

The complaint

Ms H complains that Santander UK Plc ("Santander") agreed to take the proceeds of a shortfall sale as full and final settlement of her mortgage but later passed the residual balance on to a debt collection agent.

What happened

Ms H took out an interest-only mortgage with Santander in 2008 on a property she purchased for £120,000. She moved away from the area in 2012 and rented the property out. However, she says that she struggled over many years to maintain the mortgage repayments due to the property not being occupied by tenants or tenants defaulting and causing damage. Ms H put the property on the market and received offers of £90,000 and £105,000 in August 2019 which were both withdrawn. In March 2020 a further offer was made for £105,000 and Ms H's partner contacted Santander to request a shortfall sale pack. Ms H says that Santander agreed to the shortfall sale and her partner confirmed with it over the phone that this would be in full and final settlement and that the outstanding balance would be waived, which was confirmed over the phone and in writing. Therefore, Ms H accepted the offer and proceeded with sale of the property.

Following completion of the sale, Ms H was informed by Santander that it had passed the mortgage shortfall of around £12,700 on to a debt collection agent. The agent contacted Ms H by phone and letter on several occasions to chase the debt which she had previously been informed had been cleared in writing by Santander. She complained to Santander, which accepted that she had been told there was no outstanding balance but said that this was incorrect. Ms H says that she only agreed to the shortfall sale on the condition that the sale amount would be accepted by Santander in full and final settlement. She says that had it not agreed this then she wouldn't have accepted the offer as she wasn't in a position to take on the shortfall debt either.

Ms H says that she has been financially affected by paying a very high rate on her mortgage and now faces a large debt from the shortfall sale. She also says that her credit file has been negatively impacted over many years. Ms H suffers from chronic mental health issues and says that dealing with Santander and the contact from the debt collection agent has exacerbated her depression and anxiety. She would like Santander to honour the agreement for the shortfall sale and accept the sale price as full and final settlement; to backdate the revised mortgage rate from April 2020 to the start of the mortgage term; and to compensate her for the stress caused by the excessive interest rate and being chased by a debt collector.

In relation to the shortfall, Santander says Ms H completed a shortfall application and agreed to the terms of this. It says that it has made no errors in referring the shortfall amount to a debt collection agent as per those conditions and the process. However, Santander did accept that Ms H was given incorrect information when she contacted it in January 2020 as she had been told that there was no outstanding balance. Santander said that this was because Ms H spoke with its customer services team which was unaware that the sale had been part of a shortfall sale application and that the balance had already been passed to the debt collection agent. Santander suggested that its internal processes would be changed to avoid this happening in future and offered Ms H £100 compensation for the confusion caused.

Our investigator looked into this case and found in relation to the shortfall sale that Santander shouldn't have misled Ms H and that being given incorrect information would have been frustrating and upsetting for her. However, she didn't agree that Santander should write off the debt as a result of this error as she didn't think Ms H would have declined the shortfall sale had she not been told it would be accepted as a full and final offer in the circumstances of previous offers being withdrawn and Ms H being in arrears and unable to afford the mortgage. The investigator thought that £100 compensation was reasonable for the trouble and upset caused.

Ms H disagrees with this so the case has come to me to make a decision. Her partner (and representative for the purposes of this complaint) has said that they were very much under the impression that the shortfall was being accepted by the bank as its share of the loss. They question why Santander would have disputed the sale for quite some time if the remaining debt was going to be transferred to Ms H. Ms H wasn't given any opportunity to review the documents prior to signing so, based on prior telephone conversations, her understanding was that she wouldn't be left with any outstanding debt. Following this, Santander confirmed that there was no debt to pay.

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.

Having looked at the evidence I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

Ms H complains that Santander agreed to take the proceeds of a shortfall sale as full and final settlement of her mortgage but that she was later told that she would have to pay the balance and the debt was passed on to a debt collection agent. Ms H says that she wouldn't have agreed to the shortfall sale if she'd not been told that it would be accepted in full and final settlement.

