

The complaint

Ms G complains about the way Santander UK Plc treated her whilst her mortgage account was in arrears.

What happened

Ms G has a mortgage with Santander. It's a residential mortgage, but Santander has given Ms G consent to let it out and she now lives abroad. Due to problems with a tenant, and repairs needed to the property, the mortgage account fell into arrears in 2022. Santander agreed to short term arrangements to allow Ms G time to resolve the problems she was experiencing. Those arrangements ended in May 2023. No payments were made to the mortgage between September 2022 and February 2023. Ms G paid the contractual monthly payment (CMP) in March 2023, paid nothing in April, made a small payment in May and paid nothing again in June. From July 2023 Ms G resumed payments, and started consistently paying more than her CMP each month, although no formal arrangement was in place.

After sending several letters asking Ms G to contact it with no response, Santander wrote to Ms G on 12 September 2023 to tell her it was going to start legal action as a result of the arrears on the mortgage. The letter said Ms G could prevent legal action by calling it within 15 working days and agreeing an arrangement to clear the arrears.

Ms G called Santander on 6 October which is when she said she received the letter dated 12 September. During that conversation Santander told her that the letter about legal action had been sent in error and asked her to complete a budget planner so it could look at setting up an arrangement for the mortgage arrears. Ms G complained that she had been sent a letter about legal action which had caused her unnecessary stress and worry. She completed the budget planner with details of her income and expenditure.

Ms G called Santander several times in the following weeks to discuss her account and also chase up a response to her complaint. She was told that Santander had correctly started legal action, and the only way she could prevent that going ahead was to clear the arrears in full. Santander referred Ms G to its solicitors to discuss the account.

In its final response letter Santander said there had been no set arrangement or contact from Ms G since May 2023. The letter advising of legal action had been correctly sent, and Ms G had been given incorrect information on 6 October when she was told it had been sent in error. Santander said the only way the legal action could be stopped was if the arrears were cleared in full. It said it had sent letters to Ms G in June, July and August 2023 to ask her to contact it about the arrears. Santander paid Ms G £100 to apologise for the wrong information she received during the call on 6 October.

Ms G referred her complaint to our service. She was unhappy with how Santander had handled this whole situation, including the way it dealt with her complaint, and that no one would engage with her about what she needed to do, or help her with an arrangement. She said Santander was telling her to speak to its solicitors, and the solicitors were referring her back to Santander. She said she has suffered mentally and emotionally as a result of the stress Santander has caused during the relevant period.

Ms G cleared the arrears in full on 27 December 2023.

One of our Investigators looked into things and explained that she felt Santander's offer of £100 was fair and reasonable in the circumstances.

Ms G asked for her complaint to be referred to an Ombudsman. She also explained that she was still having problems with Santander, as despite the fact she'd cleared the arrears she'd been told her account was still with the litigation team. She had been unable to speak to anyone who was able to resolve her concerns and had made another complaint.

My provisional decision

I issued a provisional decision on 9 August 2024. This is what I said.

"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 intend to uphold it.

I'm sorry to hear about the difficulties Ms G has experienced in relation to her property in recent years. I appreciate the issues with the tenants, the insurance companies and the repairs have caused her a lot of stress and worry. Particularly as she's been dealing with these problems whilst living abroad where there's a significant time difference. Whilst Ms G was unable to pay her monthly mortgage payments, Santander agreed to short term arrangements, which I consider was reasonable forbearance at the time as Ms G's problems were intended to be temporary whilst she got the necessary repairs sorted. However, those arrangements stopped in May 2023 as Ms G didn't speak to Santander or update it about her circumstances that month.

Santander sent Ms G letters in June, July and August 2023 asking her to contact it to agree a plan to address the arrears on the account. There are notes that show Ms G contacted Santander in July to check her payment had been received, but the notes don't reflect any further conversations took place about Ms G's plans to clear the arrears.

Santander has said that as Ms G had not agreed to an arrangement to clear the arrears on the mortgage, despite multiple contact attempts, it started legal action. When a lender starts legal action on a mortgage account due to arrears, it should do so as a last resort. Whilst Ms G had resumed payments in July – and those payments did reduce the arrears as they were higher than the CMP – Santander was not aware of Ms G's circumstances and whether those payments were going to be sustainable for her. It had sent her multiple letters asking her to get in touch to discuss her circumstances, but she hadn't done so. As a result, I'm not persuaded it was unreasonable of Santander to write to Ms G in September 2023 and tell her the account was going to be moved to litigation if she didn't get in touch within a certain time frame.

Ms G lives abroad and so there was a delay in her receiving that letter. But when she received it, she did call Santander on 6 October to discuss her circumstances and agree a plan. She was asked to complete a budget planner so that Santander could agree an affordable arrangement with Ms G to clear the arrears, which Ms G completed. However, Santander decided to continue with the legal action rather than agree to an arrangement.

