

## **complaint**

Miss P complains that Santander UK Plc deducted an unarranged overdraft fee from her account in March 2019.

## **background**

Miss P has a current account with Santander with an agreed overdraft limit of £1550. She was charged an unarranged overdraft fee on 14 March 2019, which related to her going into an unarranged overdraft on 11 February 2019. This was because an unpaid cheque came out of her account that day.

Before this fee was deducted from her account Miss P wrote to Santander appealing against it being applied. But she said Santander applied the charge anyway and told her it had been correctly deducted from her account. It also said it had previously waived account charges and explained how she could avoid incurring such fees again. So it wasn't prepared to waive the fee on this occasion.

Miss P wasn't happy with this and brought her complaint to our service. She said she didn't think the fee was fair because Santander hadn't text her to inform her that her account would go into an unarranged overdraft facility, which it usually did. She said that had she received a text of this nature she would have credited her account with money to cover the shortfall. So she felt Santander should have sent her a warning about the status of her account.

On investigating the charges that had been deducted from Miss P's account, our investigator didn't think Santander had done anything wrong. They said that Santander was entitled to apply those charges and that it had acted in line with the account terms and conditions. But Miss P disagreed with our investigator's view and asked for her complaint to be passed to an ombudsman for a final 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 persuaded to uphold her complaint. I'll explain why.

I know Miss P feels very strongly about this complaint. But my decision on this case is based on the actions of Santander. It's for me to determine whether it did something wrong and I don't think it has.

From Miss P's bank statements I can see she has been charged a £10 fee for Santander paying the cheque that debited her account on 11 February. This caused her to exceed her arranged overdraft limit by around £30. So, she was also charged an unarranged overdraft fee. I can also see that Miss P's salary credited her account on 12 February which brought her account back within her arranged overdraft facility.

Miss P has raised an issue about the fairness of the charges that had been deducted from her account. So, I'll focus on this part of her complaint first.

As our investigator explained, these types of charges were considered by the Supreme Court in the OFT test case and it concluded that it could not consider the fairness of these

charges under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). So the amount of charges can't be challenged on the grounds they're too high.

But our service can consider whether the charges that were applied to Miss P's account were applied in line with the terms and conditions of her account. So I'll address whether I think they were.

The terms of Miss P's account outline the tariff of charges Santander may apply to a customer's account in certain circumstances in plain and intelligible language. In relation to unarranged overdraft charges in particular, they state that a fee of £6 per day will be applied to a customer's account each time they exceed their arranged overdraft. I also note that Santander's terms and conditions include a cap on the charges that can be applied for each charging period to prevent a cycle of charges occurring.

These terms also state that Santander can use its discretion to honour payments which can take a customer into an unarranged overdraft. And where it does this a fee of £10 will be charged *"for allowing a payment despite lack of funds"*. So, I think the information provided to Miss P here was clear and that she ought to have known that making payments that would take her into an unarranged overdraft would incur fees. And I don't think Santander acted in error in allowing the cheque to be paid.

I'm satisfied that Santander was entitled to apply the daily unarranged overdraft fee for the time where Miss P was using this facility. There's no evidence that the charges Miss P incurred were applied outside of the account's terms and conditions. And I'm satisfied they were applied in accordance with the information Santander provided Miss P. It follows that I can't fairly ask Santander to refund them.

Miss P also feels the fees she's been charged are unfair because Santander didn't send her a text message indicating her account was overdrawn as it had done previously. She said if it had, she'd have credited her account with money to cover the shortfall. Santander accepts it didn't send Miss P a text here. But it isn't the bank's responsibility to tell a customer how to manage their account. And I don't think I could fairly find that Santander's failure to send a text caused Miss P to incur the charges she did.

I can see that Miss P withdrew money from her account using an ATM three times on 9 and 10 February. The last two withdrawals were made the day before the cheque debited her account. And following her third withdrawal her account balance was overdrawn by around £1540. This was only £10 off her arranged overdraft limit. I think Miss P ought to reasonably have known that when she withdrew funds from her account. I say this because had she checked her balance she could have avoided the charges she later incurred. It's Miss P's responsibility to monitor and manage her account. She was using her account regularly so I think it's reasonable for her to have been aware of the status of her account.

Miss P also thinks the charges she has incurred are unfair because Santander waived them previously. Santander accepts it made a one off goodwill refund of charges that were correctly applied to Miss P's account in the past. But it doesn't feel able to refund the fees that are the subject of Miss P's complaint.

As I think Santander has applied these fees correctly I can't fairly ask it to refund them on this occasion. And I'm persuaded that Santander's past goodwill refund demonstrates that it has acted fairly towards Miss P when she has incurred charges previously. I can also see

evidence that it's tried to help Miss P by explaining to her how she could avoid such charges again.

Miss P has made reference to press reports of Santander refunding unarranged overdraft charges after failing to send text messages. But as our investigator explained this service considers complaints on an individual basis and it's not our role to comment on the wider industry issues Miss P has raised.

For the reasons set out above, I'm satisfied that Santander acted fairly and reasonably and it wouldn't be fair to ask it to do anymore.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 28 September 2019.

Julie Robertson  
**ombudsman**