

complaint

Mr and Mrs A complain that Santander UK plc is charging fees and interest on their account when their only source of income is benefit payments. Mr A also says that he sent a subject access request to Santander but only received some of the information the bank holds. Mr and Mrs A want the bank to refund all charges and fees on various accounts from 2005 onwards.

background

Mr and Mrs A have, over the years, held various accounts with the Santander group, including Bradford and Bingley accounts. On several occasions Mr and Mrs A contacted the bank about charges on their accounts, and in particular, they spoke to the bank about financial difficulties in mid 2012 and asked that no charges were levied on an overdraft expected to last about six months.

The bank at this point said that, as it had already refunded or cancelled some charges it would not cancel any more. It gave Mr and Mrs A information on managing their finances and referred them to independent debt counselling services. Mr and Mrs A complained to this service as they were not satisfied with the response.

Mr and Mrs A also sent the bank a subject access request. The bank was slow in responding with all the relevant information and sent Mr and Mrs A a small gift to acknowledge this. Mr A says he does not believe he has received all the information available and that two letters he has written about his first right of appropriation have not been answered.

The adjudicator did not recommend that this complaint should be upheld. She concluded that the bank was correctly charging fees and interest on Mr and Mrs A's accounts, and that it had, in response to various requests, refunded or cancelled about £500 of charges. The adjudicator concluded that this was a fair and reasonable response to Mr and Mrs A's requests for help over many years. She also noted that the bank said it had not received Mr A's letters about rights of appropriation, so she could not order it to respond.

Mr and Mrs A have responded to say, in summary, that they disagree. Mr A says he still believes that the bank is withholding information and wants all charges refunded.

my findings

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

There are several points to consider within this complaint.

I am satisfied that the bank is entitled to levy charges on Mr and Mrs A's accounts in line with the terms and conditions for the account. I do not find that the bank charged Mr and Mrs A in error, and, since the Supreme Court ruling in 2009 such charges cannot be challenged simply on the amount.

Mr and Mrs A say that the bank is not allowed to collect charges from them as their only income is from benefits, and they have quoted the Social Security Act 1992 in support of this argument. The Act talks about charges on benefit payments. That seems to have led to a misunderstanding, as the meaning of "charge" in this instance does not refer to payments for

services – in this case bank charges. Instead it is meant to stop third parties from taking benefits payments as security for a debt by means of a charge or lien over such payments. I do not, therefore, uphold this part of the complaint.

Mr and Mrs A told the bank about financial difficulties in 2012. A bank is obliged to respond positively and sympathetically in such circumstances. That might be in a number of ways, but there is no obligation on a bank to refund charges – it might, for example, offer advice on managing money or provide increased or reduced borrowing facilities. The bank had already refunded some fees, and between late 2010 and early 2013 refunded or cancelled just under £500 of charges. It also gave Mr and Mrs A details of independent debt management services and provided information on how to avoid charges. I am satisfied that this was an appropriate response.

Mr and Mrs A say that the bank is withholding information since it received a subject access request in mid 2012. The bank says it has provided the information it holds. Mr and Mrs A have asked the bank to provide some information that is from 1995 onwards. It may be that the bank no longer holds this as it does not have to retain information for longer than six years, and so this is simply no longer available.

Finally, Mr and Mrs A say that the bank has not responded to two letters about their first rights of appropriation. Such letters generally instruct a bank to meet certain payments – such as rent - out of expected income before, for instance, reducing an overdraft. The bank says it has no record of receiving the letters. I cannot order the bank to find items it says it does not have, as that would be unreasonable. I have seen a copy of a letter on this subject from July 2012 which asks the bank to pay necessary living expenses before anything else and that the bank should not charge fees. As I have already explained, Mr and Mrs A cannot challenge such fees where they are correctly charged.

From the statements I have seen it appears that only one payment for an essential service has been refused between July 2012 and March 2013 and that this was corrected within a few weeks. That indicates that Mr and Mrs A are managing their account, generally, within limits. I suggest that Mr and Mrs A send a new letter if it is still appropriate and I would also urge them to talk to the bank again if they are still experiencing financial difficulties.

my final decision

My decision is that I do not uphold this complaint.

Susan Peters
ombudsman