

The complaint

Mr W complains about his mortgage with Santander UK Plc. His concerns go back many years, but in summary he believes that his mortgage should have been paid off by now and that Santander has acted unfairly in taking legal action to recover the outstanding balance.

What happened

Mr W took out a mortgage with Abbey National, a predecessor of Santander, many years ago – the first offer was issued in late 1986 with funds being drawn down in early 1987. For ease and consistency I'll refer to Santander throughout this decision, including in relation to periods when the mortgage was with Abbey National.

Mr W's complaint spans much of the period since the 1990s. As I'll explain below, where a complaint goes back that far there are limitations on what we can consider because of the time limits set out in our rules. But before I set out what that means for Mr W's complaint, and before I make any findings on whether Santander has acted fairly or not, I think it's important first of all to set out the factual background.

The history of the mortgage

In order to understand the full history of Mr W's mortgage – which is complex and long-running – I've asked both Mr W and Santander to give me any documentation they have available. I'm grateful for the efforts of both parties to find relevant material and send it to me. Given the age of the mortgage and the number of things that have happened over the almost 40 years since it was first taken out, there are inevitably gaps. For example, Santander moved to a new computer system in 2004 and doesn't retain complete information from before that – and even since then it hasn't retained everything.

I appreciate Mr W feels that this means that parts of his complaint can't be considered, and that it's concerning that evidence for the crucial period between 2001 and 2004 in particular isn't available. I do understand his concerns about that, but I don't think there's anything unusual or sinister about it; there's no obligation to retain every document over such a long period and it's inevitable that, especially further back in time, the picture is incomplete. I'm satisfied that all parties have done their best to provide me with relevant evidence. Where there are gaps, they relate to events 20 and more years ago, and so it's unsurprising that not everything is available. Where there are gaps, or where the evidence is incomplete, I've set that out below. And where necessary I've made findings about what I think is more likely than not to have happened in the relevant periods.

What follows, therefore, is my attempt at reconstructing the history and timeline of what has happened in relation to Mr W's mortgage. It doesn't cover everything, but sets out what I think are the key events. It's largely based on the documentary evidence that is available.

Mr W borrowed £41,850, drawing down the mortgage in 1987. He later took further borrowing of £1,300 in 1988, £13,700 in 1989 and £20,000 in 1990 (I have rounded all figures).

The 1988 offer said that the borrowing of £1,300 was over a term of 24 years and was conditional on an endowment policy being lodged with Santander.

The 1989 offer said that the borrowing of £13,700 was over a term of 22 years. The offer said that Mr W would take a life cover policy with a separate firm which provided endowments.

The 1990 offer said the borrowing of £20,000 was over a term of 15 years and was conditional on Mr W taking an endowment policy with the same endowment provider.

It was a condition of the mortgage offers that Santander lent on interest only terms because of the endowment policies, and that the mortgage would revert to repayment terms if the endowments were not in place.

In the 1990s, Mr W had problems with his employment and the mortgage fell into arrears. Santander brought legal action to repossess the property because of the arrears. Mr W counter-claimed – his two main arguments were that payment protection insurance ought to have been in place and if it had been there would have been no arrears; and that because he no longer had the endowment policies the mortgage should have been converted to repayment terms. The legal proceedings seem to have gone on for some time, but were eventually settled in around 2000.

It seems the endowment policies came to an end around the time of Mr W's financial difficulties, possibly because he surrendered them or stopped paying into them because of his wider financial difficulties.

Interview notes from the 1990 application confirm Mr W had endowments in place then, so it would likely be in the early 1990s that they stopped. There are two letters from the parties' solicitors in 1999, one of which says that the endowment policies were redeemed in January 1992. The other refers to a letter from Santander in May 1993 confirming receipt of the endowment proceeds and agreeing that the mortgage would remain on interest only until the end of 1993. I haven't seen any documentation from 1993, but it seems most likely that it was around then that the endowments were surrendered. A surrender in 1992 would be consistent with the terms of the Tomlin Order which was later agreed, but that would not explain why Santander did not receive the proceeds until 1993.

A surrender in 1992 would also be consistent with the conduct of the mortgage, which shows that Mr W first fell into arrears in 1991, making no payments between September 1991 and May 1992. This may be suggestive of financial difficulty which also led him to stop paying towards, and surrender, the endowment policies around this time. That is conjecture on my part. But in any case, it's clear the endowment policies no longer existed by the time of the legal proceedings a few years later.

I have seen a letter from 1995, sent by the provider of mortgage payment protection insurance (MPPI), which says that three years' worth of interest was paid out under an MPPI policy, but that the claim was paid to Mr W's savings account rather than to the mortgage. There's no mention of an MPPI policy after that, so cover seems no longer to have been in place after the mid-1990s.