I can see that Ms H wrote to Santander on 2 June 2020 and said that an offer had been made for £105,000 which she had accepted. She said at this time that this was a good offer in the current market and that the only other offer she had received to date was for £90,000 the previous year. She said that failure to go through with the sale would lead to repossession of the property which would mean costs for Santander and also a higher residual debt for her. As a result, Ms H proposed in this letter that Santander consented to her acceptance of the offer and retained her deposit in full and final settlement of the mortgage arrears.

I've looked at the Shortfall Sale application form completed and signed by Ms H on 21 September 2020. This has a question relating to Ms H's proposal to clear the shortfall once the sale completes. In this section she has referred to her letter dated 2 June and phone calls.

I've also considered the Conditions of shortfall sale document which sets out "*All borrowers will remain responsible for the balance of the mortgage remaining after the sale. Once the sale completes, a statement will be sent to all borrowers and a representative of Santander plc [the debt collection agent] will contact you to make arrangements to discuss your proposals to clear the shortfall. The debt becomes unsecured, no interest is applied and is repaid over no fixed term. The arrangement is flexible to suit your financial needs.*" Santander's shortfall sale frequently asked questions document states in response to the "*What happens to the resulting shortfall?*" question "*The shortfall becomes an unsecured debt on paper the mortgage account is closed down following the completion of the sale.*"

In light of the above, I'm satisfied that the terms of the shortfall sale meant that Ms H was liable to pay any balance remaining after the sale. It is clear from the application form that

Ms H was required to set out how she proposed to clear the shortfall once the sale had completed. Whilst I accept that Ms H asked Santander if it would write off the balance and accept the sale proceeds in full and final settlement, I haven't seen any evidence to suggest that Santander in fact agreed to waive this requirement and write off the remaining debt prior to the sale.

Santander was not obliged to write off debt as Ms H agreed to repay the full amount borrowed when she took the mortgage out. Whilst Ms H's partner makes the point that the mortgage account closed and the unsecured loan was a new debt, in my view this doesn't change the fact that Ms H still owed Santander the balance. So I don't think Santander has done anything wrong in relation to not agreeing to write off the shortfall of around £12,700.

Ms H's partner has questioned why Santander would have disputed the shortfall sale if the remaining debt was going to be transferred to Ms H. There are a number of factors Santander would want to consider before agreeing to the sale of the property for less than the remaining mortgage balance, including a valuation of the property and the ability of the borrower to pay the remaining balance, which will no longer be secured by a charge over the property. So the fact Santander had to give consideration to whether to accept the shortfall sale doesn't indicate that it was going to write off the balance owed.

In relation to the process, the conditions document also set out that a statement would be sent once the sale completed and then a debt collection agent would be in contact to make arrangements for this to be repaid. It also set out that the debt would become unsecured.

I can see that the letter from Santander to Ms H dated 18 December 2020 advised Ms H of her new monthly repayments (around £50) following the capital payment from the proceeds of the sale and informed her of the remaining balance (approximately £12,350). On 29 December 2020, Santander wrote to Ms H again and confirmed that the sale had been completed and enclosed a statement of account showing the shortfall amount and informing her that the debt collection agent would be in contact to set up an affordable payment arrangement. Following this, the letter from Santander to Ms H dated 6 January 2021 confirms that the mortgage account was now fully redeemed. I have also seen a screenshot provided by Ms H relating to a call on 12 January where the operator from Santander confirmed that the mortgage had a zero balance and that a letter had been sent on 6 January to confirm the mortgage was redeemed.

Ms H has said that the mortgage statement showed a zero balance and that she received a letter saying that she had no debt at all to pay. She has confirmed that this relates to the letter of 6 January 2021. I've thought about this but I don't think the fact that Santander said the mortgage account was redeemed is the same as saying there was nothing further to pay. At this point the mortgage had been redeemed as the property subject to the mortgage had been sold – so there could no longer be a mortgage without a property. However, there was still an unsecured loan for the amount of the shortfall which needed to be repaid. And I think this process was made clear in the conditions for the shortfall sale.

