

The complaint

Miss K complains that Santander UK Plc continued to report her mortgage account to the credit reference agencies after she was no longer liable for the debt following her bankruptcy.

What happened

Miss K took out a joint mortgage with Santander in 2006. She was declared bankrupt in January 2017 and discharged in January 2018.

Miss K says she's no longer liable for the mortgage debt. And so Santander shouldn't continue to report it to the credit reference agencies. Miss K says she's not in contact with the joint account holder and says he was abusive.

In its final response letter, Santander said as the mortgage is a secured debt it wasn't included in the bankruptcy and Miss K remains jointly and severally liable for it. And so it said it would continue to report this to her credit file.

I sent a provisional decision to the parties saying the information Santander had recorded on Miss K's credit file didn't fairly reflect the true situation. I said Santander should update Miss K's credit file to show the account defaulted at the date of her bankruptcy and the debt as partially satisfied on the date of her discharge with no entries after this. I said it should pay £250 for the upset and inconvenience this had caused Miss K.

Santander agreed that it can't pursue Miss K for the shortfall and to pay £250 compensation.

Santander didn't agree to update Miss K's credit file. It said it recorded information in line with industry standards and the principles set out by the steering committee on reciprocity (SCOR). It said its own systems, and those of some credit reference agencies, were only able to record information about the account, not individual account holders. This meant it couldn't record a default for Miss K and not for the other account holder. It said it can only record a default when a property has been taken into possession. Santander said it could arrange for the date of settlement or default to be backdated if the mortgage was repaid or if Miss K was removed from the account.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

When someone goes bankrupt, their debts are included in the bankruptcy estate, which means they're no longer liable for them. Any unsecured debt in Miss K's sole name would most likely have been written off by the lender as it would have no realistic means to recover

it. Such lenders would have reported this to the credit reference agencies as a default or partial settlement at the time of the bankruptcy.

However, the circumstances here are not straightforward.

First, this was a joint and several debt. Although Miss K is no longer liable for the mortgage debt the joint account holder remains liable. He's maintained monthly payments.

Second, the debt was secured. This means that while Miss K isn't liable for mortgage payments, Santander retains the right to take possession of the property to recover the debt.

Third, the mortgage debt increased after Miss K's bankruptcy, due to unpaid ground rent of about £7,600. Santander paid this to the freeholder to protect its security. It added the cost to the mortgage account.

Lenders have a duty to report accurate and up to date information to the credit reference agencies. The purpose is to assist third parties – such as other lenders – gain an understanding of an individual's existing obligations before offering them credit.

To help decide whether the information reported by Santander to Miss K's credit file is right and fair, we asked Miss K for more information about her circumstances and the property. We also asked Santander for information (such as who makes the mortgage payments) but it didn't respond. It confirmed the account is up to date.

Miss K says the joint account holder makes the mortgage payments. She says if he stopped doing so she wouldn't make payments. Miss K says she'd allow Santander to take possession and sell the property. Miss K says a relative of her ex-partner lives in the property and she doesn't receive any rent from the property. Taking what Miss K has told us into account, I think it's unlikely she intends to make any payments towards the mortgage and Santander can't require her to do so. It seems to me that this isn't an ongoing financial commitment that potential lenders need to know about when assessing affordability and making a decision whether to lend.

It's unclear why the trustee in bankruptcy didn't sell the property, or seek a court order to do so. Perhaps there was insufficient equity in the property at the time. The trustee collected Miss K's share of the rent. Miss K says a relative of her ex-partner moved into the property shortly after she was made bankrupt.

Santander paid ground rent to the freeholder to protect its security. It added the cost to the mortgage account. As this happened after Miss K's bankruptcy, it seems Santander believes Miss K is responsible for that part of the mortgage debt. Miss K says the debt existed before her bankruptcy and was merely transferred from the freeholder to Santander. Whether Miss K is liable for that part of the debt would be for a court to decide. I don't think it's fair to record that Miss K owes the mortgage debt because the payment to the freeholder was added to the mortgage account after her bankruptcy.

I don't think Miss K's credit report fairly reflects her circumstances. Miss K had a debt to Santander and, in effect, defaulted on her obligations when she entered bankruptcy. But her credit report doesn't reflect this. And Miss K's credit report suggests she has an ongoing obligation to make payments, which isn't right either.

