

The complaint

Mr and Mrs B complain that Santander UK Plc have treated them unfairly in relation to their mortgage account. They're unhappy with the lack of assistance offered during periods of ill health and financial difficulty.

What happened

Mr and Mrs B have a repayment mortgage with Santander. In 2015, unfortunately their circumstances changed as a result of Mrs B's ill health and Mr B's employment circumstances. They were unable to make the contractual monthly payments (CMP) from November 2015, and arrears began to build on the account.

Unfortunately, Mr and Mrs B's situation didn't improve enough for them to be able to consistently afford the monthly payments. And in August 2017, their interest rate product expired so the mortgage moved onto Santander's standard variable rate (SVR), which increased their CMP further.

During 2017, few payments were made to the mortgage account, and in 2018, Mr and Mrs B began making regular payments again but not enough to cover the full CMP. In March 2019, Mr and Mrs B were able to start making overpayments to the mortgage, which prevented the arrears from growing any further. But unfortunately, both Mr and Mrs B were impacted by the global pandemic and so from March 2020 they were unable to make any payments to the mortgage.

In June 2020, Mr and Mrs B complained to Santander about the lack of support they'd received in relation to the mortgage. They didn't think Santander had fairly considered their circumstances, and so hadn't offered reasonable options that would help them get the mortgage back on track. At that point the arrears on the mortgage stood at around £73,000. Santander didn't uphold the complaint. They said they'd set up several payment arrangements and had explored the available options to try and help Mr and Mrs B during the difficult times they'd had.

Mr and Mrs B asked our service to look into the complaint. Our investigator looked into things and felt that Santander had shown a reasonable amount of forbearance to Mr and Mrs B, and that the available options had been explored. She did however note that Santander did have a lower interest rate available that they could have applied to Mr and Mrs B's mortgage (the follow on rate). So she recommended Santander applied that rate to the mortgage account, backdating it to June 2020 when Mr and Mrs B complained. She also recommended Santander pay Mr and Mrs B £200 for the distress and inconvenience caused.

Santander accepted the investigator's view, but Mr and Mrs B didn't. So the complaint was passed to me to issue a decision.

My provisional decision

I issued a provisional decision on 10 March 2022. This is what I said.

"I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Firstly, I'm sorry to hear about the difficult personal circumstances both Mr and Mrs B have experienced in recent years. It's clear they've been through a very difficult time. When a borrower is unable to consistently afford their mortgage payments as a result of ill health or financial difficulty, lenders are required to treat them fairly – taking into account the borrower's specific circumstances. So, I've thought about whether Santander have done that having considered all the evidence and information available to me.

Mr and Mrs B first started experiencing difficulties with their mortgage payments towards the end of 2015. During 2016 and 2017, Mr and Mrs B had conversations with Santander to keep them updated on their circumstances. Some payment arrangements were agreed, and Mr and Mrs B had explained during those conversations that they expected their problems to be short term, and were anticipating they'd receive large sums of money in the near future which they would use to clear the arrears. Given what Mr and Mrs B were telling Santander during that period, I think the short-term arrangements were an appropriate form of forbearance given that it seemed the problems with affordability were going to end shortly.

Santander didn't pursue any legal action to recover the arrears, despite the fact that only four payments were received in an 18 month period. I think they gave Mr and Mrs B an appropriate amount of time and space to overcome the difficulties they were having at the time, and to receive the funds Mr and Mrs B said they were expecting to receive and then pay to the mortgage.

In August 2017, Mr and Mrs B's interest rate product expired and so the mortgage reverted to the SVR in September. This increased Mr and Mrs B's CMP by around 25%. Whilst by that point Mr and Mrs B had been able to start working again, they weren't able to afford the full CMP, and so short term arrangements were agreed again to allow for more time for the expected lump sum payments to be received. Looking at what Mr and Mrs B had been telling Santander about their circumstances at the time, I think that was reasonable.

