

complaint

Mr R complains about the charges which have been applied to his Santander UK plc current account. He says these charges have caused him financial hardship. He is also unhappy with the length of time it takes for payments to clear his account when he uses a debit card. And about Santander refusing to increase his overdraft.

background

Mr R has incurred charges on his current account. Mr R says Santander shouldn't have allowed items to debit his account if he didn't have sufficient money in his account. And he says the charges are excessive.

Santander says the charges have been applied in line with the terms and conditions of the account. And a refund of charges was given previously so it isn't willing to refund anymore. In addition, it has said it can't control when a merchant requests payment following a debit card transaction.

The adjudicator did not recommend the complaint should be upheld. In her view the charges had been applied correctly and the bank had provided assistance previously by breaking a cycle of charges and offering financial advice.

Mr R disagrees. In summary he says:

- his complaint does not fall within the narrow remit of the 2009 Supreme Court decision and the ombudsman should make a decision which is fair and reasonable in all the circumstances;
- he, as a customer, cannot be expected to deal with virtual payments and banks should inform customers plainly and in simple terms when payments by debit cards may be debited;
- the fact that Santander refunded some charges on one occasion isn't relevant to this case; and
- he doesn't think it is fair that Santander continued to load charges on charges even after he informed them he could not credit the account for a number of days.

my findings

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

Mr R complains Santander refused to increase his overdraft facility. The level of overdraft offered to a customer is a commercial decision for a bank and not one with which this service will usually interfere.

Mr R has said his case doesn't fall within the narrow remit of the Supreme Court decision and the ombudsman should make a decision which is fair and reasonable in all the circumstances. At this service we do take into account the law, amongst other things, when considering what is fair and reasonable in all the circumstances. Part of looking at all the circumstances of each individual case involves considering whether the consumer is in financial difficulties. If the consumer is in financial difficulties we would expect the bank to act positively and sympathetically. And what counts as sympathetic and positive will depend on the individual circumstances of the consumer.

Mr R has complained that debit card payments were not processed on the day he made them and when they were processed he had insufficient money in his account for them to be paid without him exceeding his overdraft. Whilst I accept it would be easier for Mr R to run his account if debit card payments were taken immediately Santander has explained this is not within its control. Mr R says this wasn't plainly and simply explained to him. I have carefully considered all Mr R's arguments which are well expressed. I have also reviewed the statements for Mr R's account and can see he has been making debit card payments for years. I consider, given Mr R's experience of using a debit card it is most likely he knew debit card payments weren't always taken on the day he used the card. I consider once Mr R makes a payment with his debit card he should make sure he has enough money in his account to cover that and other payments he makes.

Mr R complains direct debit shouldn't be taken if he has insufficient money in his account. Whilst I can see how this might help Mr R keep the charges down on his account I don't consider it would be fair or reasonable of me to order Santander to do this. I say this because the terms and conditions of Mr R's account allow Santander to meet a direct debit even if this will take an account over an agreed overdraft. And because some customers complain when banks don't exercise their discretion to pay direct debits.

As I have said when a customer tells a bank he is in financial difficulties it has a duty to respond positively and sympathetically. This doesn't mean it has to refund charges. Santander has previously refunded charges enabling Mr R to break a cycle of charges. When Mr R approached it this time it gave him advice on how to manage his account to avoid having to pay charges in the future and explained how direct debits and debit card payments worked. It also provided details of its department which deals with customers in financial difficulties and of debt counselling organisations. Although Mr R was again in a cycle of charges, I consider this was a reasonable response to Mr R's financial difficulties. Mr R says the fact that Santander refunded charges previously isn't relevant to this case. I don't agree, it shows Mr R was aware charges were being applied previously and of what steps he could take to avoid those charges.

For the reasons set out above, I don't consider it would be fair or reasonable of me to order Santander to refund the charges made on Mr R's account.

But I do urge him to continue to work with the bank and to give it information about his current financial position. I remind the bank of its ongoing obligation to respond positively and sympathetically.

Since coming to this service with his initial complaint Mr R has made a further complaint regarding a continuous payment authority. As this is a new complaint I haven't considered it in this decision. So just to be clear, Mr R can raise a separate complaint regarding the continuous payment authority.

my final decision

My decision is that I do not uphold this complaint.

**Nicola Wood
ombudsman**