Since my provisional decision, I've now seen detailed transaction records from the time, and they show that Mr W didn't pay the proceeds of this claim to the mortgage balance as a lump sum in 1995 or thereafter. There was a lump sum applied to the mortgage balance in 1993, which might relate to an earlier MPPI claim. Equally it might not – the duplicate statements don't contain any information about the source of the payment. But since the mortgage first fell into arrears in 1991, and the 1995 claim didn't go back that far, it's possible that this lump

sum payment related to an earlier MPPI claim for which I haven't seen a claim letter. But in any case there's no reason to believe that the 1995 payment to Mr W wasn't made – but then wasn't applied to the mortgage as it ought to have been.

As I say, Mr W's arrears began in 1991, with him missing payments altogether from September 1991 to May 1992. Payments resumed thereafter, but Mr W didn't make the full monthly payment in most months during the second half of 1992 and 1993 (though the lump sum payment in May 1993 meant that overall Mr W paid more than was due that year). There were further missed payments in 1994, 1995, 1996 and 1997, and after April 1997 Mr W made no payments at all until the conclusion of the legal proceedings. The effect of this period of arrears - because of the missed payments themselves, as well as additional interest added to the higher balance – was that Mr W's balance increased from around £78,000 in 1990 to around £107,000 at the end of 1998.

Legal action was taken in 1999. Following negotiations between Santander's and Mr W's solicitors, the legal proceedings were settled and a Tomlin Order was entered into formalising the settlement. The order provided that:

- The mortgage would be converted to repayment terms, backdated to 1992 – but that Mr W would have to make up the capital payments that hadn't been made in the meantime. What this means is that if the mortgage had been on repayment terms, Mr W would have had to pay more each month (not just the interest but some capital as well); if he had done so, the balance would have been reduced and he would have paid less interest as a result; Santander would write off the interest charged on the higher balance but not the unpaid capital, which Mr W would have to pay.
- Santander would capitalise the missed payments of capital as well as the arrears resulting from financial difficulty – that is, add them to the mortgage balance so that while Mr W would still have to pay them, he could do so over the remaining term of the mortgage and would no longer be treated as being in arrears.
- Santander's legal costs would be added to the mortgage balance, subject to assessment of the costs by the court. Mr W would pay his own legal costs.

The Tomlin Order was implemented in 2000 and 2001. Following implementation, Mr W's mortgage was consolidated into two sub-accounts, referred to in the correspondence at the time as loan one and loan two. The reconstruction of Mr W's account involved the following steps:

- Consolidating the borrowing into loan one and loan two – loan one being the original mortgage taken in 1987 and loan two the additional borrowing between 1988 and 1990.
- Converting both loans to repayment terms, backdated to 1992.
- The capital payments Mr W would have paid between 1992 and 2000 were removed from the loan balances, together with the extra interest that wouldn't have been charged if Mr W had made those capital payments. Santander wrote off the interest, just under £7,000, and put the capital payments in a separate non-interest-bearing account. The purpose of this was to give Mr W six months to make up the capital payments without being charged interest; any amount remaining at the end of that time would be moved back to the main mortgage balance and become interest bearing again.
- Because Mr W didn't pay the capital amounts, they were moved back to the main

mortgage balance in June 2000. This meant that at this time the balances on the two loans (following capitalisation of the arrears and the adding on of the missed capital payments) were:

- Loan one - £60,070.16
- Loan two - £44,109.33
- The legal fees were assessed and £26,577.23 was added to the balance in around September 2001. As a result, the balances of the two elements were now
 - Loan one - £84,001.19
 - Loan two - £41,946.84.

In the meantime, Mr W had been in touch with Santander to say that the new monthly payments, on repayment terms, were unaffordable for him, both in 2000 and in 2001. In July 2000 Santander offered to extend the term of the mortgage to 15 years to reduce the monthly payments. In October 2001, it applied a new interest rate and extended the term again, this time to 20 years, to reduce the monthly payments further.

As of October 2001, then, Mr W's mortgage balance was in total around £125,000. His mortgage was on repayment terms, with a 20 year term expiring in 2021.

After this, there's a gap in the documentation that Santander has been able to provide. It hasn't been able to give me anything from between October 2001 and August 2004.

In June 2017 Santander wrote to Mr W explaining how his mortgage account was made up. Presumably it had access to some limited records at that time, but they no longer survive. In the 2017 letter, Santander said that Mr W took further borrowing – of £60,000 in April 2002 and £6,000 in July 2003. The letter says that the April 2002 borrowing was over a 15 year term (ending in April 2017) and the July 2003 borrowing was over an 18 year term (ending July 2021). But as I say the contemporaneous records of this borrowing – such as applications and underwriting notes – do not survive.