Mr and Mrs B were paying around £3,000 per month from February 2018, which still didn't meet their CMP. Although towards the end of 2018 there were a few months where only £1 was paid towards the mortgage when Mr B was unwell again. In February 2019 Mr and Mrs B had a conversation with Santander about their circumstances, provided details of their income and expenditure and explained they would now be able to afford to pay more each month. An arrangement was set at around £300 more than the CMP so that additional payments could be made towards the arrears. Mr and Mrs B asked about capitalising the arrears on the account, but Santander explained they could only do that after six consecutive monthly payments had been made.

I don't think that was unreasonable. When the arrears are capitalised on a mortgage, it increases the CMP and so commits the borrowers to paying more each month. Given that Mr and Mrs B's payment history had been inconsistent, I think it was reasonable that Santander wanted Mr and Mrs B to demonstrate they could afford the monthly payment over a sustained period of time.

Mr and Mrs B did maintain their arrangement, which was higher than the CMP, for four months before Mr B had to go back into hospital which affected the amount they were able to pay. However, they were then able to resume the arrangement for another seven months. In December 2019 and January 2020, I can see that Santander carried out in depth reviews of Mr and Mrs B's circumstances. Their income and expenditure information showed they could now contribute more towards the mortgage arrears, and other options were also discussed. I can see Mr and Mrs B asked about capitalising the arrears again, but Santander explained they could only do that after the CMP had been met for 12 months. Mr and Mrs B

also asked about porting the mortgage if they were to downsize, Santander said that a porting application was unlikely to be approved whilst there were arrears on the account. So Mr and Mrs B agreed to continue paying as much as they could afford.

Since 2015, Mr and Mrs B's mortgage had fallen into a significant amount of arrears as a result of problems they'd both had with their health and employment. But since the beginning of 2019, their situation had improved somewhat, and they'd been able to consistently pay more to the mortgage than their monthly payments, bringing down the arrears on the account. Although the arrears balance was still significant in December 2019 (around £70,000).

When the conversations took place in December 2019, Mr and Mrs B had 13 years left on the mortgage at that point. Whilst that is a relatively long time, if the mortgage remained on the SVR, capitalising the arrears would not have been affordable for Mr and Mrs B each month as things stood. But if the arrears were capitalised, Mr and Mrs B would have been eligible for an interest rate product, and they would also have been able to apply to port their mortgage to a smaller property as they'd thought about doing.

It's clear from the notes of the conversations that Mr and Mrs B were trying to do all they could to improve their circumstances. They realistically felt they'd need to downsize in order to reduce their outgoings – but felt trapped as Santander wouldn't allow them to port their mortgage to a smaller property, and they felt they would struggle to get a new mortgage with another lender due to their credit histories during their illness. So this was not a straightforward situation.

I note that Santander's policy at the time said that mortgage arrears could only be capitalised after 12 consecutive monthly payments were made. Looking at Mr and Mrs B's mortgage history, it was March 2020 before they had achieved 12 months of consecutive payments (with the exception of one month). However, unfortunately by then Mr and Mrs B had been impacted by the pandemic and stopped making payments whilst a payment deferral was in place.

Lenders are entitled to set their own policies in relation to how and when they might capitalise arrears on a borrower's mortgage. Whilst there are benefits to capitalising arrears in situations where the borrower's circumstances have improved, it's also important that the borrowers are not committed to making monthly payments they might struggle to afford in the longer term. Also, as the arrears are added to the balance – it means interest is charged on those arrears for the duration of the mortgage until it's fully repaid, so can be more expensive in the long run. So it's important that it's considered carefully before anything is agreed.

Given the level of arrears on Mr and Mrs B's mortgage, I don't think it was unreasonable that Santander wanted to see that they could afford the monthly payments for 12 months before agreeing to capitalise the arrears. As a result of circumstances outside of their control, Mr and Mrs B's payment history had been very inconsistent, and some months nothing had been paid at all. So I think Santander were acting fairly when they said they'd need to see a consistent pattern of payments over time.

