

complaint

Miss B complains that Santander UK plc unfairly applied charges to her account even though she told it that a direct debit had been incorrectly taken from her account. Her account was then overdrawn and Santander charged her even more.

background

Miss B had an everyday current account with Santander. In June 2012 she set up a direct debit with a third party. It took a first payment from her account in early August 2012 and then a second payment towards the end of August 2012. When it requested the second payment there wasn't enough money in Miss B's account so Santander returned the direct debit unpaid. The third party requested the payment again on 10 September 2012 but, again, Santander returned it unpaid.

Santander charged £25 each time it returned an item unpaid. Miss B says that these charges caused her account to go overdrawn and then the bank also charged unplanned overdraft fees sometimes up to £100 in a month. Her account is now more than £500 overdrawn and is with a debt collection agency.

The investigator didn't think this complaint should be upheld. She said that Santander applied the charges fairly and in line with the terms of the account. And that the bank continued to send statements and letters so Miss B was aware of the charges. She didn't think that Miss B told Santander that she was experiencing financial difficulties, so didn't think it had made any mistake.

Miss B responded to say, in summary, that she'd visited the branch each time she received a letter from Santander to explain what had happened but it didn't help her.

my provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Miss B and to Santander on 8 November 2018. I summarise my findings:

- A direct debit is an instruction given to the bank by an account holder, which allows a named person or organisation to withdraw money from that account on a regular basis. The organisation that has been given the instruction requests the amount on the date that it agreed with the account holder. The bank doesn't have details of the amounts and due dates.
- Miss B said that the direct debit wasn't requested on the day she had agreed so this took her account overdrawn. She was charged £25 when Santander returned it unpaid and another £25 when it was requested, and again returned, two weeks later.
- I considered that if the organisation had made a mistake by making the request for payment too early then Miss B needed to contact it to ask it to put matters right and to ask for a refund of the charges.
- I didn't think Santander made any mistake or that it was required to refund the charges.
- I was satisfied that Miss B did visit Santander after she had been charged and considered it was more likely than not that she asked it to refund the charges because

she didn't think they were fair. I wasn't persuaded that Miss B told Santander that she was having difficulties in paying the charges.

- Santander sent Miss B a number of letters about the charges and amount outstanding, as well as monthly statements but she didn't reach any agreement. I wasn't persuaded that she contacted Santander again about this after October 2012.
- Santander sent her notice of default in May 2013 and passed the account to debt collectors in July 2013.
- I reviewed Miss B's statements to see how a £50 debt increased to over £500 when she wasn't using the account. She had a direct debit to another organisation for £2 per month. Santander decided not to pay it in early November 2012 and then returned it again when payment was requested a second time. I thought charging Miss B £50 for returning a £2 direct debit wasn't fair.
- Santander was entitled to charge unplanned overdraft fees from November 2012 because Miss B's account was more than £12 overdrawn and the charges were debited in accordance with the account terms.
- Santander decided to stop Miss B's account in January 2013 because she hadn't used it since early October 2012. It also said that it stopped the charges in February 2013. But I found it applied another £100 of unplanned overdraft fees in March 2013.

Subject to any further representations from Miss B or Santander, my provisional decision was that I thought Santander should refund £50 of returned item fees relating to the £2 direct debit and £100 of unplanned overdraft fees that it charged in March 2013.

I said that, despite the refunds, Miss B would still have an outstanding debt and I urged her to contact Santander, or its debt collection agency, to agree an acceptable repayment plan. The amount Santander was prepared to accept on a monthly basis in respect of the debt owed, and its debt recovery procedures generally, are matters for its own commercial judgement but I reminded it, and the debt collector, that they have an ongoing duty to treat someone in financial difficulty positively and sympathetically.

Miss B didn't respond to my provisional decision.

Santander accepted my findings and agreed to make the refunds although it said that its terms allowed it to charge an unpaid direct debit fee regardless of the amount of the direct debit being returned.

my findings

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

Santander has agreed to refund a total of £150. The further representations it has made about the value of the direct debit do not alter my opinion. I accept the terms of the account allow it to charge each time it returns a direct debit but, in these circumstances, I consider it unfair to charge £50.

my final decision

My final decision is that I uphold this complaint in part. I require Santander UK plc to:

- refund £50 of returned item fees
- refund £100 of unplanned overdraft fees

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 1 March 2019.

Karen Wharton
ombudsman