We therefore do not know why Mr W applied for this lending (he does not recall why he might have done so), nor why Santander agreed to lend or why it set the term of the April 2002 borrowing over four years less than the rest of the mortgage. As Mr W had asked Santander this question before it wrote to him, it may be that the reason it didn't address this question in 2017 was because by that time it no longer had information beyond the fact of what was lent.

However, even though Santander hasn't been able to provide anything from this period now, we do have the actual mortgage offers from that time as Mr W has found them in his own records. They confirm what Santander said in the 2017 letter.

Mr W has questioned whether these tranches of lending should have been on repayment terms, because of similar wording contained in both these offers. For example, the April 2002 covering letter says

We are prepared to advance £60,000 by way of mortgage on this property, subject to the terms set out...

Based on an initial variable interest rate ("variable rate") of 6.000% and a repayment term of 15 years 0 months, the gross monthly payment will be £514.81. Please note

that the gross mortgage payment quoted is based on a repayment mortgage over the term of the loan stated without any other concession, to reflect a maximum mortgage instalment.

Taking into account any concessions detailed in the Offer Conditions, the monthly payment you will actually pay will be £245.00.

The offer itself says

We will grant a concession whereby payments of interest only may be made each month. This arrangement may be withdrawn by us with immediate effect at any time you are in breach of any of your obligations to us under the mortgage. We will then be entitled to require you to include payments of capital in the monthly payments in accordance with the Mortgage Conditions.

I can understand why, having re-discovered these documents recently 20 years on, Mr W has now found this confusing. However, I think both offers show that Santander lent the 2002 and 2003 tranches of borrowing on interest only terms. The offer said that it could convert the mortgage to repayment terms at any time if Mr W was in breach of the conditions, but unless that happened it would be an interest only mortgage. The covering letter said what the monthly payment would be on a repayment basis, and said what the monthly payment actually was on the interest only basis that the mortgage was offered on. These were therefore offers of interest only lending.

The next significant event is a change in interest rate. In this case, the application, offer and acceptance do survive.

In August 2004, Santander sent Mr W a “conversion offer” – that is, an offer of a new interest rate on his existing mortgage. At that time the total mortgage balance was £190,943, and the mortgage was made up of four parts:

- £83,631.76 over 17 years and 2 months on interest only terms
- £41,223.14 over 17 years and 2 months on interest only terms
- £60,080.35 over 12 years and 7 months on interest only terms
- £6,008.21 over 16 years and 11 months on interest only terms.

Santander offered a new interest rate of the standard variable rate (SVR), less a discount of 1.3% until December 2007. Mr W signed to accept the offer on 16 August 2004. The four parts of the mortgage in 2004 are consistent with the other documentation – the balances on the first two sub-accounts are roughly the same as the balances of “loan one” and “loan two” after the addition of the legal fees in September 2001, and the balances on the third and fourth sub-accounts are consistent with the further borrowing from 2002 and 2003, as set out in the offers from the time and referred to in the June 2017 letter.

However, “loan one” and “loan two” were on repayment terms following the Tomlin Order, but by August 2004 sub-accounts one and two were on interest only terms. There’s no evidence surviving as to why and when these parts of the mortgage were converted back from repayment terms (as per the Tomlin Order) to interest only terms. Nor is there evidence of why, having sought to ensure his mortgage was on repayment terms in the court case, Mr W accepted further borrowing on interest only terms in 2002 and 2003.

Given that the balances had hardly reduced from the figures quoted in September 2001 by

August 2004, it seems likely the conversion back to interest only happened shortly after that, perhaps around the time of the term extension in October 2001. As the term extension happened to reduce the payments because Mr W was finding the mortgage unaffordable, it's possible that it was also converted back to interest only terms for the same reasons around the same time, perhaps because it was unaffordable even with the term extension – but that is conjecture.

But however it happened, and for whatever reason, the fact is that the mortgage was back on interest only terms by August 2004, and it has remained on interest only terms ever since. Mr W signed the conversion offer to confirm his acceptance and understanding of this in August 2004.

The next significant event was in July 2005, when Santander offered a new mortgage of £239,164 – this replaced the existing mortgage of £191,164 together with further borrowing of £48,000 (which the application form said was for debt consolidation). This mortgage consisted of four sub-accounts:

- £48,000 over 16 years and 5 months on interest only terms, charged at the SVR, with a discount of 1% for the first 10 years (this was the new borrowing)
- £125,008 over 16 years and 5 months on interest only terms, charged at the SVR, with a discount of 1.4% until October 2007 (this was the first two parts of the 2004 offer combined)
- £60,141 over 11 years and 11 months on interest only terms, charged at the SVR, with a discount of 1.4% until October 2007 (this was the third part of the 2004 offer)
- £6,015 over 16 years and 2 months on interest only terms, charged at the SVR, with a discount of 1.4% until October 2007 (this was the fourth part of the 2004 offer).

