complaint

Mr A complains that Santander UK Plc cancelled his overdraft without telling him, causing him to incur charges unexpectedly. He wants the charges to be refunded.

background

Mr A has an account with Santander. Until October 2014 he had an overdraft limit of £500, but then it was cancelled. Santander says it told him in advance, but Mr A says he never received notification. As a result he relied on an overdraft he didn't have, and from June 2015 he unknowingly ran up bank fees he couldn't afford. Our adjudicator upheld his complaint and said that Santander should refund all of the fees.

Santander says that even if Mr A didn't receive its warning that the overdraft would be cancelled, he must have still known about it. He brought his account balance to zero on the same day. His bank statements, which Santander says he did receive, all said his overdraft was zero. And he used online banking, which would also have told him what his overdraft was. So Santander objected to refunding the fees, and asked for an ombudsman to review this complaint.

my provisional findings

I wrote a provisional decision as follows.

I have seen Mr A's bank statements for the period from January 2014 to early November 2015. Up until the day that Santander cancelled the overdraft in October 2014 the account was always overdrawn, although I can see that it never exceeded the agreed limit. But on that day he reduced his balance to precisely zero. After that the account was used much less frequently, and was never overdrawn again until June 2015, when he made a small card purchase which left him £12 overdrawn. All of the fees since then stem from that one purchase.

I think that such a significant change in Mr A's habitual use of the account, occurring on the same day the overdraft was removed, cannot reasonably be attributed to coincidence.
I consider it to be compelling evidence that Mr A knew that the overdraft was being removed, and knew when. His explanation that he had always tried to reduce his account balance to as close to zero as possible is not consistent with the evidence of his account balance during the period I have examined. It was constantly going up and down, always within the agreed limit but always overdrawn, for over nine months. (The account was in credit on only two occasions, each time for only a fraction of a day, in January and April 2014.) So I think he knew the overdraft was going to be removed and prudently took action to avoid overdraft charges. Then in June 2015 he either used the wrong card by mistake or forgot that he did not have enough money in that account. (He was mostly using another account by then.)

Mr A says that he did not receive paper statements because he had elected not to receive them. And he only did online banking using his mobile phone, which does not show his overdraft limit. I accept what he says about both of these matters – I emphasize that I don't think he has lied – but they don't change my view about what he knew in 2014. They may help to explain why he accidently let the account become overdrawn in 2015.

Mr A has suggested that his overdraft was not removed when Santander says it was, but must have been removed later. He says that because he was charged an arranged overdraft fee in early December 2014. But I have seen the bank's record showing that the overdraft was removed in October. His account was not overdrawn between then and June, and no overdraft fees were charged in November. So I think the December fee relates to his use of the overdraft in October.

The fees were charged in line with the account terms and conditions. And I cannot consider whether the level of the fees was unfair, although I appreciate why Mr A feels that £280 of fees is disproportionate to a £12 overdraft. So it follows that I can't say that Santander made an error when it began charging fees, or order it to refund all of the fees.

But when Santander charged the first bank fees in August 2015, Mr A promptly wrote to say he couldn't afford them. They added up to £95, as the account had been overdrawn for three weeks before Mr A realised and brought the balance back to zero. (Based on what I've seen of his other account, I accept that this was a significant sum of money to him.) So from August Santander knew that Mr A was in some financial difficulty. Under the Lending Code, the bank has a duty to treat sympathetically and positively a customer in those circumstances. Santander says that its collections department tried to help Mr A and he refused to accept help. But Santander has not explained how it tried to help, or shown any evidence that it did. And Mr A denies that he was offered any help, or that he refused any. So I am persuaded that Santander made an error when it kept on charging him more fees in September, October and November 2015.

After Mr A paid off the original £12 overdraft balance in July, he made no more purchases or withdrawals. His account balance was zero until he was charged the fees in August. So the September fees related mostly or entirely to the overdraft balance arising from the August fees. And the fees charged after that related entirely to those earlier bank fees. Mr A paid all of the fees, but I don't think that amounts to proof that he was not struggling. His general account history shows him to be careful not to let his debts get out of control. So I think Santander should have helped him by waiving some of the fees once it knew about his problems.

I don't think Santander was wrong to charge the original fees in August. But I don't think it was sympathetic or positive of the bank to carry on charging fees on fees.

So my provisional decision is that I still intend to uphold this complaint, but I am minded to require Santander UK Plc to pay Mr A £185 (instead of £280).

responses to my provisional findings

Mr A did not accept my provisional decision. He does not accept that Santander cancelled the overdraft when it says it did. He says he made the June card payment on purpose because he thought he still had an agreed overdraft limit. He analysed his bank statements and demonstrated that his habitual use of the account actually changed in July 2014, not in October. He argued that the overdraft fee which was charged in December may not relate to his overdraft in October. And he emphasised some points he had made before.

Santander had nothing to add.

my findings

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

I accept that Mr A reduced his use of the account starting in early July 2014, instead of in October. But that doesn't change my view. I still think is probably not a coincidence that he reduced the balance to precisely zero on the same day the overdraft was removed. It's more likely that it was because he knew it was being removed then. I've seen no evidence to suggest that Santander didn't remove the overdraft on that date, so I accept Santander's evidence that it did. I still don't think that the overdraft fee charged in December 2014 proves that the overdraft limit was still in effect after October, because the account was not overdrawn between mid-October and the following June.

my final decision

So my decision is that I uphold this complaint. I order Santander UK Plc to pay Mr A £185.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 February 2016.

Richard Wood
ombudsman