

## **The complaint**

Mr J complains that Santander UK Plc took premature possession of his property once his mortgage term ended. Mr J says that the legal proceedings caused him unnecessary avoidable costs and he thinks Santander should refund him those costs in the circumstances and pay him compensation.

## **What happened**

Mr J held a mortgage with Santander. The mortgage was repayable on part interest and part repayment terms.

Mr J took out his mortgage in three parts:

- £10,003.26 on capital repayment ending 21 December 2020
- £25,526.82 on interest only ending 21 February 2021
- £35,349.00 on capital repayment ending June 2034

In 2020 Mr J's income was affected as a result of the coronavirus pandemic. Santander agreed to a six-month payment deferral on the mortgage but following that, Mr J's situation didn't improve. This, coupled with a family bereavement, had a lasting impact on Mr J's mental health. He didn't resume work and no payments were made to the mortgage thereafter.

Santander tried to make contact with Mr J to discuss his account. It received no reply so it started sending letters informing him that field agents would be sent to the property to conduct an interview with him.

Mr J says that he wrote to Santander and its appointed legal representative and debt recovery team during 2021, but he received no reply until Santander's legal representative wrote to him in April 2022 to advise him of upcoming court action.

Mr J put forward his proposals to sell the property, but Santander chose to proceed with court action. The matter went to court in June 2022 and the judge adjourned the possession process to allow Mr J time to sell the property. Mr J sold the property and redeemed the mortgage in November 2022.

Mr J later complained to Santander. He feels that Santander shouldn't have started legal proceedings. It should have acknowledged that he was in the process of selling the property and allowed him time to do so. By proceeding with court action, he has incurred avoidable legal costs applied to the mortgage. Mr J says that Santander's perceived wrongdoing is supported by the outcome of the court case in which the Judge granted an adjournment to allow Mr J time to sell the property.

Mr J feels that Santander should refund him the legal costs incurred and pay him compensation for the stress and inconvenience caused by having to prepare and attend court – taking into account the additional pressure he endured on his mental wellbeing.

Santander answered the complaint and upheld it in part. Overall Santander thought that it had taken reasonable action to obtain payment of the mortgage arrears from Mr J. It said that it received no contact from Mr J from mid-2020 onwards to address the arrears on his account and those arrears continued to accumulate. He was warned of legal proceedings on multiple occasions, and it did not agree that legal action was taken prematurely. Santander didn't agree that the legal costs had been wrongly charged so it did not agree to refund these. It did however offer to pay Mr J £119 to cover a £69 field agent cancellation fee and £50 for compensation.

Unhappy with Santander's response, Mr J brought his complaint to the Financial Ombudsman Service. An investigator looked into things and didn't recommend that the complaint should be upheld. He said that he didn't think Santander acted unfairly in the circumstances or that the legal costs incurred were wrongly charged.

Mr J didn't agree. In summary, he still thought that if he'd received response to his communication to Santander and its representatives sooner, he would have been better informed to make the choice to put his property on the market sooner to avoid the necessity for possession proceedings.

The investigator considered Mr J's points but explained why his opinion remained the same. Mr J remained unhappy and asked for his case to be decided by an ombudsman.

### **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 done so, I don't think this complaint should be upheld. I realise this will be disappointing for Mr J. But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

The starting point here is that when Mr J borrowed money from Santander, he agreed to maintain his contractual monthly payments and repay the outstanding capital at the end of the term. So, it's not unreasonable for Santander to expect the loan to be repaid as agreed.

Unfortunately, in 2020 Mr J faced some difficulties in his work and personal life. As a result of these circumstances Mr J experienced financial difficulty and was unable to make his mortgage payments. I'm very sorry to hear about Mr J's situation and everything he's been through. I do truly empathise with his circumstances.

In such circumstances, where a consumer is experiencing financial difficulty, the lender is expected to treat the consumer fairly and provide suitable support where possible. The lender should take steps to find out about the consumer's circumstances – this helps the lender agree a suitable and affordable plan to help get the mortgage back on track.

In order for the business to provide this level of support, the consumer needs to engage openly and honestly with the lender. More specifically, the consumer needs to engage meaningfully with the lender about their circumstances, what's possible for them, and supply any reasonable evidence to confirm their finances.

Santander tried to contact Mr J multiple times over the years from 2020 onwards, by phone and in writing, to inform him of the arrears on his account, asking Mr J to make contact to discuss his circumstances and agree a suitable arrangement to help get the mortgage back on track. The letters sent confirmed legal action may be taken and fees charged if Mr J did not get in contact with Santander regarding the arrears balance.

