

complaint

Mr and Mrs P complain that Santander UK Plc (Santander) paid a direct debit after they had instructed it to cancel it. As a result this it put them into unarranged overdraft. Mr and Mrs P don't think it was fair that Santander reported missed payments to credit reference agencies (CRA's) without asking them for payment first. They say as a result of this it has negatively affected their credit report and this is out of proportion with the amount of money they owed.

background

I issued my provisional decision on 15 July 2017, a copy extract of which is attached and forms part of this final decision.

In my provisional decision, I explained why I was proposing to uphold Mr and Mrs P's complaint in part.

I invited both parties to let me have any further submissions before I reached a final decision.

Mr and Mrs P didn't respond and Santander provided further comments which I've considered but overall it doesn't change the outcome of this complaint.

my findings

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

Santander agrees that a Direct Debit Indemnity can be processed and that it could've offered to complete the indemnity sooner. But it doesn't think it should reconstruct Mr and Mrs P's account until it's certain the indemnity is successful.

As outlined in my provisional decision based on the information I've been given I think it's likely the two direct debits were paid in error and that being so Mr and Mrs P are entitled to an immediate refund regardless of who's error it was – Santander or the beneficiary. So I think Mr and Mrs P should be refunded the direct debits and placed back in the position they would've been in if the direct debits hadn't gone out and I can't see any reason why Santander should hold off on reconstructing Mr and Mrs P's account.

So it follows that I uphold Mr and Mrs P's complaint in part.

my final decision

My final decision is that I uphold Mr and Mrs P's complaint in part against Santander UK Plc and I direct it to pay the fair compensation as outlined in my provisional decision attached, reconstruct Mr and Mrs P's account and update the credit reference agencies with this information.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 22 September 2017.

Caroline Davies
ombudsman

copy extract of provisional decision

background

Mr and Mrs P held a joint bank account with Santander where they had a number of direct debits set up. Mr and Mrs P cancelled all but one of the direct debits. For reasons that aren't clear two months following the cancellation of the direct debits one of the cancelled direct debit instructions was reinstated and two payments taken by the beneficiary of the direct debit.

The two payments of the cancelled direct debit caused Mr and Mrs P to go into unarranged overdraft - which they were charged for and this subsequently led to the direct debit that they didn't cancel going unpaid and further charges. This resulted in Mr and Mrs P being in unarranged overdraft for around four months until they cleared the overdraft.

Two months after Mr and Mrs P first went into unarranged overdraft Santander wrote to them about this and requested payment within 12 days. It then started reporting the information about the arrears to CRA's.

Our investigator thought that Santander had correctly cancelled the direct debits as instructed and that Mr and Mrs P should raise the reinstatement of the cancelled direct debit with the beneficiary of it.

She thought that Santander had correctly reported the information on the account to the CRA's in line with its terms and conditions. And even though Santander didn't explicitly tell Mr and Mrs P it was going to do this, thought it was reasonable to assume that being in unauthorised debt would be reflected in their credit history. She thought Santander had done enough to keep Mr and Mrs P informed by sending letters and bank statements which explained the situation.

Mr and Mrs P disagreed with her findings. They say because Santander allowed them to go into unarranged overdraft by paying the direct debit, it effectively authorised the overdraft. And that it was unfair of Santander to report them as having missed payments without notifying them of its intention of doing this or asking for payment first.

They want Santander to have the missed payments removed from their credit file.

So their complaint has come to me for a decision.

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.

Mr and Mrs P say because Santander allowed them to go into unarranged overdraft it was effectively authorising the overdraft. But I don't agree. All Santander, I think, was doing was using its discretion as per its terms and conditions of the bank account to allow small payments to go through which put Mr and Mrs P in the position of being in unarranged overdraft as it *hadn't previously been agreed*.

Initially Santander didn't report this to the CRA's as the amount of arrears was small and below the level at which Santander reports to the CRA's. At the point Santander was no longer happy with the level of arrears – around two months after first going into unarranged overdraft - it wrote to Mr and Mrs P and asked for payment within 12 days. The letter also said if they were unable to repay the overdraft to contact Santander and it would see if it could devise a repayment plan. Following this letter and Mr and Mrs P's failure to repay the unarranged overdraft or contact Santander, it reported the arrears on their account to the CRA's.