So whilst I understand that the different documentation sent after the sale could have been confusing, I don't think the documents sent by Santander indicate that the balance had been written off or support the fact that it had previously agreed to write the debt off.

Santander has accepted that Ms H was given incorrect information in January 2021 as she was told over the phone that there was no outstanding balance. Santander explained that this was because its customer services team was unaware that the sale had been part of a shortfall sale application and that the balance had already been passed to the debt collection agent. As set out above, the mortgage itself had been redeemed by this stage so there was technically no outstanding balance remaining on the mortgage. But the customer services team was not aware of the unsecured loan, which I accept would have been confusing for Ms H. I can see that Santander has looked into changing its internal processes so this is not repeated. And I think that £100 compensation for the confusion caused by this is fair and

reasonable in the circumstances. Again, I don't think this conversation indicates that Santander had previously agreed to write the debt off or that, as a result of this, Santander should now write off the remaining £12,700 owed by Ms H.

Although I haven't seen enough information to suggest that Santander agreed to take the proceeds of the sale in full and final settlement of the mortgage debt, I do accept that Ms H may have understood this to be the case. So, for the sake of completeness, I have considered what I think she would have done had she understood that she would still have had to pay the remaining balance. And I don't think she would have done anything differently for the reasons below.

In her letter of 2 June 2020, Ms H said that she had accepted the offer for £105,000. This was before she made the shortfall sale application and at the same time as she asked Santander to consider taking the amount in full and final settlement. So at this time Ms H would not have known whether or not Santander would agree to this proposal but said that she had already accepted the offer. In the letter, Ms H also said that the only other offer she had received to date was for £90,000 and that failure to go through with the sale would mean a higher residual debt for her (along with costs for Santander).

Santander's telephone notes refer to calls from Ms H's partner in August 2020 where it states that he advised they were 'desperate for a shortfall sale' as it was their only solution currently as they were not making any money from the property itself due to failure with rental. I have also seen that, in the course of Ms H's complaint in September 2020 about the delay in sending the shortfall sale pack despite a number of requests, her partner expressed that they couldn't afford to lose the buyer as the property had been on the market for a number of years and the offer was considerably higher than those received in the past, which had fallen through.

Ms H also provided handwritten details with the Shortfall Sale application form in September 2020 setting out that the property had been on the market from November 2010 until April 2012 but had no viewings or offers. Ms H stated that it had gone back on the market in December 2018 and the asking price was reduced to £110,000 in August 2019. She said that the first offer of £90,000 was rejected but the offer of £105,000 had been accepted in March 2020. Ms H also provided details of the fact that the property had been advertised through various different agencies over that time. So again, before the shortfall sale was agreed Ms H has also stated that the offer of £105,000 had already been accepted.

In light of the above, I think that Ms H would have accepted the offer of £105,000 regardless of whether Santander agreed to write off the remainder of the mortgage debt. As she was struggling to meet the monthly repayments and was in arrears, the shortfall sale meant that her monthly repayment decreased from over £450 a month to around £50 a month (as per Santander's letter dated 18 December 2020) before the mortgage was completed. Following this, the debt was transferred to the debt recovery agent as an unsecured debt which meant that it was no longer secured on property, no longer attracting interest and that she was able to set up an affordable payment arrangement.

In conclusion, whilst I accept that Ms H may have misunderstood the process, I'm not satisfied that Santander agreed to accept the shortfall sale in full and final settlement. And had Ms H been aware of this, I still think she would have accepted the offer in the circumstances of this case. I know my decision will come as a disappointment to Ms H and her partner, but I can't say that Santander has acted unreasonably or unfairly in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 27 September 2022.

Rachel Ellis
Ombudsman