But as I said, by the time Mr and Mrs B had paid 12 consecutive monthly payments, they were no longer able to make any further payments to the mortgage and had to take a payment deferral. Whilst I appreciate it's clear that Mr and Mrs B were trying to do what they could to pay the mortgage, given the uncertainty at that time – I'm not persuaded it would have been fair to capitalise the arrears onto the mortgage when they didn't think they'd be able to commit to making the future payments.

For the same reasons, I don't think it would have been reasonable for Santander to have locked Mr and Mrs B into a lower fixed interest rate product either until they'd been able to demonstrate a consistent payment history. Particularly as Mr and Mrs B had discussed selling the property. Fixed interest rates, whilst often cheaper than the SVR, come with fees, as well as charges if the borrowing is repaid within the fixed rate period. So I don't think it would have been appropriate to apply a fixed interest rate when the future of the mortgage, and the property, were so uncertain.

Mr and Mrs B have mentioned that they could have benefited from the mortgage switching to interest only to help them whilst they were in difficulty. I have thought carefully about this. Whilst this is something lenders can do to ease the financial burden on borrowers for a short period of time, I don't think that would have helped Mr and Mrs B to get this mortgage back on track. I say this because when they initially experienced difficulty, they weren't able to make any payments to the mortgage, and so switching to interest only would not have made the mortgage affordable for them.

They were able to start making more regular payments towards the end of 2017, but I can see from the contact notes during that period that Mr and Mrs B wanted to pay as much as they could afford, which was in their interests, as that meant they were paying towards the capital rather than just the interest. Based on what Mr and Mrs B were telling Santander during those conversations, I don't think it would have been in their interests to only have paid the interest if they could have afforded to pay more.

I do understand that Mr and Mrs B have said that switching to interest only would have given them more disposable income at the time. But by only paying the interest they would not have been paying anything towards the capital. Which would have resulted in them having to agree another plan with Santander about how that capital balance would be repaid over the outstanding term. So whilst it may have given them more disposable income in some months, it would have added to the long term debt they still would have needed to find a way to repay.

I do appreciate Mr and Mrs B were impacted by the pandemic, and they've since become unwell again. As a result, they still hadn't resumed making payments by the summer of 2021. Whilst I really do empathise with Mr and Mrs B's situation, looking at everything that's happened, I'm not persuaded Santander have treated them unfairly when considering the forbearance they've given.

I know Mr and Mrs B don't feel like Santander did take their circumstances into account, but I'm afraid I disagree. Looking at all of the contact they had about the mortgage from 2015 onwards, Santander gave Mr and Mrs B the breathing space to recover from their difficulties without taking any steps towards repossession. They agreed to several payment arrangements – agreeing for Mr and Mrs B to pay what they could afford towards the mortgage. Looking at everything that's happened, whilst I appreciate it will come as a disappointment to Mr and Mrs B, I'm not persuaded that Santander ought to have done more to help, or that there was more they could have offered Mr and Mrs B that would have made the overall mortgage affordable for them.

The follow on rate

Whilst I don't think Santander were acting unfairly by not offering Mr and Mrs B a fixed interest rate product whilst they were experiencing financial difficulty, they did have another rate that they could have applied to Mr and Mrs B's mortgage which wouldn't have carried the risks that the fixed rates would have.

Following our investigator's view, Santander agreed to apply their follow on rate to Mr and Mrs B's mortgage account, and backdate it to June 2020. That means that whilst the interest

rate isn't as low as some of Santander's fixed rate products, Mr and Mrs B would be paying a lower rate than they currently are on the SVR.

