

complaint

Mr N complains the charges on his Santander UK Plc bank account are excessive so should be refunded with interest, and the default removed from his credit file.

Mr N is represented in this complaint by his solicitor, M.

background

Mr N had a bank account with Santander since 2010. The account had a £250 overdraft limit which he exceeded on several occasions from 2011. His account entered Santander's collections and recoveries process in 2012. A default notice was issued in May 2013.

Mr N complained to Santander in 2016 about the charges. He said a relative would clear his account if Santander reduced his overdrawn balance from over £1,000 to £250. Santander said it wouldn't do that, but asked Mr N to complete a statement showing his financial circumstances for further consideration, which Mr N didn't do. It refunded £190 of charges as a gesture of goodwill, and issued him with a final response letter. This gave him six months to complain to this service. Mr N didn't complain to us, but he cleared the full balance in December 2016.

In March 2018 M complained to Santander on Mr N's behalf, claiming its charges were excessive. It said they caused such hardship Mr N had been unable to afford day to day expenses. It calculated Mr N had paid a total of £1,855 in charges, which M said should be refunded with interest. And as Mr N's overdrawn balance in 2013 was £1,045.33, it followed the account would have been in credit without those charges. So M said the account shouldn't have been defaulted.

Santander provided M with a copy of its 2016 final response letter, and said it had resolved Mr N's complaint at that time by refunding charges totalling £190. M wasn't satisfied so complained to this service. Our investigator thought Santander had treated Mr N fairly. It had written to Mr N on many occasions during 2011 and 2012 without success, which is why his account entered its recovery process. And she felt the £190 of charges refunded was fair.

On further investigation, she told M she'd seen from notes recorded in 2016 that Mr N had told Santander he hadn't been in financial difficulty. He simply hadn't been monitoring his account. He'd been working in another part of the UK for a few years, so hadn't been receiving his mail. He'd told Santander paying off the balance wouldn't cause him financial hardship, and then did so.

M reiterated its position that Santander's charges were excessive and unfair, and it should have recognised Mr N's financial hardship. So it's come to me to make a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not going to uphold it. Let me explain why.

can we look at the complaint?

This service won't usually consider complaints which have been referred to us out of time. And Mr N doesn't appear to have complained to us in the six months from the date of Santander's final response letter in April 2016. I'd have expected him to do so if he was unhappy with the outcome. However Santander did issue a further final response letter in 2018 when M complained on his behalf. And Santander has confirmed to us that it consents to us looking into the complaint now, even though it's outside the original referral time period.

was Mr N in financial hardship?

According to Santander's notes of what Mr N said in 2016, he hadn't been monitoring his account in 2011-12. He hadn't seen his bank statements or Santander's letters which were being sent to his home address. This was the only address Santander had for Mr N, as he hadn't told it he'd been working in another part of the UK for a few years.

But even if Mr N wasn't getting his mail, I don't think he was completely unaware of the account. His statements show that as well as direct debit payments, which it may be possible to forget about, he was issuing cheques and using his debit card in shops and entertainment venues. He was also regularly withdrawing cash from ATMs, where he could have checked his balance or obtained an account statement. And the location of those ATMs, and some retailers, suggests Mr N was in the vicinity of his home address, during the latter part of 2012.

Mr N received regular payments into his account, which remained substantially in credit for most of 2011, occasionally going overdrawn within the agreed limit of £250. This continued until late 2012, when the credits were smaller, and the limit was exceeded more often than not. But if he was in serious financial difficulties I think it's reasonable to expect Mr N to have said something at the time, not wait until 2016. Mr N didn't contact Santander in 2012 when his overdraft started building up, or in 2013 when his account was defaulted. And Santander may have done more to help him if he'd done so. But it would have required full disclosure about his finances, which wasn't forthcoming.

So while M says Mr N was in such difficulty he struggled to afford day to day expenses, it hasn't provided any evidence to support this. It seems his income fell in 2012 for whatever reason, but I'm not persuaded Santander should have done anything differently. It had written to Mr N on several occasions about his account, and received no reply. And it didn't know he was living elsewhere so wasn't getting his mail. But it seems likely Mr N had some knowledge of the state of his account, and could have asked Santander for help if he'd needed it

I don't consider the pattern of spending evident from his statements to be consistent with someone unable to meet basic living expenses. And M hasn't disputed Mr N's testimony from 2016 when he said he wasn't in financial difficulties - he'd simply failed to keep an eye on his account. So on balance, even if Mr N's circumstances were reduced, I don't think he was in financial difficulties and unable to pay for his living expenses.

were Santander's charges excessive and unfair?

M's position is that Mr N was in financial hardship, caused by Santander's charges, and Mr N wasn't treated with forbearance, in line with the regulator's guidance. M requested copies of Santander's terms and conditions and tariff of fees applicable for the relevant period, which were provided. So M doesn't dispute the charges were levied in line with Santander's terms and conditions, which Mr N accepted when he opened the account. But M says they are unfair under section 5 of the Unfair Terms in Consumer Contracts Regulations

1999. And that the 2009 high court ruling in relation to bank charges doesn't prevent individual complaints being brought under section 5 of the Regulations.

M is right in that we can look into individual complaints about bank charges leading to financial difficulty. And we can assess the help offered by a business once a consumer has brought their circumstances to its attention. But even when we think a consumer is in financial difficulty, it's unlikely we'd require every charge to be refunded. We expect consumers to be treated positively and sympathetically. Businesses demonstrate this by listening to them, assessing their financial situation, helping to get their finances back on track, and perhaps refunding some charges.

I'm satisfied Mr N's charges were in line with Santander's terms and conditions, and I've already said I think continuing to spend while his income was reduced, rather than the fees, was how Mr N exceeded his limit. I appreciate seeing several years' worth of charges expressed as a total can seem a lot. But paying a lot of fees isn't inherently unfair, if they're charged correctly. As well as the daily unauthorised overdraft fees, Mr N was charged when direct debits and cheques were returned unpaid, which he would have been notified of, to the address Santander had for him. And I've said I think it's likely Mr N was aware, to some extent, of the state of his account, but took no action to prevent further fees being charged. So because of this I don't think Mr N's charges were either excessive or unfair.

was Mr N treated with forbearance?

When Mr N brought his concerns to Santander's attention in 2016, I think it did treat him positively and sympathetically. It refunded £190, which appears to be the charges for January 2013, just prior to the account being defaulted. And it asked him for information about his income and expenditure to enable his financial situation to be evaluated. But Mr N didn't provide the requested information. He's entitled not to do so, but without his cooperation I can't say Santander treated him unfairly.

So, as I don't agree with M that all of Mr N's charges should be refunded, I can't say Mr N's account should have been in credit in 2013. So it follows I don't consider the default was incorrectly registered and should be reversed.

When Santander turned down his low settlement offer, Mr N said he could clear the account balance in full. I think by checking he'd be able to do this without causing himself financial difficulty, Santander was again treating him with "forbearance". It suggests if he'd admitted he was in trouble it would have tried to help. But this would have required full disclosure of his financial circumstances, which Mr N doesn't appear to have been keen to provide.

And Mr N did clear the balance, which suggests he had access to the funds. So, taking everything into consideration, I'm not persuaded Santander should do more than it's already done to resolve this complaint.

my final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 September 2018.

Sarah Milne
ombudsman