

## **The complaint**

Ms A has complained that in 2009 Santander failed to follow her instructions to change her mortgage from interest-only onto a capital and interest repayment basis. As a result, part of the mortgage remained on interest-only, which has left Ms A with an outstanding balance. To settle the complaint Ms A has asked that Santander writes off the mortgage balance.

Ms A has been represented in the complaint by family members, but for the sake of clarity, I will refer to Ms A throughout this decision.

## **What happened**

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

In addition, what's happened isn't really in dispute, because Santander has accepted an error was made. Consequently, I don't need to go into detail about everything that's happened in order to establish if the bank is at fault. I also see that our investigator has set out the events in detail in her letter dated 17 February 2022, and both Ms A and the bank have copies of that letter. In addition, our decisions are published, so it's important that I don't include any information that might lead to Ms A being identified.

For all these reasons, I will keep my summary of the complaint fairly brief.

In 2002 Ms A took out a mortgage with Santander (then known as Abbey National). The mortgage was originally on part-repayment, part interest-only. A further advance was taken out in 2003. In 2004 the mortgage was switched to interest-only, with a balance of £88,000.

Ms A enquired about switching back to capital repayment in 2007, but didn't proceed with this. In 2009 Ms A took out a new interest rate product and a mortgage offer was issued showing that £58,000 of the mortgage was to be switched to capital repayment, leaving about £30,000 on interest-only. However, although the new interest rate product was applied to the mortgage, the switch to capital repayment wasn't put in place. As a result, the entire balance of £88,000 remained on interest-only.

A complaint was made to Santander in 2012 that the mortgage hadn't been converted to capital repayment. In a final response letter, Santander accepted it had made a mistake. It

said it would switch the mortgage from interest-only if Ms A made a lump sum payment to bring the account up-to-date as if it had been on capital repayment since 2009.

Ms A wasn't able to make this payment, however, and so the mortgage stayed on interest-only. There were arrears on the mortgage due to problems with the Department for Work & Pensions, but the mortgage was brought up to date in 2018.

Another complaint was brought in 2019 that Santander hadn't switched the mortgage to capital and interest in 2009. Santander offered Ms A compensation of £250 but didn't uphold the complaint.

Ms A complained to this service. She said that she'd asked Santander to switch her entire mortgage onto interest-only, but the bank had failed to follow her instructions.

Initially Santander told us that it thought the complaint had been brought too late for us to consider, saying it was the same complaint that Ms A had raised with the bank in 2012, when a final response letter was issued giving her six months to complain to us. However, an ombudsman decided that the 2019 final response letter superseded the 2012 final response, and so we could consider the complaint.

The investigator thought the complaint should be upheld. Although Santander had said that a switch of £58,000 to capital repayment in 2009 would have been unaffordable, the investigator wasn't persuaded that difficulties Ms A later experienced in 2014 was evidence of unaffordability in 2009.

The investigator also noted Ms A's health issues (which I won't give details of here), which she was persuaded affected Ms A's ability to have realised her mortgage hadn't been changed in 2009. But she did think that Ms A was aware the mortgage hadn't been switched over by 2012, when the complaint was first made to Santander.

The investigator thought Santander should re-work the mortgage account as if Ms A had made the full payment set out in the 2009 offer from the date the change should have been made until March 2012 – so as if the £58,000 had been on capital repayment. This would mean that the overall balance of the mortgage account would be reduced by March 2012 from what it actually was.

Thereafter, Santander should re-work the account on the basis of the payments Ms A had actually made, applying these to the balance as it should have been in March 2012, and applying any overpayments to reducing the capital balance.

As the mortgage term has now come to an end, the investigator thought Santander should extend the term for a year to enable Ms A to make arrangements to repay the remaining balance. The investigator also thought a total payment of £500 should be made for distress and inconvenience.

Santander agreed with the investigator's findings. Santander calculated the amount by which the mortgage would be reduced, and the current position. This showed the following:

- the mortgage was underfunded by £11,831.50 during the period from 2009 and 2012
- this would have reduced the overall balance to £76,486.50

- from 2012-present, the mortgage would have been overpaid by £1,637.07
- the current mortgage balance is £94,936.96, including arrears of £6,597.89
- deducting the amounts above, this would give a remaining balance of £81,468.38

Santander also said it would refund any arrears fees incurred.