Again, Mr W signed to accept this offer.

In February 2008 Mr W applied for further borrowing of £60,000, again on interest only terms – the application form again said it was for debt consolidation. Santander offered the further borrowing over a term of 13 years and 10 months on a fixed rate of 5.69% until April 2010 followed by the SVR.

In March 2008, Mr W took new interest rates on the other parts of his mortgage. That means he now had the following sub-accounts:

- £126,007 over 13 years and 9 months on interest only terms with a fixed rate of 5.69% until April 2010 followed by the SVR
- £60,141 over 9 years and 3 months on interest only terms with a fixed rate of 5.69% until April 2010 followed by the SVR
- £6,105 over 13 years 6 months on interest only terms with a fixed rate of 5.69% until April 2010 followed by the SVR
- £48,000 over 13 years 9 months on interest only terms with a fixed rate of 5.69% until April 2010 followed by the SVR
- £60,000 over 13 years and 8 months on interest only terms, with a fixed rate of 5.69% until 3 April 2010 followed by the SVR.

Again, Mr W signed to accept this offer.

By this time, then, the total mortgage balance had reached just over £300,000. There was no further borrowing after 2008.

In 2010, the Department for Work and Pensions (DWP) wrote to Santander to inform it that the DWP would make payments to Mr W's mortgage from November 2010 as part of his entitlement to pension credit.

In 2010 Mr W fell ill and was unable to work. This caused financial difficulty and in March 2011 Mr W began to fall into arrears on the mortgage. It has been in arrears ever since – peaking at arrears of around £14,000, equivalent to almost 12 monthly payments, in August 2014. Since then the arrears have gradually reduced as Mr W has made his monthly payments plus a contribution to the arrears – by the start of 2023 the arrears were below £5,000 and below the equivalent of three months' payments, though they have started to increase again since then.

In 2012 Mr W entered into an individual voluntary arrangement (IVA – a form of insolvency). The arrangement only included his unsecured debts, but the supervisor of his arrangement wrote to Santander at the time to notify it of the arrangement. Mr W included around £66,500 of unsecured debt in the arrangement.

In his IVA statement Mr W said that his financial difficulty stemmed from redundancy in 2008, followed by illness which impacted his ability to earn freelance income. Once he had used up his redundancy payment he financed his outgoings using credit – his situation was compounded by flood damage to his property and other issues. By the time Mr W was able to resume working his debts had got out of control. Mr W proposed making payments of £110 per month over five years.

The mortgage also fell into arrears, and in 2011 and again in 2014 Santander took legal action. The 2014 witness statement filed on behalf of Santander wrongly said Mr W had borrowed £191,400 in 1987 (as I've set out above, that wasn't the case) – though the balance quoted at the time of the hearing appears to have been correct. Mr W says he was told by Santander not to attend court in May 2014 because the hearing was not going ahead – but when he contacted the court he was told it was still listed, and when Mr W went to court Santander's representatives were there. The case was withdrawn by Santander.

Around this time, Mr W began complaining about his mortgage. I'll set out below more information about his various complaints.

In 2017, the interest only term of the £60,000 borrowing taken in 2002 came to an end. Santander asked Mr W about his proposals for repayment. No agreement could be reached.

In 2019 Santander said it would no longer agree arrangements to repay the remaining arrears and in 2020 it referred Mr W's mortgage to its solicitors to begin legal action. The remaining sub-accounts expired in 2021. Legal action began in 2022 but was adjourned for Mr W's complaint to be dealt with.

While the legal action did not go ahead, Santander has added the costs it incurred to Mr W's mortgage balance. These include

Date added to balance	Amount
19/10/2021	£198

27/05/2022	£265.20
24/08/2022	£751.20
26/10/2022	£1225
24/01/2023	£590.40
11/05/2023	£1528.68
09/08/2023	£293.76
24/11/2023	£1279.08
16/01/2024	£899.24
09/04/2024	£91.80

As a result the monthly payments to Mr W's mortgage have increased – and increased further as wider interest rates have gone up. The arrears balance has begun to gradually rise again as a result – up to the end of 2023 Mr W hadn't missed any payments in full, but hadn't always paid the full amount due each month.

