

## **complaint**

Mr D complains about his overdraft with Santander UK Plc. He'd like Santander to write off the overdraft and refund all the fees he's paid. He'd also like it to compensate him for making his mental health condition worse. Mr D has brought his complaint through a representative.

## **background**

Mr D opened an account with Santander in 2006. He says he asked for an account similar to the one he held with another bank. That included a fee-free overdraft. He says Santander didn't tell him a monthly fee would be charged for his overdraft facility. Nor did it tell him when it changed its fee structure in February 2013 and August 2014.

Mr D says he was already experiencing financial difficulties when he opened the account. He says he explained that he'd entered a voluntary arrangement. And he says he told Santander that he suffered mental health problems and had been off work recently as a result, although he was employed at the time. Santander set up his direct debits to a free debt advice organisation. He thinks this should have alerted it to the fact that he was in financial difficulty. Taking all this into account, he thinks it was irresponsible of Santander to offer him an overdraft facility in the first place.

Mr D considers the overdraft charges debited by Santander to be unfair. He lives on benefits, and the charges have made his financial hardship worse. He doesn't think Santander should be taking money from his benefits to pay charges he never agreed to. If he'd known about the charges, he wouldn't have opened the account.

Mr D says Santander refused to accept that he was experiencing financial difficulties, as he'd kept his account within the overdraft limit. He says this is unfair, as he'd been relying on support from family and friends, and had even resorted to selling his belongings, to make sure he stayed within the limit. This was because he was frightened that if he exceeded the limit, he wouldn't be able to access his money.

Mr D says he has a severe mental health condition, which has been made worse by the stress of his financial situation. He's been upset by Santander's attitude, which he feels has been callous.

Santander no longer has a copy of Mr D's application for the account, due to the time that's passed. But it says he'd have agreed to the terms and conditions of the overdraft when it was arranged. And it has no record of Mr D having complained about the overdraft fees before November 2014. It says it's the account holder's responsibility to monitor the account and to ensure that it's suitable for their needs. It accepts that it didn't deal with Mr D's complaint as quickly as it might have done, and it's credited his account with £50 to apologise for this. But it's not willing to write off Mr D's overdraft or pay him further compensation.

Our adjudicator didn't think Santander had made any mistake. And she was satisfied that it had taken appropriate steps when Mr D told it about his financial difficulties. So she didn't recommend that Santander pay Mr D any further compensation. Mr D was unhappy with the adjudicator's view, so the complaint's been passed to me.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator, for similar reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here) I reach my decision on the balance of probabilities – that is what I consider is most likely to have happened, given the evidence that is available and the wider circumstances.

I don't consider it unreasonable that Santander no longer has a copy of the paperwork Mr D signed when he opened the account, given the time that's passed. I note from the earliest available statements, dating from January 2008, that although Mr D made frequent use of his agreed overdraft facility, he had a regular income, and his balance was frequently healthily in credit. I acknowledge that Mr D says he told Santander about the problems he'd been experiencing when he opened the account. But I'm not satisfied, on balance, that Santander should have reached the conclusion that agreeing to give him an overdraft facility would be irresponsible. Nor do I consider that the fact that he was making monthly payments to a debt management organisation should, in itself, have dissuaded Santander from granting Mr D an overdraft.

I've been provided with copies of Mr D's statements from January 2008 onwards. Overdraft fees were being debited to the account regularly. Mr D didn't complain about the fees until he'd been using the account for eight years. I don't think that there was anything that could reasonably have been expected to alert Santander to the fact that he was unhappy with his overdraft arrangements before then. And I think it more likely than not that Mr D was provided with a copy of the terms and conditions when he opened the account. This would have included details of fees and charges for the overdraft facility.

I acknowledge that Mr D says he operates his account on line and doesn't receive any letters or paperwork from Santander. But Santander's records show that it sends him paper statements. I'm satisfied, on balance, that Santander has sent Mr D monthly statements to the address it holds for him. And I think it unlikely that they'd have all failed to reach him. Fees are itemised on the statements three weeks before they're debited. I note that Mr D says he's been too ill to scrutinise his account in detail, so only became aware of the charges recently. I sympathise with Mr D, but I don't consider that I can fairly hold Santander responsible for the fact that he didn't realise the fees were being charged. And I'm satisfied that the fees were charged in accordance with terms and conditions of the account.

I'm also satisfied, on balance, that Santander would have sent Mr D advance notification of the changes to its fee structures. It says it sent letters to all affected customers with their monthly statement, a few months before each change. Mr D's account was affected by the changes and I think it unlikely that it would have failed to send the notification to him.

Banks aren't required to write off borrowing if a customer's experiencing financial difficulties. But they do have a duty to treat them positively and sympathetically. Santander has no record of Mr D having told it he was experiencing financial difficulties before November 2014. I acknowledge that Mr D was disappointed that Santander seemed reluctant to believe that he was experiencing financial hardship. But it cancelled fees of £31, which were due to be debited to Mr D's account. And in its final response to Mr D in early December 2014 it gave him contact details for its collection and recoveries department, which it explained could talk through his options with him. It also provided him with details of organisations

providing free debt advice. In the circumstances, I consider that Santander took reasonable steps to help Mr D, once he told it about his problems.

Finally, Mr D considers that his complaint hasn't been properly considered by Santander. I've considered Santander's response and am satisfied that it's responded to Mr D's concerns in a reasonable level of detail. It accepts that there was a short delay in dealing with Mr D's complaint when he first raised it. But it's paid him £50 to apologise for this. I consider that to be reasonable.

I'm sorry to disappoint Mr D, and I don't underestimate the difficulties he's experiencing or the lengths he's gone to to keep his account within his overdraft limit. But I don't consider that I can fairly require Santander to pay him more compensation.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 18 May 2015.

Juliet Collins  
**ombudsman**