not want an overdraft. And the account does not have an ongoing arranged overdraft facility. Santander has said it doesn't have records from the time, so isn't able to say whether the terms and conditions were varied as Mr W says they were. I'm afraid I consider it very unlikely that the bank would have agreed to remove its ability to set up unarranged overdrafts in certain circumstances. These have been common features of current accounts for some time, and without evidence from Mr W that he successfully negotiated the terms of

the account, I don't consider I can safely say that this change in terms and conditions took place.

In addition to this, banks retain the ability to vary terms and conditions of an account as they wish, upon provision of notice to the customer. Santander has confirmed that Mr W would have been sent updated versions of the account terms and conditions and that these make it clear that an unarranged overdraft will be set up to cover unfunded payments, and that certain charges will be applied. Santander has provided a copy of one such set of terms and conditions for A&L, which do clearly state when and how an unarranged overdraft will apply.

Based on this, I consider that the terms and conditions of the account did allow Santander to set up an unarranged overdraft and to charge fees accordingly. I also consider that Mr W was made aware of this, both in the updated copies of terms and conditions provided to him, and when he visited a Santander branch in April 2015. He continued to use the account, and to make unfunded payments. Because of this, I consider he knew what the implications of making those payments were, and that Santander acted reasonably in allowing Mr W's account to go into unarranged overdraft.

credit file

Banks are expected to ensure that a customer's credit history is an accurate reflection of how the account is being managed. Santander is therefore under an obligation to regularly update Mr W's credit file and to report any arrears. Because I consider that Santander was able to set up an unarranged overdraft on Mr W's account and charge fees accordingly, it follows that I consider the bank has acted reasonably in reporting this to be recorded on Mr W's credit file.

financial difficulties

Mr W says that the bank's actions have caused him financial difficulties, and that the bank has not responded positively and sympathetically to these. Looking at his account history, it's clear that charges have been applied and I appreciate that Mr W has had difficulty repaying these.

Lenders are expected to respond positively and sympathetically when a borrower reports financial difficulties. But there's no prescribed form of action that they have to take. Santander has shown that when contacted by Mr W in August 2015 about the charges on his account, it offered to undertake a review of his income and expenditure, which he refused, limiting the assistance which the bank could provide under its policies. It's not unusual for a bank to require someone in financial difficulties to undertake this kind of review, and I consider Santander acted reasonably in doing so.

Even though Mr W did not complete the income and expenditure review, Santander still refunded or waived £182 in charges and also told him how he could avoid future charges. I consider this to be fair and reasonable in the circumstances. Mr W says the bank is still calling him regarding the debt, but this isn't something that I can stop the bank from doing as it's entitled to contact an account holder about arrears.

I do realise that Mr W feels that the bank hasn't kept to its side of a bargain he believed was agreed when he first opened the account. But for the reasons I've set out above, I consider that the bank has acted in line with its policies and terms and conditions, so I can't say it has acted unreasonably.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 June 2016.

Catherine Wolthuizen
ombudsman