Whilst I think it was reasonable of Santander to consider legal action in September 2023, I'm not persuaded it was reasonable for it to pursue that action after Ms G had contacted it on 6 October 2023. I say that because Ms G was willing to complete an income and expenditure assessment and agree an arrangement to clear the arrears, and she had consistently paid more than her CMP in the previous three months which actually meant the arrears were reducing. The notes show that Santander didn't actually pass Ms G's account to its litigation team until 12 October 2023, which was after Ms G had called Santander in an attempt to engage and agree a solution. I don't think that was reasonable, as Ms G was engaging about ways she could get this mortgage back on track without the need for legal action, and had evidenced she could do so.

Considering all the circumstances, I'm persuaded that Santander should have agreed an arrangement with Ms G when she called in October 2023, and allowed her to reduce the arrears in a way that was affordable for her. Ms G continued to make payments, and cleared the arrears in full in December 2023. But she's also now incurred additional costs that have been added to the mortgage as a result of Santander referring the account to litigation.

Ms G has also complained about the confusing and conflicting information she was given in the phone calls she had with Santander and its solicitors during October and November 2023. I agree that Santander could have been clearer about what was happening and why, but for the reasons I've explained above, had things happened as they should have done, I'm persuaded those phone calls wouldn't have been necessary. I've considered this when deciding an appropriate redress award for this complaint.

Ms G says she's still having problems with Santander as her account is still being managed by its solicitors despite the fact she cleared the arrears. Whilst I can't consider a complaint about any new issues Ms G has experienced since making this complaint, as I've found that Santander should not have passed Ms G's mortgage account to its solicitors in the first place, it follows that, in the event Ms G's mortgage account is still being managed by Santander's solicitors, this should no longer be the case and Ms G should be able to discuss her account with Santander moving forward.

Putting things right

As I'm persuaded Ms G's mortgage account should not have been passed to Santander's litigation team in October 2023, I'm satisfied that any costs or fees Santander has added on to Ms G's mortgage in relation to that action should be removed from the account. Santander should also refund any additional interest it's charged on those fees.

I'm satisfied Santander's unfair actions have caused Ms G distress and inconvenience. I've thought about everything Ms G has said about how this situation impacted her, and I'm satisfied Santander should pay Ms G a total of £500 (including the £100 already paid) to recognise that impact. Whilst Ms G is likely to be disappointed with that amount, I can only make an award for the direct impact Santander's actions had on her. I don't dispute that Ms G was experiencing significant distress during the relevant period, but that was in part caused by her wider circumstances at the time and the problems she was having overall with the property. Considering all the circumstances, I'm satisfied £500 is a fair amount to reflect the distress and inconvenience caused by Ms G's account being moved to Santander's litigation team, it refusing to agree a payment arrangement with her, and the confusing and conflicting information Ms G was given during October and November 2023."

Responses to my provisional decision

Santander accepted the outcome reached and agreed to put things right as I'd set out above. It confirmed Ms G's mortgage account was no longer being managed by its solicitors.

Ms G provided us with more information about the problems she'd had trying to resolve things with the other parties she felt were responsible for the current position her house is in. She explained how severely this whole issue has impacted her mental and physical health and provided notes from her psychotherapist.

Ms G said she would like an increase in the compensation awarded. She said this was because Santander withdrew her overdraft facility. She also doesn't believe the redress award adequately compensates for the severe trauma she was put through after receiving the notice of repossession whilst she was fighting to keep her property.

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, including the additional comments Ms G has sent our service, I remain satisfied the outcome reached in my provisional decision is a fair and reasonable way to put things right for Ms G's complaint.

I really am sorry to hear about everything Ms G has been through, and the impact the problems she's experienced with her house have had on her daily life and her mental health. But I'm satisfied the cause of the severe trauma Ms G has experienced is largely the problems she's had with her house. As I explained in my provisional decision, I can only instruct Santander to pay an award for the distress and inconvenience caused as a direct result of its unfair actions. In Ms G's case – that was failing to agree an arrangement to pay the mortgage arrears in October after Ms G contacted it, and instead pursuing legal action. I'm satisfied £500 is a fair and reasonable amount to reflect that distress and inconvenience.

Ms G has explained the stress that the letter Santander sent her in September caused. But I explained in my provisional decision that I don't think Santander was wrong to send that letter. It hadn't heard from Ms G for several months despite sending letters asking her to contact it about the arrears. So, whilst I understand the impact that letter had on Ms G, I don't think Santander was acting unfairly at that point.

Ms G has also explained the problems she's experienced as a result of Santander removing her overdraft facility. That isn't something that's been considered as part of this complaint, and so Ms G will need to complain about that issue separately if she wishes to do so.

Putting things right

As I set out in my provisional decision, I'm satisfied Santander should do the following to put things right:

- Refund any costs or fees it's added to Ms G's mortgage account as a result of legal action taken on the account after 6 October 2023. Santander should also refund any additional interest it's charged on those fees.
- Pay Ms G £500 in total for the distress and inconvenience its actions have caused (this amount includes the £100 already paid – so a further £400 needs to be paid).

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or

reject my decision before 20 September 2024.

Kathryn Billings
Ombudsman