Mr W's complaints

When he first brought his complaint in 2017, Mr W completed a complaint form, in which he said:

"I believe that there has been a pattern of mis-selling and cover-up that has resulted in my debt continuously increasing, with little hope of it ever being paid off. This has resulted in years of financial pressure and stress with the permanent threat of losing my home hanging over me. Had Abbey National and subsequently Santander done what they promised to do, none of this would have happened.

I would like them to rectify everything that was done to put me in the situation that I find myself today and compensate me for everything they have put me through."

Mr W has since expanded on and clarified his complaint. He says that he has no means of repaying the mortgage other than selling his property. If he did sell, he would have enough equity to clear the mortgage balance, but he wouldn't have enough to buy another property, even if he downsized. He's concerned that he would be left with nowhere to live, or at least would be living in the insecurity of the private rented sector and having to pay rent out of his retirement income.

Mr W believes that his mortgage ought to have been paid off by now. He says that it was agreed that the mortgage would be converted to repayment as part of the Tomlin Order in 2000. He says Santander failed to do this – if it had done so, he would have paid the mortgage off by now and wouldn't be faced with a substantial balance still to pay.

Mr W doesn't think Santander has acted fairly more recently either, because it's taken legal action before the end of the term of his mortgage and while he had an outstanding complaint with the Financial Ombudsman Service. As a result he has been caused substantial upset and worry at the thought he might lose his home. And Santander has added significant legal

costs to his mortgage balance.

I've seen the following complaint responses that Santander has sent Mr W, in response to this and earlier complaints:

- 17 December 2014 – Mr W complained that a court hearing in May 2014 was listed unnecessarily as Santander already had a suspended possession order, and disputed the balance. Santander said that no costs were added to the mortgage balance in respect of this hearing. And it said the balance of the mortgage quoted in the proceedings is correct.
- 11 April 2016 – Mr W complained about the loan balance. Santander said the loan started in 2004 and the balance was £19,164. (Neither of these were actually true – there was a typo in the balance, which should have read £191,164. And 2004 was when the mortgage was converted to a new interest rate and moved to Santander's new system; the original borrowing dated back to 1987.) Santander said that following further borrowing in 2005 and 2008 the balance was correct. It said a complaint about the initial borrowing and further advances was out of time.
- 12 July 2016 – not a formal final response, but referring back to April 2016 response.
- 14 July 2017 – not a formal final response, but referring back to final responses in 2016.
- 22 May 2019 – Santander would not agree to any further arrangements in respect of the arrears because part of the mortgage was out of term.
- 3 March 2020 – a complaint about mis-matched terms on the sub-accounts was previously addressed and won't be considered again. Legal action has been taken because one part expired more than two years ago. £25 compensation offered for an incorrect telephone number being included on a letter.

My jurisdiction to deal with this complaint

I've previously notified the parties of my conclusions on my jurisdiction to consider Mr W's complaints. I noted that Santander didn't consent to us considering any part of Mr W's complaint which may be out of time. I concluded that his complaint about the mortgage being on interest only terms, and about the level of borrowing agreed before 2008, was out of time because Mr W didn't complain within six years of those events, or within three years of when he became aware – or ought reasonably to have become aware – of cause for complaint.

I also said that I couldn't consider the decision in 2002 to offer part of the mortgage over a shorter term than the rest, for the same reason. And I said that I couldn't consider the 2014 repossession action and the circumstances surrounding that, because Mr W complained about that to Santander at the time and didn't bring the complaint to us within six months of its final response.

However, I said that I could consider how Santander had treated Mr W in his financial difficulty since 2011 (other than in respect of the 2014 possession proceedings) – 2011 being six years before Mr W first made this complaint – and the action taken because of and since the end of the term of one part of the mortgage in 2017. Finally, I wasn't persuaded that there were exceptional circumstances which prevented Mr W complaining about any of those matters before the relevant deadlines for doing so.

My provisional decision on the merits of Mr W's complaint.

In respect of the parts of the complaint I can consider my provisional conclusions were as follows.

“In around 2010 Mr W became seriously ill. He was unable to work for some time – by this time, as a freelance rather than an employee he wouldn’t have received sick pay. More recently he hasn’t been in permanent employment, but has been doing freelance work from time to time to supplement his pension income, though he’s also experienced some issues in getting paid for work done. He’s also been receiving support from family and others. Mr W says that in the early part of this period he increasingly relied on unsecured credit to keep up with his obligations, leading to an IVA in 2012.

As a result, it became more difficult for Mr W to keep up with the mortgage payments. Between 2011 and 2014 he missed a small number of payments altogether, but more commonly paid less than the full amount due each month. Over this period the mortgage fell further and further into arrears, and by the time of the legal action in 2014 Mr W was the equivalent of almost a year’s worth of payments behind on his mortgage. The arrears peaked at over £14,000 in May 2014.

