

complaint

Mr B acquired a new car in early December 2018, by means of an 18 month hire agreement with Santander Consumer (UK) Plc. He incurred a penalty charge while parking his car in mid-December 2018. He complains about the way Santander handled the payment of this charge.

background

first provisional decision

The background to this complaint, and my initial conclusions, were set out in my first provisional decision dated 9 April 2020 – a copy of which is attached and forms part of this second decision. In my first provisional decision, I explained that I disagreed with our investigator's view that the complaint should not be upheld.

Santander agreed with my first provisional decision, but Mr B disagreed saying:

- His appeal was 'time barred', rather than rejected
- The penalty charge was not assigned to him by Santander, as it had the legal right to do (it assumed responsibility, rather than nominating him as in charge of the car)
- This meant that he could not appeal directly against his penalty charge – and the appeal had to be made through Santander, by which time it had already paid the charge
- Santander failed to act with sufficient care and diligence, in the timing and methods of communicating with him about his penalty charge – which prevented him from either appealing, or paying at the discounted rate

second provisional decision (dated 21 October 2020)

I reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence was incomplete, inconsistent or contradictory (as some of it is here), I reached my decision on the balance of probabilities – in other words, what I considered most likely to have happened in light of the available evidence and wider circumstances.

Before being told by Santander that the penalty charge appeal had been unsuccessful, Mr B asked how it handled driving offences, which were notified to it (as the vehicle owner) but committed by hirers (like him)? Santander told Mr B that its transfer of liability process would be followed, the result of which would be re-issue of the notification to the hirer (and possibly the re-starting of any time allowances for response).

I was unable to find references to this process in the welcome pack sent by Santander to Mr B, or in the hire agreement documentation. But, in its final response letter, Santander had asserted that it was unable to transfer liability to Mr B, for legal reasons relating to the type of penalty charge incurred.

We asked Santander for further information about its transfer of liability process, and why it could not be applied to Mr B's penalty charge? But we received no reply, despite several reminders. So, I could not with certainty either confirm or refute Santander's assertion. Although, on the balance of probabilities, I was unable not to accept the assertion.

In these circumstances, I was (again on balance) unable to agree with Mr B that Santander had the legal right to assign the penalty to him. I was also unable to agree with Mr B that his appeal was 'time barred'.

As noted in my first provisional decision, Mr B's appeal was delayed, but its outcome was not affected by that delay. This was because his appeal was rejected on the grounds that the payment made specified an incorrect car registration – and not for any reason connected with when the appeal was submitted, or whether or not the charge had already been paid.

But I continued to agree with Mr B that Santander had not acted with sufficient care and diligence, in the timing and methods of communicating with him about his penalty charge. For this reason, I also continued to think that my provisional settlement recommendation is correct.

This meant that (on balance) I came to the same conclusions as I reached in my first provisional decision, albeit not for identical reasons.

My provisional settlement recommendation was that Santander should reduce the invoice it sent to Mr B by £90, in compensation for the long delay in emailing him, which unfairly constrained his opportunity to pay his penalty at the lowest charge.

responses to my second provisional decision

Both Mr B and Santander agreed with my second provisional decision, and with my provisional settlement recommendations.

my findings

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

Both parties have agreed with my second provisional decision and settlement recommendations, and I have seen no new information that would lead me to change my views.

my final decision

For the reasons explained above, my final decision is that I uphold this complaint in part. In full and final settlement of it, I order Santander Consumer (UK) Plc to reduce the invoice it sent to Mr B by £90.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 February 2021.

Roy Mawford
ombudsman

COPY OF PROVISIONAL DECISION

9 April 2020

complaint

Mr B acquired a new car in early December 2018, by means of an 18 month hire agreement with Santander Consumer (UK) Plc. He incurred a penalty charge while parking his car in mid-December 2018. He complains about the way Santander handled the payment of this charge.

background

Mr B says:

- He made the correct payment, when parking his car in mid-December 2018 – but, when he was told about the penalty charge, he realised that he had entered the wrong registration plate
- He received by post an invoice for just over £200 from Santander in late February 2019 – Santander had already paid the penalty charge, and were invoicing him for the costs of doing so, plus an administration charge
- He complained to Santander, saying that he should have been told sooner about the penalty charge (of which he was previously unaware) – the delayed notification meant that he was unable to pay the discounted basic charge, or even the basic charge, before additional charges were applied

Santander sent a final response letter to Mr B in mid March 2019, saying:

- It retains a legal responsibility to pay penalty charges on behalf of its customers – but it notifies these charges to customers, to give them the opportunity to appeal against the penalties
- It notified Mr B of his penalty charge by email, when it was notified in January 2019
- It was unable to uphold his complaint, but it wanted to offer him its support, if he wished to appeal against the penalty

Santander helped Mr B to appeal against the penalty. Notification was later received that the appeal had not been upheld, because the payment made specified an incorrect car registration.