Ms A didn't accept the investigator's findings and asked for an ombudsman to review the complaint.

### **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 apologise for the length of time it's taken for us to give Ms A our decision on this case. I know this has been a very stressful time for Ms A, and I am glad she has the support of her family in bringing this complaint.

I've read the jurisdiction decision issued by my ombudsman colleague on 5 January 2022. I confirm I agree with his decision that we have jurisdiction to consider this complaint.

As I said at the outset, Santander has acknowledged it made a mistake in not switching £58,000 of the mortgage to capital repayment in 2009. Where a business has made a mistake, what I have to do is to put the consumer back in the position they'd have been in if the mistake hadn't been made.

Ms A's position is that in 2009 she'd asked Santander to switch her entire mortgage (then £88,000) onto interest-only. However, there is no evidence of this and, indeed, the mortgage offer is clear that Santander intended to switch only £58,000 onto interest-only. However, in error, Santander kept the entire mortgage on a capital repayment basis.

This mistake resulted in Ms A paying less to the mortgage account than if the switch to capital repayment had taken place. This meant the account was 'underfunded'.

I'm satisfied that it wasn't until 2012 that Ms A first knew that the switch to part-capital repayment hadn't taken place. Given that this was Santander's mistake, I don't think the bank's response to her complaint was fair – which was that Ms A should make a lump sum to cover the difference in what she would have paid if the account had been switched. I think it's likely that Ms A didn't realise what had happened because of her health issues.

### **Putting things right**

In the circumstances, I think the fairest outcome is for Santander to cover the difference in payments Ms A would have made from the date the switch should have taken place (July 2009) to March 2012. Santander has calculated that if the full payments had been made, the mortgage balance would have reduced to £70,856.98.

But by March 2012 Ms A *did* know she wasn't paying enough towards the mortgage, and so I don't think Santander should be responsible for making up the difference in payments from then on. Instead, I think Santander should apply the payments Ms A actually made as if the

mortgage had been on part-capital repayment and part-interest-only from April 2012 onwards and apply any overpayments towards reducing the capital balance.

Santander should also remove any arrears fees on the account.

I understand that a calculation as at March 2022 was given to Ms A, but this will need to be recalculated at the point where my decision is accepted by Ms A to take into account any payments due and any payments made since March 2022.

An offer of £250 was made by Santander for distress and inconvenience. I don't think this goes far enough, given that this error has had a significant impact on the mortgage and caused considerable upset to Ms A. I think a further £250 should be paid, making a total of £500.

## **Conclusion**

The mortgage term expired in June 2020 and there is a balance that is properly due and owing to Santander. I agree with the investigator that Santander should give Ms A one year from the date my decision is accepted to put a repayment strategy in place.

I note that Ms A has recently made an offer of £10,000 to settle the mortgage. However, online data from property portals suggests that the property is likely to be worth at least £450,000.

In the circumstances, I am not persuaded that it would be reasonable for Santander to accept a short settlement, given that there are other options available to Ms A, such as a sale of the property or an equity release mortgage that would allow her to repay the mortgage and either downsize free of mortgage or else retain her property. I would suggest Ms A's family arranges for her to have some independent financial advice so that Ms A is aware of the options available to her so that the mortgage can be repaid.

If Ms A wants to accept my decision, it will be in full and final settlement of the complaint, and the mortgage account will be reduced in line with the redress set out above, with final figures to be confirmed by Santander. They are not likely to differ significantly, however, from those set out above. This means that if my decision is accepted and the redress is put in place, Ms A will owe Santander around £81,500 (not including any payments made or payments due since Santander last gave us the figures at the end of March 2022, which Santander will need to take into account when giving Ms A the final figure to be applied to the account).

I know this isn't the outcome Ms A wanted, and I am truly sorry if my decision adds to her distress. But after taking account of everything that's happened, I am unable to agree that Santander should either write off the outstanding balance of the mortgage or agree to a short settlement. I think the redress I have ordered is a fair way of resolving the complaint.

## **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I direct Santander UK Plc to re-work the mortgage as set out above, refund arrears fees, pay compensation of £500 for distress and inconvenience and to allow Ms A a period of one year from the date of acceptance of my decision to repay the outstanding mortgage balance.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 3 May 2022.

Jan O'Leary  
**Ombudsman**