

## **The complaint**

Mrs B complains Santander UK Plc failed to investigate a fraud involving a loan and associated account being taken out in her name, and it unfairly held her liable. She wants to not be pursued for the loan debt and compensation for the financial loss and distress she suffered.

## **What happened**

A bank account and associated loan were taken out in Mrs B's name in 2009. Mrs B disputed she took them out in 2010, but Santander declined her claim. It said the passport number on the passport which was presented with the loan application was genuine.

Mrs B refused to make payments towards the loan. Santander eventually recorded a default and passed the loan debt to a debt collector. The default is now spent and no longer appears on her credit file.

Mrs B pursued the matter again in 2019 and Santander again declined her claim. It said it had information which indicated that Mrs B's husband was involved in the loan application.

Mrs B brought her complaint to our service.

An investigator and then an ombudsman concluded the complaint was not one our service had the power to consider. They said Mrs B brought the complaint to Santander more than six years after the loan was taken out. And, as she would have been aware of her loss when the loan was taken out, she also failed to complain to Santander within three years of having had cause to complain.

Our service's position on Mrs B's complaint was reviewed. I issued a decision on our jurisdiction over the complaint and found we could consider it. I found the correspondence Mrs B sent to Santander in 2010 met the definition of her making a complaint. So, she had made a complaint within six years of the fraud taking place. It didn't matter that Santander failed to treat her communication as a complaint at that time.

Santander reviewed its position and decided it would write off the loan and not hold Mrs B liable. It said the debt collector would no longer contact her and any references to the loan would be removed from her credit file.

Mrs B felt this wasn't enough to put matters right. So, an investigator considered matters further and issued a view on her complaint. They found:

- Santander now accept the loan was taken out fraudulently, so there was no need to investigate whether it was or not.
- In addition to the actions Santander had agreed to do, it should pay Mrs B £250 to compensate her for the stress she experienced.

- Mrs B was under a duty to mitigate her losses because of the fraud and it wasn't evident she had done this.

It's possible a mortgage product with Santander wasn't available to her when it might have been had Santander not held her liable for the loan. But she hadn't explored what other products were available to see if she could get a better deal. And, while Mrs B may not have previously been aware of our service, it wasn't clear what other actions she had taken since 2010 to help her dispute the loan.

- Mrs B said her health deteriorated because Santander held her liable for the loan. This led to her being unable to work, so she lost out on important income. But there is insufficient medical evidence to establish the actions of Santander caused her health conditions and led to her not working.
- The actions of how the debt collector went about pursuing Mrs B for the debt were a matter for the debt collector to answer. So, they weren't considering them in relation to a complaint about Santander.

Santander agreed to pay Mrs B £250. Mrs B didn't agree this was enough. She said:

- A mortgage broker had advised her not to apply for a mortgage with other lenders because they would likely turn her down due to the fraudulent loan debt. Santander had also switched its offer to a higher interest product. Overall, the failure of Santander to investigate the fraud properly led to a large financial loss.
- Santander were responsible for passing the debt to the debt collector, so it follows it's accountable for the effects of the debt collector's actions. Those actions caused Mrs B and her family to fear for their safety
- The emotions Mrs B went through were real, and she was very vulnerable. It is difficult to evidence medically the anxiety and worry she was caused.

Mrs B asked for a final decision by an ombudsman, so the complaint was passed to me to decide.

### **What I've decided – and why**

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

I am upholding this complaint, but other than refunding any payments Mrs B might have made towards the loan I don't find Santander need to pay any more compensation than £250. I'll explain why.

My role as an ombudsman is not to award compensation to fine or punish Santander for errors it may have made regarding Mrs B. Instead, it is to consider what is fair and reasonable compensation in all the circumstances of the complaint.

Santander's reasons for turning down the fraud claim in 2019 reference holding information which pointed towards her husband applying for the loan. I haven't been supplied with this

evidence, as Santander now accepts Mrs B was a victim. But the question still remains whether Santander performed a sufficient investigation into what happened when Mrs B raised her initial fraud claim in 2010.