Santander took legal action in 2014. But it later accepted that it shouldn’t have done so at that time. It wasn’t planning to actually repossess the property, but wanted the comfort of a possession order and the associated requirement for Mr W to maintain his mortgage payments and also start to pay down the arrears. But that wasn’t necessary as it already had a suspended possession order. Santander confirmed in December 2014 that it hadn’t added the cost of those proceedings to Mr W’s mortgage balance. As I’ve explained above, I can’t consider whether it treated Mr W fairly at this time.

In 2015 and 2016, Santander agreed a series of payment arrangements with Mr W and he gradually reduced the arrears. Mr W was in regular contact with Santander, discussing his income and expenditure and letting Santander know if he might be late with a payment. This continued into 2019, past the expiry of the interest only term on the second sub-account in June 2017.

However, in May 2019 Santander told Mr W it wouldn’t continue with the arrangement any longer. It wasn’t willing to agree an arrangement when part of the mortgage was beyond the end of its term and Mr W hadn’t taken steps to repay it. Santander instructed its solicitors to take legal action in early 2020. The solicitors agreed a further payment arrangement with Mr W, which he kept to.

Following the end of the term on the other parts of Mr W’s mortgage, the solicitors issued repossession proceedings in August 2022. The proceedings were adjourned in September 2022, then re-started and adjourned again in 2023, both times to allow us to deal with Mr W’s complaint.

I’ve already explained why I can’t consider Mr W’s complaint about the proceedings in 2014. Since then, I think Santander acted fairly and reasonably in agreeing a succession of payment arrangements with Mr W, whereby he gradually reduced the arrears over time. It’s reasonable that the arrangements were kept under review and that Santander stayed in touch with Mr W over time to make sure that the arrangement continued to be affordable and stayed on track – and I can see that on various occasions Santander agreed to show some flexibility over the dates on which particular payments were made, which I think is fair.

However, I think the picture changed from 2019, when Santander said it would no

longer agree to further arrangements. This seems to have been driven not by a change in Mr W's circumstances or his ability to keep to the arrangement. Rather, it was driven by Santander noting that part of the mortgage had reached the end of its term in 2017 and hadn't since been repaid.

I don't know why the 2002 further advance was lent over a term that was over three years less than the rest of the mortgage – whether that was something Mr W asked for, or whether it was a decision by Santander. In any case, as I've said that lending decision is out of time and I can't consider whether it was fair or not.

However, I can consider whether the action Santander took in 2017 and later was fair and reasonable. I'm not persuaded it was.

Mr W had a mortgage made up of several sub-accounts. Most of them came to an end in 2021; only one small part – around 20% of the overall balance – ended in 2017. Mr W had no means of repaying the capital balance that fell due at that time other than selling his property, as I think was – or ought to have been – clear to Santander. The same was true of the rest of the balance.

But Santander had agreed to lend 80% of this mortgage to Mr W until 2021. By treating the remaining 20% of it as repayable in 2017, in these circumstances, Santander effectively circumvented the agreement to lend most of the mortgage until 2021. In threatening legal action in 2019 and 2020 founded on the expiry of one sub-account in 2017, Santander was requiring Mr W to sell his property – and by doing so, repay the whole of his mortgage even though 80% of it didn't expire until 2021. Santander didn't actually take legal action at this time, but only because Mr W said he had outstanding complaints with the Financial Ombudsman Service.

In all the circumstances, I think it would have been fair and reasonable to have extended the term of the 2002 further borrowing to align it with the terms of the rest of the mortgage. Had Santander done that, I think it wouldn't have refused to consider further payment arrangements from 2019 onwards, and wouldn't have threatened possession proceedings in 2019 and 2020. While it's true Mr W was still in arrears in 2017, he was in a payment arrangement to pay more than the contractual monthly payment and was reducing the arrears. He kept to this arrangement until Santander terminated it in 2019 – because of the end of the term of part of his mortgage in 2017.

I therefore can't see a good reason why Santander didn't consider, or agree, to align the terms of the mortgage so all parts came to an end in 2021. In my view, it should have done so.

The consequences of failing to do so were substantial for Mr W. It led to the payment arrangement being terminated in 2019, and the resumption of collections activity. Santander threatened, but didn't take repossession action at this time.

It did take repossession action in 2022, issuing proceedings in August 2022. However, this was only around nine months after the end of the term on the last sub-account. Had Santander aligned the terms of all sub-accounts to end in December 2021, and allowed the payment arrangement to have remained in place in the meantime, I think things would have been viewed differently in 2022. Mr W would have been regarded as being in an arrangement and as being a few months out of term – rather than being viewed as in arrears without an arrangement and out of term for several years.