Mr and Mrs P say that this was unfair and that Santander should've notified them first of its intention to do this. But Mr and Mrs P were sent regular bank statements which showed the position of their account and I think by writing to Mr and Mrs P, Santander gave them a chance to clear their arrears before it reported to the CRA's the position of their account.

And while I agree it would've been helpful for Santander to tell Mr and Mrs P that it would report the arrears on their account to CRA's - it was under no obligation to do this. Ultimately Mr and Mrs P are responsible for the management of their account and I agree with our investigator that it would be reasonable to assume that any unpaid unauthorised debt would be reflected on their credit file.

But Santander does have a duty to make sure the information it reports on its customers affairs to the CRA's it subscribes to is factually accurate. I've seen a copy of the information Santander sent to the CRA's and the information contained within shows the amount of months Mr and Mrs P were in unarranged overdraft and by how much. This matches what is shown on Mr and Mrs P's bank statements and the credit reports I've seen for the relevant period. So I'm satisfied that Santander has correctly reported Mr and Mrs P's affairs and hasn't done anything wrong here.

I think it's worth noting that while Santander can control what it reports to CRA's, it has no control over how CRA's present this information. So even though it informed the CRA's about how many months in arrears Mr and Mrs P were and the amounts involved – albeit as small as they were – it's up to the CRA whether it shows this in its reports.

I've noted Mr and Mrs P's concerns that their credit rating is affecting their ability to borrow money. They might be interested to know that they can place a 'Notice of Correction' on their credit records. The purpose of such a notice is to allow someone the opportunity to add any explanatory circumstances that they would like prospective lenders to take into consideration when making lending decisions. If they wish to do this, they should contact the credit reference agencies directly.

Although I don't think Santander has done anything wrong by allowing Mr and Mrs P to go into unarranged overdraft and reporting their affairs to the CRA's, that is not to say I think Santander did everything right.

Mr and Mrs P say that they instructed Santander to cancel all but one of the direct debits on their account. I've seen a copy of their bank statements and can see they had a number of direct debits going out of their account. And I can see that the month following where Mr and Mrs P's say they cancelled the direct debits that this instruction seems to have been followed as only the one direct debit they wanted to keep was paid.

But the next month I can see that Santander reinstated one of the cancelled direct debits and paid out on this twice. I've seen nothing to show me that Mr and Mrs P authorised this and I think it is unlikely that they would reinstate a direct debit less than two months after they cancelled it. So I think these two direct debits were paid in error.

The direct debit guarantee entitles customers to immediate refunds from banks for payments taken in error. Or if a payment is taken after a customer has cancelled it – as in this case – the customer will be entitled to an immediate refund.

It's not clear whose error it was that led to the reinstatement and payment of the cancelled direct debit. But the direct debit guarantee doesn't just cover mistakes which are made by banks it also covers mistakes made by the beneficiary. In accordance with the guarantee banks are under an obligation to guarantee a full and immediate refund if the beneficiary makes an error with a direct debit. And under the guarantee all banks must refund disputed payments without question, pending further investigation.

So I think Santander should refund Mr and Mrs P the two direct debit payments that were made in error. And because the payments led to Mr and Mrs P going into unarranged overdraft I think Santander should reconstruct their account to the position it would be in if this hadn't happened and update the CRA's with this information.

From what I've seen it does look like Mr and Mrs P would've still ended up in unarranged overdraft regardless of whether Santander had allowed the direct debit payments to go out. I say this because the following month I can see that there wasn't enough money in their account to pay the one direct debit they had kept and I can't see there was any money going in. But it may have some bearing on the amount of months reported to the CRA's of the account being in unauthorised overdraft.

And on top of refunding the direct debits paid in error I think Santander should pay Mr and Mrs P a further £50 in compensation for the inconvenience caused by this.

my provisional decision

My provisional decision is that I propose to partially uphold this complaint. If my decision becomes final I'll direct Santander UK Plc to:

1. reconstruct Mr and Mrs P's bank account by refunding the two wrongly paid direct debits and to ensure any interest and charges are calculated correctly;
2. update the credit reference agencies with this information; and
3. pay Mr and Mrs P £50 for the inconvenience they have suffered.

Caroline Davies
ombudsman