

## The complaint

Mr and Mrs P's complaint is about their mortgage account with Santander UK Plc. They say that Santander unfairly refused to allow a switch to a new interest rate product until their account had been clear of arrears for 6-12 months. Mr and Mrs P are also unhappy at the number of administrative errors Santander made when they were trying to sort out the problem. As a result, Mr and Mrs P say they had to pay Santander's Standard Variable Rate (SVR) for several months.

To settle the complaint Mr and Mrs P want Santander to backdate their mortgage payments from March 2022 onwards on the interest rate product they wanted to apply for.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 7 January 2023. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs P being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr and Mrs P have a mortgage with Santander taken out in 2015. Approximately £90,000 of the mortgage is capital repayment and about £650,000 is interest-only. In April 2020 Mr and Mrs P took out a new interest rate product, when Santander also agreed to capitalise arrears of about £3,800 on the account. Total monthly repayments were £1,217.63 for the fixed rate period. The interest rate product expired on 3 April 2022.

In January 2022 Mr and Mrs P failed to make their mortgage repayment. Santander sent letters and a text about this but Mr P (who has dealt with the complaint throughout) said he didn't receive these because he was out of the country.

The consequence of this was that in March 2022, when Mr and Mrs P tried to apply online for a new rate when their existing product was coming to an end, they were unable to do so. I will not set out all the administrative issues that arose, as these are covered in the correspondence. But the main impact was that in April 2022 the mortgage reverted to SVR.

After Mr and Mrs P complained, Santander explained that there had been some errors in communication. However, the bank clarified that it hadn't been possible to book a new rate online because the account was in arrears, and so the facility to do this online had been removed.

Santander said that the online message instructed Mr and Mrs P to call, but instead they emailed, but to the bank's consumer motor finance division and customer service, neither of which departments were able to assist. Mr P made requests for callbacks, but Santander didn't call Mr P.

When Mr P was able to speak to Santander in July 2022, he said he was told that the bank's policy was that it would not agree a new rate until the account had been free of arrears for 6-12 months. A complaint was made, with Mr P arguing that this was disproportionate and unfair. Mr P also complained about the poor customer service and the difficulties he'd had contacting Santander.

In its final response, Santander acknowledged there'd been some customer service errors, and offered £50 for not calling back or signposting Mr P to the correct area. However, the bank wasn't prepared to put the account onto a lower rate, whilst there were arrears.

Mr and Mrs P brought their complaint to our service. An investigator looked at what had happened. He didn't think the compensation for the customer service errors was sufficient and asked Santander to pay an additional £150, bringing the total compensation to £200.

With regard to the product switch, the investigator noted that a payment arrangement for the arrears had been put in place, and that once the arrears were cleared a new rate could be applied for. He wasn't persuaded that Santander had said that the account needed to be up-to-date for 6-12 months; this hadn't been mentioned in the final response, and contradicted what the bank had said to Mr and Mrs P in August 2022, when they were told they could have a new product once the arrears had been paid off.

The investigator wasn't persuaded that Santander was required to backdate any new product to April 2022. He explained that, where an account is in arrears, tying customers to a new product that has an Early Repayment Charge (ERC) can put them in a worse position if their financial difficulties mean that they are unable to maintain the mortgage.

Mr and Mrs P didn't agree with the investigator's findings and asked for an ombudsman to review the complaint. Mr P has made some further points, which I summarise below:

- the 6-12 month delay before a new product could be put in place was fundamental, as it turned a relatively easily surmountable arrears situation into something that was simply not feasible;
- delays in receiving the correct advice had a material impact on the ability to settle the arrears, which were growing month by month because of the increase in the mortgage payments once it reverted to SVR;
- the investigator's ruling is extremely unbalanced in favour of a huge multinational worth billions which is only being fined £200 whereas he is being penalised with a mortgage rate that has increased by over £2,500 per month to more than £4,000 per month, which will inevitably result in the repossession of his home and bankruptcy;
- he would like us to advise Santander to review this matter so the bank gets paid exactly what it would have received if it hadn't made the mistakes it did.

### **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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for

consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted Mr P's directions in relation to evidence and his request that we advise Santander to settle the matter, that's not something that I'm able to do, because I don't represent Mr and Mrs P in this complaint.