Acting fairly, based on a term that ended nine months earlier and with a payment arrangement that had been maintained for several years, I think taking legal action in August 2022 would have been premature. Repossession action should be – as the regulator has made clear – a last resort when all other options have failed. Had Santander aligned the terms to the end of 2021 and then sought to work with Mr W in 2022, as it ought to have done, I don't think it would – acting fairly – have issued possession proceedings in August 2022. I also note that the possession claim form contains significant errors about Mr W's mortgage. But as I don't think the proceedings ought to have been issued in the first place, I don't think I need to go into that.

In my view, all this stems from the failure to consider aligning the terms in 2017. That wasn't fair and reasonable. To put matters right, Santander should unwind the consequences which flowed from that decision. That means that it should remove all legal fees added to the mortgage balance resulting from the legal action. And it should amend Mr W's credit file to show the continuation of the arrangement to pay from 2019 onwards.

Santander should also compensate Mr W for the impact on him. This includes the stress and worry of a term that ended in 2017 rather than 2021, the cancellation of the arrangement in 2019, and the threatened and actual legal proceedings. Taking unnecessary possession proceedings in particular is a serious step, creating substantial worry that Mr W might be about to lose his home. I think £1,500 is fair compensation in all the circumstances.

However, although I'm intending to uphold this complaint in respect of Santander's treatment of Mr W arising out of the end of the term in 2017, the fact remains that even after this complaint Mr W will still have an interest only mortgage which is now out of term, and which – after recent interest rate rises – seems to be becoming unaffordable for him.

Mr W will need to find a way to repay the capital. I understand he's been very concerned about the history of his mortgage and where he believes things have gone wrong in the past.

It's for that reason I've set out in some detail my findings about what has happened over the life of the mortgage and why things have ended up where they are – even where I can't, because of the passage of time, consider a complaint about what happened I have at least set out the facts of what happened as far as I've been able to discover them. I hope that helps Mr W understand why the situation is now what it is, and that he's able to move on from his concerns about the past and address the future – which is that he'll need to find a way to repay his mortgage sooner or later.

Once this complaint is over, I don't think it would be fair for Santander to resume recovery action straightaway. I think it should give Mr W some time and space to consider his options and come to an arrangement that will allow him to repay – whether through sale of the property, re-financing or some other means. Mr W might want to take independent financial advice to consider his options. All of that will take some time.

I'm aware that Santander has a concessionary interest rate available to customers whose interest only term has expired and who are working towards repayment of the capital. I think that Santander should apply that to Mr W's mortgage to reduce the payments to an affordable level, and it should give him a grace period of one year from the conclusion of this complaint to explore his options. Mr W will need to keep

Santander updated during that period. Depending on how things progress, it might be fair for Santander to extend the grace period further – if, for example, Mr W has agreed a sale of his property which hasn't yet completed. That will be something to be considered and discussed between them when the time comes, and what might happen then is not something I'm addressing in this complaint. But I would urge Mr W to use the one year period to give careful consideration to his options and try to find a way forward."

The responses to my provisional decision

Santander said it would abide by my final decision. It provided details of the interest rates it had available to customers at the end of an interest only term.

I've carefully considered everything Mr W said in reply. I haven't repeated everything here, because part of it related to my jurisdiction to consider the complaint (which I've dealt with in my jurisdiction decision), and part related to the period that I've said is out of time. But in summary, in respect of the parts of the complaint I can consider, Mr W said:

- He is concerned about gaps in the evidence, particularly for the period between 2001 and 2004, and questions whether the documents I would expect to see ever existed in the first place.
- He understood that his mortgage had been converted to repayment terms following the Tomlin Order, and understood that the further borrowing was on the same basis.
- There is a pattern of Santander giving misleading information to the courts – both in 2014 and in 2022. This is symptomatic of how Santander treats important documentation.
- He understands that legal fees relating to the 2014 repossession were added to the mortgage balance, even though Santander said they wouldn't be.
- He received substantial compensation for mis-sold payment protection insurance (PPI) but because of the IVA this was paid to his creditors rather than to him so he had no chance to use it to reduce his mortgage.
- A one year grace period is not enough. Taking into account his age and circumstances, Santander should not seek to repossess his property at all. It should come to an arrangement that allows him to remain in his home.
- In 2017, when the first part of the mortgage term ended, he could have re mortgaged. But now, in 2024, at the age of 77, he has lost that opportunity.
- Even if he was able to sell, or wanted to sell, his home, a one year period is not enough to do so and would put him under great strain and result in substantial upheaval, with risks to his health.
- He questioned why I had only said that Santander should remove legal fees charged since 2021, and not earlier dates – including a litigation fee in 2020 and legal fees in 2011.
- £1,500 compensation is not enough. The awful fear of losing his home, and the financial pressure he has been under, has blighted his life for many years. This has had a significant impact on his family, relationships, and physical and mental health. He has now developed a stress-related heart condition.