I agree that Santander should apply this rate to the mortgage and backdate it. But I think they need to backdate it further – to October 2018. I say this because the follow on rate was introduced by Santander in early 2018. I've looked carefully at the contact notes, and I can see that in October 2018 there was an in depth discussion about the next steps for the mortgage considering Mr and Mrs B's situation at the time. During this conversation Mr B explained that he was having to go into hospital and so wouldn't be able to maintain payments for the next couple of months. He said that he would still be able to pay around £1,000 per month but he was aware that wouldn't even cover the interest. Santander said the interest would be £1,630 and Mr B said that would be too much for him to pay.

I think in that call, Santander had the opportunity to review the interest rate Mr and Mrs B's mortgage was on to see if there was anything more they could do in the circumstances. I think had they done that, they would have seen that Mr and Mrs B were paying more interest than their other borrowers who had similar characteristics to Mr and Mrs B, but were paying the follow on rate. So I think by keeping Mr and Mrs B's mortgage on the SVR when they could have been paying less on the follow on rate, they were treating Mr and Mrs B less favourably than their other borrowers with similar characteristics. And in this case, I think that resulted in unfairness for Mr and Mrs B who were clearly struggling but trying to pay as much as they could afford.

Putting things right

So in order to put things right, I'm persuaded that Santander should re-work Mr and Mrs B's mortgage account as if they'd applied the follow on rate to the mortgage from October 2018. The resulting overpayments, and overcharged interest, should be used to reduce the outstanding mortgage arrears on the account. Santander will need to ensure they also adjust any interest that has been charged on those arrears.

Santander will also need to ensure the updated account position is reported to credit reference agencies.

Mr and Mrs B have experienced distress and inconvenience as a result of Santander applying a higher interest rate than they needed to from October 2018 onwards. Although I do appreciate a lot of the stress Mr and Mrs B were experiencing at the time was a result of their overall situation, rather than what I think Santander had done wrong. As a result, I think the award recommended by the investigator of £200 is a fair and reasonable amount to recognise the direct impact of the stress caused by the monthly payments, and arrears balance, being slightly higher than it should have been. This amount should be paid directly to Mr and Mrs B."

Responses to my provisional decision

Santander accepted the provisional decision and agreed to the redress I had recommended.

Mr and Mrs B asked me to consider some further points before reaching my final decision. I've summarised these below.

- Whilst Santander may have held off taking legal action during the period where there were arrears on the account, they still sent letters that suggested otherwise. Mr and Mrs B said that the phone calls during this time were constant and repetitive, and the follow up letters sent did not reflect the whole conversations that were had. They say these letters and calls contributed to their ill health.
- They had several earlier conversations with Santander about the interest rate on the

account, and so feel that the follow on rate should be backdated to January 2018, when they'd asked Santander about other options to help them, but the interest rate wasn't mentioned. Mr and Mrs B said that the backdated rate should be 1.99% as this is the rate Santander had written to them about in 2021.

- They would like me to persuade Santander to allow them to port their mortgage. They fear that they will never be offered a mortgage by another lender. They said that if they repay the arrears upon selling the property and port their existing mortgage, they will have a fighting chance of downsizing and being able to afford a smaller home.
- They asked me to re-consider the amount awarded for distress and inconvenience. They said the pressure and stress of meeting such high repayments, and receiving constant letters from Santander was unbearable. The fear of losing their home has been the one single most horrific cause of their anxiety, stress and worry. Mr and Mrs B say that perhaps an award of £200 per day would be a more realistic figure, or alternatively, for Santander to write off the arrears.
- They have also queried some of the information contained in the account statements and transaction history as they don't feel they're correct.

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.

Mr and Mrs B have kindly sent us copies of some of the letters they received from Santander during their periods of financial difficulties. I can understand that receiving these letters when they were already stressed and worried about their overall circumstances would have been difficult for them. But the letters I've seen are largely confirmations of payment arrangements, and requests for information about their circumstances. The letters do include some warnings to Mr and Mrs B that if they fail to make payments under the arrangements, it could result in litigation action leading to repossession of their home. And whilst I know that wouldn't have been nice to read, lenders are required to inform borrowers of the consequences of what may happen if payments aren't maintained.

