

complaint

Mr F complains Santander UK plc gave him an unrequested overdraft without telling him and sending the terms and conditions. Mr F is assisted in bringing this complaint by his grandmother.

background

Mr F opened an account with Santander into which he could be paid Education Maintenance Allowance. He was under 18 at the time. The original account didn't have an overdraft facility. The bank say this changed to a different type of account when Mr F was 16 and the terms and conditions should've been sent to Mr F. Santander said the accounts had statements available to view online as were the account terms. Mr F told us he wasn't made aware of the change to the account, the new terms or the overdraft facility on the account.

In September 2011, when Mr F was over 18, his account became overdrawn by £4.61 from an online card purchase. From this point until mid 2012 - when a debt collection agency called at the home address Santander held for him - Mr F made no contact with the bank. During that time the overdraft attracted charges and was defaulted in July 2012. The default was recorded with credit reference agencies ("CRAs"). The £4.61 overdraft was repaid in 2013. And, at the same time, Santander removed the charges which had been added to the account between September 2011 and July 2012, as a gesture of goodwill.

In September 2015, Mr F said he discovered the default when he made applications for a loan and a new account with an overdraft, to another bank. The applications were initially refused. And Mr F said the reason given for the refusals was the default registered on his credit file by Santander in July 2012. Mr F complained to Santander as he'd settled the account in 2013 and didn't know about the default. He asked Santander to remove the default and for a letter of apology.

Santander told Mr F they'd recorded the default because he hadn't responded to letters or made payment back in 2011/2012. So, Santander felt they'd acted correctly in defaulting the account then and recording that default with CRAs. But they apologised for the inconvenience this had caused Mr F and, as a gesture of goodwill, they removed the default from his credit file.

Mr F wasn't happy with Santander's response to the complaint. He felt Santander should pay him compensation for breach of contract and under The Protection from Harassment Act. So, he complained to us.

Our adjudicator found it was Mr F's responsibility to monitor his account and it was now difficult to find Santander had done anything wrong in seeking repayment of this debt. He felt Santander had applied charges in line with the account terms and issued the default notice to the address on its records. And he thought any possible compensation for trouble and upset was outweighed by Santander's actions to date. So he didn't recommend the complaint should be upheld.

Mr F disagreed. Although he accepted it was his responsibility to check the account he felt he should've been made aware of the changes in the account terms and conditions. And Mr F thought Santander's actions had a long term detrimental effect on his finances. So the case has come to me for a 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 agree with the adjudicator and for broadly the same reasons.

I can see Mr F feels strongly about this. The original debt arose in 2011 and he thought it had been dealt with when it was paid in 2013. So, I can appreciate it must've been frustrating to find outstanding issues with this in 2015. But, as I think Santander have dealt with this fairly and reasonably, I can't properly ask them to take any further action.

Everyone accepts the initial debt of £4.61 was owed and it was settled in 2013. And it's agreed Mr F should've been made aware of the changes to the account and the terms and conditions. What's in dispute is whether the bank told Mr F about these changes.

Santander told us the terms were available to view online but they've not been able to send us exact details of how Mr F was made aware of this or the account changing to another type of account. Mr F said he couldn't get online access, despite trying a number of times, so eventually gave up and he got nothing in the post. So, I can't know whether Mr F was told of the changes to the account or sent the terms and conditions. But, for reasons I've explained below, I don't think that matters.

- It seems to me Santander have done what Mr F has asked of them since they've been made aware of Mr F's position. In 2013 they refunded the charges and then, in 2015, removed the default from his credit file and apologised for the inconvenience. So, I think the bank have placed Mr F back in the position he would've been in had the overdraft not been in place or the default recorded.
- Mr F told us his application for a loan with his new bank had been refused because of the default. But I've not seen anything to confirm the default was the reason for the refusal. And as lenders take into account a number of factors when considering an application, I can't be sure the default marker alone stopped Mr F from obtaining credit. And, as the default's now been removed, there's no longer any reference to it on his credit file for future applications.
- Mr F explained to Santander in a call on 24 September 2015 he needed an account with an overdraft but his new bank had refused this due to the default. I've also listened to a recording of a call between Mr F's grandmother and Santander on 14 October 2015. So I'm aware, although it took a lengthy appointment at the new bank to process, Mr F's application for the account with an overdraft was ultimately approved by his new bank. So, overall, I can't be sure Mr F's suffered any loss as a result of the default.

I can see Mr F has been caused inconvenience by the situation. But, like the adjudicator, I think Mr F has some responsibility in how it arose. I don't doubt what Mr F says about his attempts to get the online access to his Santander account. But, I think it's likely Mr F understood, if he couldn't access the account and continued to use it, there may be consequences. I say this as at the time the overdraft was triggered, Mr F was also using his card for online transactions, and not just cash machine withdrawals where he could check the balance at the same time.

And Mr F accepts it's his responsibility to monitor the account generally. Mr F has also shown us a number of letters sent to him at the address Santander have recorded for account. But, they weren't opened by him for some time. Whilst I appreciate Mr F says he didn't anticipate anything untoward in this correspondence that doesn't reduce his obligation to manage and check the account.

Overall, I think Santander's response to Mr F's complaint has been fair and reasonable, so, I don't require them to take any further action.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 April 2016.

Annabel O'Sullivan
ombudsman