In January 2021 due to lack of response from Mr J, Santander wrote to inform him that field agents had been instructed to visit the property and conduct a face-to-face interview with Mr J to understand his circumstances. Santander chose to cancel a field agent visit and refer Mr J's account to the customer care assist team to assess any possible vulnerability. However, following the assessment, the normal collections process resumed. Santander has refunded the field agent cancellation fee.

By this time, the term on part of Mr J's mortgage had ended. He owed Santander more than £10,000, made up of the outstanding capital repayment and accrued arrears. The following month a further £25,000 plus became due when the second part of Mr J's mortgage term ended. Several reminder letters were sent informing Mr J of the expiry of his mortgage term(s) and what he needed to do to repay the outstanding capital.

Mr J accepts he had no means to make his mortgage payments from 2020 onwards after losing his job. He also says that it was always his intention to sell this property to repay the mortgage at the end of the term. In these circumstances I don't think it's unreasonable to suggest that Mr J ought to have taken steps to market and sell his property sooner – to repay Santander before it took legal action to repossess the property. Possession should be a lender's last resort, but in these circumstances where there was lack of contact from Mr J, I don't think it was unreasonable for Santander to take the steps that it did to recover its debt. It's also important to note that this was not Mr J's main residence so the risk of making him homeless was not a concern here.

I accept Mr J says that he sent some emails and letters to Santander and its representatives, but in my opinion these were sporadic and did not fulfil the requirement of having a meaningful conversation with Santander about his circumstances. Each letter that was sent to Mr J from Santander and its representatives asked Mr J to call to discuss matters. The obligations Santander needed to fulfil including the types of questions it needed to ask and the financial assessment it needed to carry out – would be hard to do in writing.

I appreciate Mr J explained in his letters and emails why, due to his mental wellbeing, he preferred written communication. But I'm not persuaded he had no other means to make proactive contact with Santander sooner and after getting no reply to his letters and emails. Mr J has managed some telephone calls with Santander and its legal team post litigation to discuss the progress of the sale of his property and to query fees. So, I don't think he was entirely restricted from making telephone contact – or at the very least call to explain his situation and agree a way to communicate moving forward.

Mr J was sent a letter from Santander's legal representatives on 10 July 2021 warning him of possible legal proceedings if he didn't make contact with Santander to repay the balance in full within seven days or at least put forward a suitable repayment proposal. Notice of legal proceedings was subsequently given in April 2022. By this time there was no indication of a suitable proposal in place to repay the capital and so Santander would not be acting responsibly by allowing the situation to continue any further – during which time arrears, interest and costs would mount.

It wasn't until May 2022 that Mr J took steps to sell his property, more than two years after the balance on his mortgage fell due. Mr J says it was always his intention to sell the property to repay the capital due. There was nothing preventing him from taking proactive steps to market the property sooner to avoid the need for legal action. He knew from the outset of the mortgage that part of the balance fell due in late 2020 and again in early 2021 and Santander sent multiple reminders over the life of the mortgage too. When taking everything into account I don't think Santander acted unreasonably by persisting with the

court action. Not only was a large part of the mortgage long overdue but Mr J had stopped making payments or engaging with Santander.

In response to the notice of legal proceedings, Mr J took steps to secure a quick sale. He first tried selling the property through a cash purchase company but that didn't go ahead because the company were offering less than the amount needed to repay the mortgage. Mr J then went down the auction route. Mr J started engaging regularly with Santander's legal representative by phone and email. By this time, court action had already been initiated and, with the lack of sufficient evidence to demonstrate an imminent sale, I don't think Santander could not reasonably be expected to withdraw the legal proceedings.

I acknowledge that Mr J actively tried to secure a quick sale from May 2022 onwards and I appreciate how much of a stressful time this must've been for him. But I can't reasonably hold Santander responsible for him leaving the matter unaddressed for so long and for leaving it so late to market the property.

By the time of the court date in June 2022, the auction company were still preparing the particulars of sale – so no sale had been agreed yet. But it appears the judge felt that at this point Mr J was close enough to securing a quick sale of the property – so an adjournment was ordered. A further adjournment was ordered in September 2022 and the mortgage was subsequently redeemed in November 2022. So, on reflection it took a further seven months for the debt to be repaid from the time legal action started. That is not what is reasonably considered to be a timely sales process – supporting Santander's position to proceed with the legal action in the circumstances.

When considering everything, I don't think Santander has acted unfairly in the circumstances. I think it has settled this complaint fairly by offering to refund Mr J the field agent cancellation fee amounting to £69. I also think it's compensation award of £50 is fair and reasonable to reflect the confusion caused by this matter.

### **My final decision**

My final decision is that I don't uphold Mr J's complaint against Santander UK Plc. It's unclear whether Santander has already paid Mr J the offer made in its response to the complaint. If not, Mr J should get in touch directly with Santander to arrange payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 March 2024.

Arazu Eid  
**Ombudsman**