

## **complaint**

Mr H complains that Santander UK Plc has breached the Equality Act 2010 because it failed to make reasonable adjustments to the way in which it deals with him and his accounts even though it is aware of his severe dyslexia.

## **background**

Mr H has four current accounts with Santander;

- a Zero current account which was £700 overdrawn and Mr H is paying the overdraft off through Santander's collections team,
- an Instant Plus current account which doesn't offer an overdraft,
- a 123 current account upon which Mr H doesn't have an agreed overdraft, and
- a business current account held in the name of Mr H's limited company.

Mr H is in receipt of benefits from the Department of Work and Pensions and those payments go into the Instant Plus account, he then transfers money out into the 123 account from which his bills are paid by direct debit.

This normally works well, but on occasion Mr H has used his debit card to spend money from the 123 account which meant there wasn't enough money left to cover the direct debits. Santander paid the direct debits anyway but Mr H incurred unauthorised overdraft charges. Santander previously refunded some of the charges as a gesture of goodwill and it's explained to Mr H how much he would need to have in his account to cover the bills.

The time we're looking at here, Mr H had enough in his 123 account to cover the direct debits that were due to go out on 2 October 2017 until he used his debit card to spend £18.36 ordering a pizza delivery on 28 September. That left £141.63 in the account; but the total amount needed to pay the three direct debits that were called for on 2 October was £158.52. This left Mr H with a £16.89 unauthorised overdraft, which chargeable at £6 a day. As Mr H didn't pay any money into his account until 13 October 2017 he was charged for 11 days, which totalled £66. Mr H complained but Santander wasn't willing to refund them this time.

Mr H brought the complaint to us about the charges, and said Santander hadn't made a reasonable adjustment under the Equality Act. He said he wanted the charges refunded and another current account opened which wouldn't incur charges in the future.

Our adjudicator didn't recommend the complaint should be upheld. He said Santander had acted fairly and reasonably in respect of Mr H's dyslexia. Furthermore, he was satisfied that Santander didn't have to open Mr H another current account without him closing at least one of his other ones and going through the normal application process.

Mr H didn't accept the adjudicator's findings. He said, in summary, that he believed the bank was in breach of the law relating to customers with disabilities and didn't think that Santander had made reasonable adjustments.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It may help if I explain the extent of my powers in relation to the issues raised. We were established by Parliament under the Financial Services and Markets Act 2000 ("FSMA") to investigate complaints between consumers and financial businesses. Whilst I take account of relevant law, regulations and codes of practice, under s.228 of FSMA I'm required to reach my decision on the basis of what's fair and reasonable in all the circumstances.

Consequently, whilst I have noted Mr H arguments that he considers the bank has breached the Equality Act, we're not a court or a regulator, and we've no power to impose sanctions on financial businesses, or to order them to change the way they operate their businesses. Nor can I award punitive compensation or damages. It falls outside my remit to decide whether or not there's been a breach of the Equality Act – only a court is able to decide this. What I'm required to determine by FSMA is whether or not the adjustments made by Santander to accommodate Mr H's dyslexia are fair and reasonable in the circumstances.

Mr H normally has access to his accounts by visiting a branch, telephone banking, or online banking; I say "normally" as I understand Mr H currently has some problems with his access, but that's a new issue that's being considered separately. The only issue I'm dealing with here in this decision is whether Santander needs to do something more to help Mr H avoid bank charges in the future. Mr H has some of his Santander letters delivered to his local branch (as he has had some postal issues), and the branch manager has said that Mr H hasn't asked for any extra assistance from them.

Mr H would like Santander to open a new account for him that wouldn't charge him fees if direct debits "bounce" or take him into an unauthorised overdraft. He says this is a reasonable adjustment as his dyslexia means he has poor organisational skills and an inability to keep track of financial matters. Santander has said it would be willing to consider an application from Mr H for a new account, but that he would have to close at least one of his other accounts first, and that it would be subject to its normal eligibility criteria.

I understand Mr H would like a basic bank account. They're designed for people that can't get a "normal" current account (which clearly isn't the case here), not as a way to avoid bank charges. There are also terms and conditions on those, and if a bank considered a person was using it as a way to avoid charges (such as bouncing direct debits knowing there would be no financial cost to doing so) then the bank could choose to close the account as it was being abused. Mr H also needs to bear in mind there could be charges from the companies trying to take the money if his direct debits were to bounce.

It seems to me a far more reasonable way Santander can help Mr H is by doing what it previously did; telling Mr H exactly how much he needs to pay into his 123 account to cover the direct debits that go out. All Mr H needs to then do is set up a monthly standing order into the 123 account for that amount, and not use the debit card. If it helped him, Mr H could destroy each card as soon as it's issued. As Mr H has a debit card on his Instant Plus that he uses regularly this won't cause any issues for Mr H as he'd still be able to make debit card payments from that account.

If Mr H asks Santander it can tell him how much money needs to go into the 123 account each month to cover the payments that go out (from my review these appear to be a set amount each month, rather than varying wildly) and it could assist him in setting up the standing order from his Instant Plus account to cover it. This would mean Mr H wouldn't need to "manage" his 123 account as it would simply run from month to month paying the direct debits. The only time Mr H would need to take action is if he's notified a bill is going to

be higher any month for any reason, which he'd have to do even if he had a basic bank account.

I'm unable to uphold the complaint about charges made to Mr H's 123 account. That's because the Supreme Court decided that current account charges aren't penalties and can't be challenged on the basis that they're unfair. A bank isn't obliged to agree to make a payment where there's not enough money in an account to cover it. However, this doesn't mean it's prevented from making such a payment. Bank's will often pay direct debits if it takes a customer into a small unauthorised overdraft on the basis the consumer has until late afternoon to pay money into the account to cover it, and bouncing a direct debit will incur a fee and could cause problems with the customer's relationship with the merchant/supplier requesting the money. Again, that's not to say a bank has to, but it's often good customer service to do so, as it's a transaction the bank's customer has asked it to make. Here I don't think Santander did anything wrong in paying the three direct debits that were called for on 2 October 2017 and then charging Mr H for having an unauthorised overdraft until he brought the account back into a credit position.

### **my final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 January 2019.

Julia Chapman  
**ombudsman**