

### complaint

Mr L's unhappy that Santander UK Plc won't remove adverse information he thinks it's unfairly recorded on his credit file. The information relates to an unauthorised overdraft that Mr L ran up when buying a laptop. He says the retailer told him his Santander debit card payment hadn't gone through. So Mr L transferred the money to another bank account and made his payment from there. However, the Santander card payment was then debited to his account, leaving him overdrawn. Mr L set up a repayment arrangement, but feels he's been unfairly treated.

### our initial conclusions

Our adjudicator reviewed the calls between Mr L and Santander. He was satisfied the bank told Mr L that the payment arrangement would be recorded on his credit file, and that it would show as an outstanding balance. The adjudicator also felt Mr L could've avoided the adverse information by repaying the debt using the retailer's refund. But Mr L didn't agree with the adjudicator's conclusions. He said he hadn't signed a credit agreement with Santander. He's pointed out what he thinks are regulatory failings on the bank's part in recording default information. And he says Santander allowed an unauthorised payment to go through on his account.

### my final decision

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 Mr L's complaint. I'm satisfied Santander's acted reasonably in its dealings with him.

It simply isn't the case that the payment was unauthorised – Mr L's said throughout that he was trying to use his card to buy the laptop. Once the account went overdrawn, it met the Financial Conduct Authority (FCA) definition of a credit agreement. And there's no default shown on the extracts Mr L's provided of his credit file<sup>1</sup>. It simply shows an outstanding balance and a repayment arrangement. That's an accurate reflection of what's happened on the account. I appreciate Mr L says by the time he received the retailer's refund, he didn't have enough money to pay back Santander. But that isn't Santander's fault.

Santander UK Plc has already paid Mr L £100 for complaint handling delays. For the reasons I've set out here, I'm not going to require it to do anything further. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L either to accept or reject my decision before

**1 March 2017.**

Niall F Taylor

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

<sup>1</sup> I've noted Mr L's comments about default notices and timescales. From what I've seen, Mr L's account went into an unauthorised overdraft on 14 June. Santander wrote to him on 23 June and 8 July to alert him to the unsatisfactory position. That seems to me to be in compliance with FCA requirements, as set out in CONC 6.3.4.

The bank then issued a notice of default on 22 July. It subsequently set up an arrangement with Mr L to repay the debt. In my view, those actions are consistent with the purpose of provisions in CONC 7.3.4 to 7.3.15. Issuing a notice of default within this timescale isn't prohibited by the FCA. And it's necessary for the bank to serve notice in order to ensure compliance with the termination of agreement provisions set out in section 87(1)(a) of the Consumer Credit Act. Santander appears to have suspended registration of the default in light of the payment arrangement, but that doesn't mean it was wrong to issue the notice.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.