

complaint

Mr and Mrs F have complained that Santander UK Plc ("Santander") told them to change their account to a fee-paying 123 account in July 2012 when it has not been of much use to them.

They have also complained that Santander increased the amount it charged customers to use their overdraft and hasn't dealt with their financial difficulties in a reasonable way.

background

Our adjudicators assessed this complaint and didn't think that Santander should refund Mr and Mrs F's monthly account fees or overdraft charges. But they did think that Santander could've done more to help them when they told Santander about their financial circumstances. So they asked Santander to refund the overdraft charges that were applied to the account in August and September 2018, with interest.

Both Santander and Mr and Mrs F disagreed with the adjudicators' assessments and so the complaint has been referred to me for a final 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.

We've explained how we handle complaints about packaged bank accounts on our website. I've used this approach to decide what to do about Mr and Mrs F's complaint. And having done so, I only uphold this complaint in part. I will explain why.

sale of the 123 account

Mr and Mrs F say that because the account they held was being withdrawn, they were told to change their account to a Santander 123 account. They say that Santander told them that it would be beneficial for them. At the time, the 123 account incurred a £2 monthly fee and in return it paid 1% cashback on water and council tax Direct Debits, 2% cashback on electricity and gas Direct Debits and 3% on communications Direct Debits – providing they paid in £500 a month and had at least two Direct Debits set up on the account.

Based on what I can see from their bank statements, Mr and Mrs F met the account criteria and were receiving more than £2 each month in cashback. So overall, I think Santander's suggestion that they take out the 123 account was reasonable in the circumstances. Because of this I don't think it would be appropriate to require Santander to refund Mr and Mrs F's 123 account fees, even if anything had gone wrong at the time of the sale.

I note that the account fee has since increased to £5 per month in January 2016 and I appreciate that Mr and Mrs F may not be receiving as much value for money from having the 123 account as they originally did. But this doesn't mean that Santander was wrong or acting unfairly to have suggested Mr and Mrs F to change their account to the 123 account in July 2012. I wouldn't expect Santander to monitor whether its packaged account customers are using the benefits on their accounts. So it would've been up to the account holders, in this case Mr and Mrs F, to change their account, if they felt that the 123 account was no longer right for them.

Santander was able to increase the monthly account fee - providing it gave Mr and Mrs F sufficient notice. And I can see Mr and Mrs F were told in November 2015, about the increase in the monthly account fee due to take place in January 2016. So I think Santander gave Mr and Mrs F a reasonable amount of time to decide whether they wanted to keep the 123 account with the increased monthly fee or to change it to another type of account that didn't incur a monthly fee.

Mr and Mrs F have said that they regret having been advised about the 123 account and refer to the large amount of overdraft charges that they incurred on their account. But having the 123 account had no bearing on how much they were being charged on their overdraft. This is because Santander has provided evidence which shows that it essentially charged the same amounts for using an overdraft on the 123 account as it did on its fee-free Everyday current account. So although Mr and Mrs F may, with the benefit of hindsight, wish they hadn't agreed to the 123 account, this in itself doesn't mean that Santander was wrong to have sold it to them or should refund the 123 account fees.

overdraft charges

A Supreme Court ruling in 2009 says that bank charges can't be challenged on the basis that they're too high. They can only be challenged if they've been applied incorrectly, against the terms and conditions of the account.

The terms and conditions of Mr and Mrs F's bank account set out the charges Santander could apply if the overdraft was used. And I've seen from the statements Mr and Mrs F used their overdraft regularly – and Santander applied charges in line with those terms and conditions.

I understand that Santander changed how it calculated its overdraft charges and this resulted in Mr and Mrs F having to pay a lot more for using their overdraft. But like the monthly fee for the 123 account, Santander was able to amend how it charged customers for using an overdraft, providing it gave sufficient notice. Again I can see that Santander told Mr and Mrs F about those changes in advance of them coming into effect. And looking at the amounts that were charged, they appear to be in line with the amounts Santander were entitled to apply.

