

The complaint

This complaint's about a mortgage Mrs and Mr C hold with Santander UK Plc. They say that the annual mortgage statements issued since 2008 have not been compliant with the requirements of the Consumer Credit Act 1974 (CCA). As a result, they believe Santander is prohibited from charging interest during the period of non-compliance. Both borrowers have joined the complaint, but all our dealings have been with Mr C.

What happened

By way of a provisional decision dated 6 March 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mrs and Mr C and Santander. So I don't need to repeat all of the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr C being identified. Instead I'll give a brief summary, and then focus on giving the reasons for my decision. 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.

Mrs and Mrs C made a subject access request (SAR) of Santander under the General Data Protection Regulation. They've raised a separate complaint about how that was handled by Santander and I understand a fellow ombudsman is dealing with that. Following the SAR, Mrs and Mr C brought this complaint.

In a final response of 26 July 2022, Santander denied the existence of any shortcoming in the form and content of its mortgage statements. Our investigator agreed with Santander, and so Mrs and Mr C have asked for the case to be reviewed by an ombudsman, as is their right.

What I've provisionally decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs and Mr C's mortgage began in 1989, before residential mortgages were subject to any form of regulation. Mortgage regulation was introduced in 2004, but not via the CCA. Rather, when the FCA introduced mortgage regulation, it did so via the Mortgage and Home Finance: Conduct of Business Sourcebook (MCOB).

Mrs and Mr C believe their mortgage statements are missing key information, but by invoking the requirements of the CCA they're applying the wrong test. The mortgage statements they've received from Santander since 2008 meet the requirements set out in MCOB, in the form prescribed by the regulator, and so the issue of non-compliance with the CCA doesn't arise.

I can't be sure, but from other comments they've made, it seems Mrs and Mr C may think their mortgage account has been wrongly calculated. If they do think that, then that's a separate complaint from the one I'm deciding here, which is solely about whether the form and content of the statements meets regulatory requirements (and I've concluded they do).

If Mrs and Mr C do think there are accounting mistakes to their detriment (and I stress it's not entirely clear if they do or not) then they'd need to raise a new complaint with Santander with evidence of the mistakes they think have occurred. Typically, such evidence might be an independent audit by a suitably-qualified third party instructed and paid for by Mrs and Mr C, which Santander could then consider and respond to. If Mrs and Mr C weren't happy with any such response, then they could refer that complaint to us."

I gave the parties two weeks two weeks to reply to the provisional decision; both have done so already.

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've considered afresh everything that both parties have said and provided, including Mr C's most recent emails to the investigator. Having so, I won't be departing from my provisional conclusions. However, I will address some of Mr C's further comments.

First of all, he's right to say that the FCA didn't exist in 2004, when mortgage regulation was introduced via MCOB. This was carried out by the FCA's predecessor, the Financial Services Authority. My apologies for the error, however, it changes nothing.

Credit agreements that are regulated under the CCA have a clear narrative on the first page saying just that. Mrs and Mr C's original mortgage offer from 1988 contains no such narrative, simply because it wasn't ever a regulated agreement under the CCA. The fact that the starting balance of the mortgage in 1989 was below £15,000 is not a factor in whether it was regulated by the CCA.

First charge mortgages are not regarded as consumer credit for the purposes of the CCA, and were never included in its scope. So the question of exemption doesn't arise; an agreement can't be exempt from something it was never covered by in the first place.

For the avoidance of doubt, regulation of first charge mortgages, like the mortgage Mrs and Mr C have, began in 2004 under MCOB, and applied retrospectively to mortgages already in existence. Nothing I've seen in the evidence from either party gives me any reason to find that Mrs and Mr C's mortgage statements aren't MCOB-compliant.

Mr C says I am “*tasked with looking at what has gone wrong with my statements since 2008*”. I’ve already explained what Mrs and Mr C can do if they think something has gone wrong *arithmetically*. My remit here is decide if anything *regulatory* has gone wrong with the statements, and for all the reasons I’ve set out, the answer is nothing. For that reason, it would not be fair or reasonable to say Santander cannot charge interest in accordance with the terms of the mortgage contract.

I appreciate that Mr C might not agree; if he and Mrs C decide not to accept my final decision, they will be free to pursue their claim against Santander in court, should they wish to do so. I would suggest they take advice from a solicitor before pursuing any legal action.

My final decision

I don’t uphold this complaint. My final decision concludes this service’s consideration of this complaint, which means I’ll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs and Mr C to accept or reject my decision before 10 April 2023.

Jeff Parrington
Ombudsman