Mr B referred his complaint to us in late March 2019. He told us:

- He did not receive an email from Santander in January 2019
- He never agreed to email only contact, and he would have expected an email of this nature to have been followed up with postal correspondence

Mr B could have paid the charge directly, so as to avoid Santander's administration charges, within 14 days at the £60 discounted rate. But, because the charge was not been paid within 28 days, it was referred to a debt collection agency, and Santander was sent a reminder notification.

The agency applied an additional administration charge of just over £70. Santander paid the penalty, and added a £30 administration charge. This meant the penalty, which could have been £60, increased to just over £200. And Santander sent an invoice for this amount to Mr B, by post in mid-February 2019.

Santander told us that, in its view, the correct process had been followed. In particular, it felt that:

- Emailing Mr B during January 2019, when it was notified of the penalty charge, was appropriate – because this was the quickest means of contacting him
- When a reminder notification was received 28 days later, payment of the charge was appropriate

Our investigator did not think the complaint should be upheld.

Our investigator noted Mr B's concern that Santander had sent him an email (but not a letter as well) in January 2019 about his penalty charge – while it chose to post (and not to email) its invoice to him in February 2019. Our investigator also noted Mr B's concern that he had never opted into email communications.

Our investigator checked the email address used by Santander, and confirmed it was the same as that included by Mr B in his hire agreement application form – where Mr B had opted out of marketing and related email communications. This opt-out notwithstanding, our investigator concluded that Santander had not done anything wrong, by emailing Mr B about his penalty charge.

Our investigator noted as well Mr B's concern that Santander had not acted sooner to mitigate the penalty increase from £60 to just over £200.

Our investigator drew attention to the welcome pack Mr B received, when his hire agreement was signed. This made clear that Santander might choose to pay penalty charges, and then to recharge along with an administration fee. Our investigator concluded that Santander had appropriately decided to pay the penalty charge, when the reminder notification was received, in order to stop the debt escalating further.

Mr B disagreed with our investigator's conclusions. And so this complaint was referred for review by an ombudsman.

my provisional findings

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

I agree with our investigator's first conclusion above (about emailing Mr B), for similar reasons. I also agree with our investigator that Santander acted appropriately, when it decided to pay the penalty charge, in order to stop the debt escalating further. But I think that Santander did not act soon enough to mitigate the penalty increase from £60 to just over £200.

I find that there was an inappropriate apparent delay of 13 days between Santander being told about Mr B's penalty charge, and it passing this information on to him by email. While a short delay is understandable, the charge payable by Mr B was only discounted for 14 days, and so an urgent email would have been appropriate.

Mr B says that he did not receive an email from Santander. But, if he had received the email Santander says it sent, he would have had only one day to pay directly at the discounted rate – and to save the discount (£60) and Santander's administrative charge (£30). He might not have paid in this way, but I find that Santander unfairly constrained his opportunity to do so.

Conversely, if Mr B had received Santander's email, he would have had 15 days to pay at the non-discounted rate (£120). In these circumstances, I do not think that Santander unfairly constrained his opportunity to do so.

I also think it is fair to say Mr B's appeal was delayed, while he was unaware of the penalty charge, but the outcome was not affected by that delay. This is because his appeal was rejected on the grounds that the payment made specified an incorrect car registration – and not for any reason connected with when the appeal was submitted, or whether or not the charge had already been paid.

My findings lead me to conclude that Santander should reduce the invoice it sent to Mr B by £90, in compensation for the long delay in emailing him, which unfairly constrained his opportunity to pay his penalty at the lowest charge.

my provisional decision

For the reasons explained above, but subject to any further comments or evidence I receive from Mr B or Santander Consumer (UK) Plc by 8 May 2020, my provisional decision is that I uphold this complaint in part.

My provisional settlement recommendation is that Santander should reduce the invoice it sent to Mr B by £90, in compensation for the long delay in emailing him, which unfairly constrained his opportunity to pay his penalty at the lowest charge.

Roy Mawford
ombudsman