Given all of this, I haven't seen any instances, and Mr and Mrs F haven't pointed out any instances, where the overdraft charges were applied incorrectly.

financial difficulties

I accept that Mr and Mrs F were consistently overdrawn and that Santander had a duty to treat them both positively and sympathetically if they were experiencing financial hardship.

But I've not seen enough evidence to say that Mr and Mrs F raised this issue with Santander directly, until that is, they complained in July 2018. Therefore, I can't hold Santander responsible for not giving Mr and Mrs F the relevant support they may have needed before they raised the complaint. I say that because Mr and Mrs F would have needed to have told Santander if they were struggling – but I can't see that they did, so Santander wouldn't have known anything was wrong.

However, I've listened to the telephone call when Mr and Mrs F made their complaint to Santander. Santander did mention its financial assist team, however the call was ended without referring Mr and Mrs F to the financial assist team. As Mr and Mrs F referred to the 'looping' of overdraft charges preventing them from bringing the account out of the overdraft, I think Santander could've provided more support and put them through to the financial assist team, even if Mr and Mrs F were unhappy with the outcome of their complaint. Mr and Mrs F didn't refuse the initial suggestion of speaking to the financial assist team, but the conversation got caught up in the complaint and the Santander representative didn't again mention the possibility.

Santander says that its financial assist team wouldn't have waived Mr and Mrs F's charges unless the account was in a credit balance. Santander says the only option that the financial assist team could offer was to put Mr and Mrs F's account into collections and arrange a repayment plan, which would've led to adverse information being recorded on Mr and Mrs F's credit file. Santander has also pointed to the fact that as Mr and Mrs F were able to clear the overdrawn balance so quickly, they can't have been in financial difficulties.

Had Mr and Mrs F been passed through to the financial assist team, I don't think it would have been treating Mr and Mrs F positively or sympathetically had it *only* given them the option of putting their account into collections. And, of course, Santander's recent comments are essentially hypothetical, as I would be surprised if its financial assist team didn't take a more individualised approach to considering its customers' difficulties.

Mr and Mrs F have said that they had to borrow money from elsewhere to help clear the overdrawn balance – so I don't think just because they paid off their debt with Santander so quickly meant they weren't struggling financially. And had Mr and Mrs F been put through to the financial assist team, Santander would've had the opportunity to find out the level of Mr and Mrs F's indebtedness to other parties.

Overall I think it would have been reasonable to have offered to waive the overdraft charges for a short period of time, as by that point Mr and Mrs F clearly had a plan as to how to they'd clear the overdraft debt within a relatively short space of time – even if it did involve borrowing money from elsewhere. So I agree with the adjudicator that Santander could've done more to support Mr and Mrs F's financial situation when they spoke to Santander about their complaint. Although I note that the adjudicator said that debit interest should be paid on the August 2018 overdraft charge. But as the overdraft charges were based on set amounts rather than interest, and as Mr and Mrs F had to use money from elsewhere to pay those charges, I think that awarding 8% simple interest on both charges is fairer.

Because of this, I think it's not unreasonable to require Santander to refund the overdraft charges they applied to Mr and Mrs F's account in August and September 2018, with interest.

However, for the reasons outlined above, I don't think Santander needs to pay back to Mr and Mrs F the 123 account fees they paid or any further overdraft charges.

I appreciate that they may be disappointed with this decision, but I hope I have been able to explain the reasons why I have only upheld this complaint in part.

what Santander needs to do put matters right

To put matters right, I require Santander to:

- Pay Mr and Mrs F the two overdraft charges applied to the account in August and September 2018;
- Add simple interest to each payment from when they paid each one, until they get them back. The rate of interest is 8% a year †;

† HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr and Mrs F a certificate showing how much tax it's taken off if they ask for one.

my final decision

Because of the reasons given above, I uphold this complaint in part and require Santander UK Plc to do what I have said above to put matters right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 11 May 2019.

Thomas White
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