

## **complaint**

Mr H complains about charges applied to his account by Santander UK Plc.

## **background**

Mr H said that he used his Santander debit card to pay for transport. He didn't have enough money in his current account to do that, but he said that Santander allowed the transaction to go through, which it shouldn't have done. He said that then Santander applied charges which were out of all proportion to the payment that he was trying to make.

Mr H sent us letters that Santander had sent to him, demanding repayment of an unauthorised overdraft of around £250. Mr H said that he was finding it difficult to deal with Santander's collections department, who were relentless and unsympathetic.

Santander sent us statements for Mr H's account. Those showed that in October 2017, Mr H used his card to pay for transport, and went into an unauthorised overdraft. Mr H then used the card again for other transport costs. And he started to accrue charges, including for a failed cheque that he had written for £200.

Mr H brought his account back into credit in November, but then used it again to pay for transport costs towards the end of November when there wasn't enough money in the account to cover that. So he went back into unauthorised overdraft. And shortly after this, he was also charged for the unauthorised overdraft he'd used the month before.

After the start of December 2017, Mr H seems to have stopped using the card. His account was about £50 in debt then. He has since accrued additional charges.

Santander wrote to Mr H in April 2018, and it gave Mr H two options. It would refund all of the charges he'd accrued on the account, and return his account to £1.50 in debt, if he agreed to pay that, and close the account. Or if he wanted to keep the account open, then it would refund £85 in fees to his account, and he would need to pay the remaining debt.

Santander has since written to Mr H again, to say that all the charges on his account have been accrued in line with the terms and conditions of his account, and to point out the part of his terms and conditions which explains that if he tries to use his card when there isn't enough money in his account, that will be treated as a request for an unauthorised overdraft. Santander also said that overdraft fees had been considered as part of a Supreme Court case in 2009, and there were no grounds for challenging these as unfair. So it didn't think it had to make changes.

Mr H has also complained about the amount of phone calls he's been receiving from Santander's collections team. Santander wrote to him to say that the debt on his account was mounting up, and it was contacting him because it was in his best interests to pay this money back. Santander said that it would pause telephone calls to him for a short time, but it would still write to him about the debt.

Our adjudicator didn't uphold this complaint. She said that Santander had acted in line with Mr H's terms and conditions when it allowed a payment to go through, and put him into unauthorised overdraft. And all of the charges on his account had been applied in line with the terms of his account. She said that Santander didn't have to pay those charges back.

Our adjudicator said that Santander had tried to contact Mr H to get him to pay this debt, but it had also offered to help him. She said that Mr H might want to contact Santander to see if it would still offer him a refund of fees, which it had previously offered him. Santander then contacted our adjudicator, and said it was still willing to refund one month's fees to Mr H. It wanted to know which month he would like it to refund.

Mr H's representative said he'd like our help to arrange a settlement. He proposed he could pay £55, and Santander could waive the rest of the fees. Our adjudicator put that offer to Santander, but Santander said it wouldn't accept that now. Our adjudicator said that Santander had already offered a refund of one month of fees. She thought that was fair. The next step for our service was for an ombudsman to consider Mr H's case.

Mr H didn't want to pay the rest of the fees on his account, so the case was passed to me for a final decision.

### **my provisional decision**

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- Mr H used his card when there wasn't enough money in his account. As he had since found out, Santander treats this as a request for an unauthorised overdraft. And it charges for an unauthorised overdraft. I didn't think that Santander did anything wrong when it allowed the transactions that Mr H made, to pay for transport, to go through. And I didn't think it did anything wrong when it then charged him fees for an unauthorised overdraft.
- Those charges had since increased considerably. I understood that Mr H owed a little over £250 on this account.
- I didn't think that it was unfair for Santander to apply the charges that are set out in the terms and conditions of Mr H's account. So I didn't think that Santander would have to pay those charges back.
- I could see that Santander had made two offers in this case – to close Mr H's account if he paid off the £1.50 which was the last unauthorised overdraft payment on his account, or to refund a month's charges and leave the account open. It offered £85 as a refund.
- But when I wrote my provisional decision, Santander was only offering to refund one month's charges. It was no longer offering to write off all of Mr H's debt if he paid back £1.50 and closed his account.
- I thought it was quite unusual for a bank to make an offer like the offer that Santander first made (to write off this debt if Mr H closed his account and paid £1.50) and then to withdraw that offer.
- Because Santander was prepared to accept that, I thought that made the offer that Mr H made after that, of paying £55 towards this debt if Santander would write off the rest, sound more reasonable. I thought it was also important to note that Mr H's representative had told us that Mr H is vulnerable, he has struggled with this complaint, and that he has spent time recently caring for a very elderly relative, which meant he'd had no income for a while.

- With those points in mind, I thought it was reasonable to ask Santander to accept a payment of £55 from Mr H in full and final settlement of this debt, and then to allow Santander to close this account.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mr H's representative agreed with the proposal, although she offered some additional comments. Santander wrote to query my proposed decision.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr H's representative said that I hadn't included the frustrations of dealing with Santander's collections department, who wouldn't negotiate anything.

I appreciate that it must have been frustrating, after Santander had initially offered to settle this debt on quite favourable terms, to be told that it was no longer interested in doing that. But I've said that I don't think Santander did anything wrong when it applied these fees to Mr H's account. That means that Santander could ask Mr H to pay that debt. I don't think it did anything wrong just because it asked him to pay that.

I haven't seen anything that suggests to me that Santander's collections department was unfair. If Mr H was disappointed or upset by how it has dealt with him, then I think that requiring Santander to accept a settlement which is a relatively small proportion of Mr H's overall debt would provide the right amount of compensation for that.

Santander also contacted us about my provisional decision. Before it responded formally to say whether it would accept the decision, Santander asked whether I was also asking it to remove any adverse markers related to this account from Mr H's credit file. I explained to Santander that I hadn't asked for that as part of my provisional decision. I don't think it's unfair if Santander has told credit reference agencies about the problems with Mr H's account.

Santander then said that it agreed with my proposed resolution.

I'll now make the decision I initially proposed.

### **my final decision**

My final decision is that if Mr H makes a payment of £55 to Santander UK Plc, then Santander UK Plc should accept that amount in full and final settlement of his debt, and then close his account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 April 2019.

Esther Absalom-Gough  
**ombudsman**