I will also clarify that we are not a regulator and so have no power to fine or punish Santander. We can award redress for actual financial losses and compensation for distress and inconvenience. It is into this latter category that the compensation recommended by the investigator falls; it is not a fine or a penalty.

Turning to the issues in the complaint, because Santander has accepted it made errors, I don't need to analyse the events in detail to decide who is at fault or why. Indeed, I note that Mr and Mrs P also acknowledge they made errors.

I've seen that the January 2022 direct debit was returned unpaid – once on 5 January 2022 and again on 17 January 2022. I don't know if this was due to insufficient funds, or as a result of an error on the part of the bank operating the current account from which the direct debit was taken, but nothing turns on this.

I'm satisfied Santander took reasonable steps to contact Mr and Mrs P by letter and text. Mr P was out of the country and so didn't see the letters or text. I am not told whether Mrs P was also abroad, but as this is a joint mortgage, correspondence would have been addressed to both mortgagors at the secured address.

I find no error in Santander blocking access to new rates via its online portal because of the arrears. I agree with the investigator that, where customers are in financial difficulty, allowing them to take out a new product with an ERC can make their situation worse, not better, if their financial situation is such that they would not be able to keep up with the mortgage in any event. So I find Santander did nothing wrong here.

Mr P says that he was told a new product couldn't be applied for until the account was arrears free for 6-12 months. I think it's possible he was told this, as it is a policy many lenders have in place. There's no evidence in Santander's records Mr P was told this, but in the context of this complaint, it doesn't affect the outcome I've reached.

I say this because I'm satisfied that, due to the arrears, Santander wasn't under any obligation to put in place a new interest rate product. It's important when customers fall into arrears that the bank is able to discuss the reasons why financial difficulties have arisen, and so that's why, when Mr and Mrs P tried to book a new rate, a message popped up asking them to call the bank.

Rather than calling Santander – as the message on the portal instructed – Mr and Mrs P chose to email Santander instead, and contacted the wrong section of the bank. I can't hold the bank responsible for this. But Santander should have called back when it said it would, and things were delayed as a result.

Although Mr P says that this was a situation which could have been resolved quickly, the arrears weren't, in fact, paid off quickly. I'm satisfied that by May 2022 Mr P had confirmed to Santander that he was aware that the mortgage might be in arrears, as he'd received an email to this effect.

However, further arrears accrued as the monthly repayment in June 2022 – which had by now increased to £2,916.37 (not £4,000 as Mr P claims), was also returned unpaid. This

brought the arrears to just over £4,150. So the evidence isn't persuasive that Mr and Mrs P would have been in a position to clear the January 2022 arrears on the account once Mr P first confirmed he was aware of them in mid-May 2022, given the further financial difficulties that arose the following month.

Therefore, in relation to the issue relating to changing the mortgage product, I'm not persuaded Santander has done anything wrong. The account was in arrears at the time the product expired (albeit by only a month, but as I said above, the evidence isn't persuasive that Mr and Mrs P were in a position to clear the arrears). In the circumstances, I don't think Santander has done anything wrong in relation to not offering a product switch.

Once the arrears have been paid off, Mr and Mrs P will be free to apply for a new product switch. But there is no basis on which I can fairly or reasonably find that Santander should offer one whilst the arrears remain on the account.

I'm satisfied that Santander's customer service should have been better, and I'm glad the bank has accepted this. Mr P was given the run-around trying to speak to someone at Santander, and the bank should have called him back when requested. Santander has agreed to pay the investigator's recommended compensation of £150, in addition to the £50 already paid by Santander. I think this is fair, reasonable and proportionate in all the circumstances and I'm not ordering Santander to do anything further.

I know this isn't the outcome Mr and Mrs P were hoping for. I can see from what Mr P has said that he and Mrs P are facing financial hardship and potential bankruptcy. It might help them to take some advice from one of the free advice agencies such as StepChange, Citizens Advice or Shelter. We can provide contact information for those agencies, if Mr and Mrs P would like us to.

### **Putting things right**

In addition to the £50 already paid, Santander UK Plc must pay Mr and Mrs P £150 compensation (making a total of £200) for distress and inconvenience. I make no other order or award.

### **My final decision**

My decision is that I partly uphold this complaint. In full and final settlement I direct Santander UK Plc to pay the compensation directed above.

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 Mrs P and Mr P to accept or reject my decision before 30 May 2023.

Jan O'Leary  
**Ombudsman**