The loan was taken out over ten years ago, and Santander has said some of the information it would have held at that time is no longer available. This is understandable, as firms cannot hold onto information indefinitely. So, I have considered what evidence would have been available.

Mrs B has sent samples of her handwriting to our service. But our service is not equipped to perform handwriting analysis. Instead, forensic analysis of this kind would be a matter for the police or a private qualified hand-writing expert to carry out. Their conclusions would then have been something I could have considered.

Some of the evidence available to me is compelling; particularly the copy of the passport which was presented at the time of the lending application which differs substantially to the copy of the passport Mrs B says she held at the time. This evidence would have been available to Santander in 2010 and it ought to have led them to question further what had happened. This is particularly so, given Santander relied on a matching passport number to conclude no fraud had happened. On balance, had Santander investigated the fraud in further depth, I find it should not have held Mrs B liable for the loan.

Mrs B said she was unable to work due to medical conditions which stemmed from the impact the fraud and Santander's decision to hold her liable caused. I am sorry if Mrs B was affected to this extent. But I have insufficient evidence to reasonably conclude Santander's failure caused her to be medically unfit to work.

Mrs B provided evidence of her conditions but says she cannot provide anything more to establish that Santander caused them. I understand some of what she says she experienced is hard to evidence, but considering the size of loss she is claiming, I cannot hold Santander responsible without strong evidence to establish causation.

I also find Mrs B's loss of income would not have been reasonably foreseeable as a result of Santander getting its fraud investigation wrong. So, I find it would be unreasonable to hold it liable for Mrs B's alleged loss of income on this basis.

Santander passed the loan debt to a debt collector, and the extent of debt collector's actions caused Mrs B further worry and concern. But while I agree that a debt collector would not have been engaged had Santander taken the decision to clear the debt earlier, I find £250 is enough compensation.

What Mrs B has said about the debt collector is worrying. But I agree with the investigator that a complaint about its behaviour is a matter more appropriately addressed to it and not Santander. The debt collector can then respond fully to put its side of what happened across, and the matter of whether its actions were fair or not can be appropriately considered.

Mrs B's eligibility for certain mortgage products was likely impacted by the existence of a defaulted loan. But lower interest mortgage products may not have been available for a wide variety of other reasons. Mortgage underwriting can be a drawn-out process and many hurdles can arise, so it's not evident Mrs B would have ended up with a better product. Santander is also not liable for a broker's advice to not apply for other products. So, I am not awarding further compensation.

I have borne in mind that Mrs B didn't pursue this matter again for a considerable number of

years after 2010. I see the online national fraud reporting centre was only contacted in 2018. And I haven't seen evidence to show the police were contacted when the fraud occurred or that advice was sought about what to do before Mrs B spoke to a consumer advice service in 2019. So, I'm not persuaded the evidence available points to this matter having had quite the impact Mrs B says it did over a prolonged period.

I don't doubt Mrs B was negatively impacted by being held liable for the loan. But in view of my considerations above, I find the sum of £250 is an appropriate to put right this right.

### **Putting things right**

- Subject to Mrs B accepting this final decision, I direct Santander to pay her £250 in compensation. Payment should be made no later than 28 days of her acceptance of the final decision being communicated to Santander.
- If Santander has not already done so, it should remove any trace of the loan and account in question from her records and ensure credit reference agencies also don't report this information.
- If it hasn't already done so, Santander should ensure no debt collector pursues Mrs B for the debt attributable to the fraud.
- If Mrs B made any payments towards the loan during the time it was in dispute Santander should refund those payments to her and add 8% simple interest from the time the payments were made to the time they are refunded.
- Santander should remove any protective CIFAs marker recorded in relation to Mrs B. She does not wish a marker to be recorded.

### **My final decision**

I have decided to uphold Mrs B's complaint and I direct Santander UK Plc to pay Mrs B compensation in accordance with my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 5 November 2021.

Liam King  
**Ombudsman**