I also appreciate there were a lot of phone calls that took place over the years. And again, I understand why it would have been stressful for Mr and Mrs B to constantly keep Santander updated with their circumstances and plans. But it was important that Santander were kept informed of the situation so that they could ensure they were managing the mortgage account in the most appropriate way based on Mr and Mrs B individual circumstances. I explained in my provisional decision why I was satisfied that Santander had demonstrated appropriate forbearance and I haven't seen anything to change my mind about that.

I've noted Mr and Mrs B's point about when they think the follow on rate should be backdated to. But Santander only introduced the follow on rate in early 2018. And having looked through the contact history for the mortgage account, I've found that October 2018 was the earliest conversation that took place after it was introduced where forbearance options were discussed in any detail. So I'm still satisfied that the follow on rate should be backdated to October 2018 rather than an earlier date. I think that's the earliest reasonable opportunity Santander could have been expected to review the interest rate Mr and Mrs B were paying, and switch them on to the follow on rate.

Mr and Mrs B have said that they understand the follow on rate to be 1.99%. The follow on rate is a variable rate and is not fixed at a certain amount. Santander will need to explain to Mr and Mrs B what the rate would have been for the period they are retrospectively applying it to the account.

Once this matter has been resolved and the account is re-worked should this decision be accepted, Mr and Mrs B will need to engage with Santander about their options for managing this mortgage going forward. I understand Mr and Mrs B's wishes for them to downsize and port a smaller balance to a new property. Whilst Santander do have policies in place that may prevent them considering an application whilst the mortgage is still in arrears, I think they'll need to take a pragmatic approach to any proposals Mr and Mrs B make, as it could be that selling the property and porting a smaller balance could clear the arrears and make the monthly payments affordable for Mr and Mrs B in the long term. I'd expect Santander to consider Mr and Mrs B's circumstances carefully when considering such proposals.

Mr and Mrs B have asked me to reconsider the amount awarded for distress and inconvenience. And I think it's important for me to note that the £200 I've provisionally instructed Santander to pay is not a reflection of what I think their overall distress and inconvenience has amounted to since they begun experiencing difficulties in 2015. I am truly sorry to hear about the impact Mr and Mrs B's overall circumstances have had on their physical and mental health over the years, and I'm not underestimating how much the stress of managing the mortgaging added to that. But I can only instruct Santander to pay for the distress and inconvenience caused as a result of something they've done wrong.

I've explained that in the context of Mr and Mrs B's complaint, Santander should have applied a lower interest rate to their mortgage account from October 2018 onwards. But I'm not satisfied that error was the cause of a lot of the distress and inconvenience Mr and Mrs B have told us about, it only added to what was already a stressful time. As a result, I'm still satisfied that £200 is a fair and reasonable amount to compensate Mr and Mrs B for the fact Santander could have applied the lower rate sooner.

Mr and Mrs B have queried some of the information they've found in the statements and transaction histories for the mortgage account. As that is not something we've been asked to consider under this complaint, they'll need to speak to Santander directly about their queries.

Putting things right

So having considered all the available evidence and arguments afresh, including the latest comments provided by Mr and Mrs B, Santander need to do the following to put things right and resolve this complaint.

- Re-work Mr and Mrs B's mortgage account as if they'd applied the follow on rate to the mortgage from October 2018 onwards.
- The resulting overpayments, and overcharged interest, should be used to reduce the outstanding mortgage arrears on the account. Santander will need to ensure they also adjust any interest that has been charged on those arrears.
- Ensure the updated account position is reported to credit reference agencies.
- Pay directly to Mr and Mrs B £200 for the distress and inconvenience caused.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 25 May 2022.

Kathryn Billings

Ombudsman