Santander does have to treat the joint account holder fairly. Most likely, Santander didn't default the account because the joint account holder maintained monthly payments (although as it points out there's the unpaid ground rent and the letting of the property in breach of the mortgage terms and conditions).

Santander says for joint accounts it reports the same information for both account holders. Santander is recording information about the account – whether the account is up to date, in arrears or defaulted. It says its systems (and those of at least one credit reference agency) can't record different information for joint account holders.

The mortgage debt is still owed and Santander has the right to collect it from the joint account holder or from the proceeds of sale of the property. But it isn't correct for Miss K's credit report to say that she is liable for the mortgage debt. She isn't.

Miss K is no longer required to make monthly mortgage payments, or to repay any shortfall if the property is sold. She's said if her ex-partner didn't make payments she wouldn't make payments but would allow the property to be taken into possession and sold. Given that Miss K doesn't live in or benefit from rental income from the property, it's likely to be in her interests for the property to be sold. She would receive her share of any equity in the property and no longer be joint owner and account holder with her ex-partner. While Miss K could choose to make mortgage payments to avoid the property being taken into possession, I think it's unlikely she would do so.

In my provisional decision, I said it would be fair for Miss K's credit file to show she defaulted on the debt when she entered bankruptcy on 31 January 2017 and that her obligations were partially settled when she was discharged from bankruptcy a year later. I said there should be no entries after this and Santander should arrange for Miss K's credit file to be updated accordingly.

Santander didn't agree to this. First, it said its systems didn't allow it to report different information for joint account holders. Second, it said it reported information in accordance with industry standards and the SCOR principles of reciprocity.

SCOR's governing principle is that "data is shared only for the prevention of over-commitment, bad debt, fraud and money laundering, and to support debt recovery and debtor tracing with the aim of promoting responsible lending". It says defaults should be reported in line with the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" drawn up by the credit industry and ICO. The relevant parts of these principles say:

- data reported to a customer's credit file must be fair, accurate, consistent, complete and up to date.
- circumstances which may lead to a recording of a default include where the account is or has been included in a bankruptcy. The default date must be consistent with that of the bankruptcy. The account should be closed and marked as partially settled if it's included in a bankruptcy which is discharged and the full amount isn't repaid.
- where there is joint liability, the account should not automatically be marked in default if it is maintained by the other party.

The situation here isn't straightforward, and I'm sympathetic to the difficulties Santander has described. I appreciate that it reports information on an account basis, but here the obligations of the joint account holders are not the same. Miss K's obligations regarding the debt owed to Santander have ended, but the joint account holder's obligations have not.

It wouldn't be fair to record a default or part settlement in such way that it is reported against the joint account holder. But continuing to report that Miss K has a significant debt obligation when this isn't the case (and hasn't been the case for several years) isn't fair either,

especially as the long-term nature of the mortgage means this could be reported for many years. So Santander needs to find a way to remove this from Miss K's credit file.

Putting things right

Santander made errors here. It said in its final response letter that Miss K remained jointly and severally liable for the mortgage. That's not correct, which Santander now accepts. It told ICO that the mortgage wasn't included in Miss K's bankruptcy. Miss K provided evidence that it was. And Santander is reporting that Miss K is responsible for a mortgage account, which I don't think fairly reflects the true situation.

So, Santander needs to amend what it is reporting to make sure that Miss K's credit file reflects the true position. Santander has told us about the problems that this will create for it. However, it's for me to decide what a business should do to put things right – I don't need to tell a business how it should do that. That's a matter for Santander. If Santander needs to make changes to the account, it will need to contact Miss K about this. However, ultimately, it will need to correct its reporting so that it shows Miss K as no longer liable for the mortgage. And it will need to back date this to her discharge from bankruptcy.

Santander shouldn't pursue Miss K for payments towards the mortgage debt. It can contact her if reasonably necessary for the purpose of enforcing its security.

I think it would be fair for Santander to pay compensation to Miss K for the upset and inconvenience caused by its errors. I need to take into account that Miss K was made bankrupt in 2017 and it's likely her credit report shows a number of defaulted debts. It's unlikely the information recorded by Santander had an adverse effect on her credit score such as to make compensation for financial loss fair and reasonable. However, having to contact Santander to put matters right will have caused inconvenience and upset. In the circumstances, I think compensation of £250 is fair and reasonable.

My final decision

My decision is that I uphold this complaint. I order Santander UK Plc to take the steps and make the payment set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 20 July 2022.

Ruth Stevenson
Ombudsman