- His mortgage has been disastrous from the start. The MPPI should have paid out when he was made redundant, but did not. This led to a court case which cost Mr W tens of thousands of pounds in his own and Santander's legal fees. His mortgage was made unnecessarily complex and never explained to him. He was kept on high interest rates, with multiple attempts at repossession. Large sums kept being added to his balance which made it impossible for him to keep up with payments. Santander's solicitors made matters worse, treating him with contempt. Santander has shown no interest in reaching a solution, only in repossession.
- If a concessionary interest rate is available, it should have been applied sooner.
- He is concerned about reports to his credit file.

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 also thought very carefully about the conclusions I reached in my provisional decision, and whether they still represent a fair and reasonable outcome – taking into account in particular the further points Mr W has made. But having done so, I haven't changed my mind about the outcome of this complaint, or how to put matters right.

I appreciate Mr W's concerns about the absence of documentation from earlier in the life of his mortgage, and in particular the period between 2001 and 2004. As I've explained, I don't think this is evidence that Santander has deliberately concealed or destroyed information. Nor do I think it's likely that documents explaining why the mortgage was converted back to interest only, why Mr W applied for further borrowing, and why Santander agreed to those applications, never existed at all.

Rather – especially bearing in mind both the passage of time, and Santander's change to a new computer system in 2004 – I think it's most likely that those documents simply no longer exist now. There's no obligation on a lender to keep every document indefinitely. Some will be destroyed as part of routine good practice in data protection and records management; some may simply have been lost in the intervening years. It's not surprising or evidence of sinister intent that documents relating to events more than twenty years ago are no longer available.

But in the absence of those documents I've had to do the best I can in reconstructing and understanding what has happened to Mr W's mortgage in that earlier period, as important context and background to the later events that I can consider as part of this complaint.

I've set out above my findings about that, and nothing I've seen since I first set them out in my provisional decision has led me to change my mind. I think it's more likely than not that:

- The Tomlin Order was implemented correctly, with Mr W's mortgage being converted to repayment terms in line with the order.
- Also in line with the Order, the earlier arrears and missed capital payments between 1992 and 2001, as well as Santander's legal costs, were added to the mortgage balance. Having considered the statements covering this period that Santander recently sent to Mr W, I haven't changed my mind about that. Any complaint about this period is out of time, as I've said, but it's nevertheless relevant as part of the background to the question of whether the amount Santander is seeking to collect now is fair. The individual transactions on the statements don't always match the

later correspondence, but that's because of the various retrospective adjustments and amendments made following the settlement. By the final adjustment in January 2002, I'm satisfied that the balance as shown on the statements reflects what it ought to have been in line with the Tomlin Order and the actions taken following it.

- The resulting increased balance, and the increased payments now that he was required to pay not just the interest but also the capital, meant that Mr W struggled to afford the new higher monthly payments.
- In 2001, in an effort to assist him, Santander offered a new interest rate and also extended the term of the mortgage to 2021, both of which would reduce the monthly payments.
- The mortgage was then converted back to interest only. Exactly when this was done, and why, is not clear because the evidence of that does not survive. But it's likely that it was done shortly after Santander offered an increased term and new interest rate in October 2001. The statements recently obtained show that Mr W's monthly payments reduced in April 2002 even though he took further borrowing – so it may have happened at this time. It's possible this was done as a further measure to assist Mr W, given that in late 2001 he was struggling with the payments on repayment terms, but I don't have evidence to confirm that. And in any case, whatever the reason it was done, it's clear the mortgage was in fact back on interest only terms during this period.
- In 2002, 2003, 2005 and 2008 Mr W applied for further borrowing from Santander. On each occasion the application, and offer, was for further borrowing on interest only terms. All further borrowing applications were over broadly the same term as the existing mortgage – ending in 2021 – other than the £60,000 advanced in 2002, which was on a shorter term ending in 2017.
- Santander also offered further preferential interest rates, the last of which began in 2008 and ended in 2010. From 2010 the mortgage was charged at the SVR.

All of those events fall outside the period that's in time for the purposes of this complaint. I can't therefore consider whether or not Santander acted fairly in doing anything that I've set out above. But while I can't consider the fairness of what it did, it's necessary to understand what it actually did – fair or not – to determine the complaint that's in time and so I've made findings of fact about some of these matters to establish the factual background and context for the period that is in time.

Mr W's mortgage began to fall into arrears in March 2011. He has asked me to consider refunding arrears and legal fees charged later in 2011. And I've thought about that. But I don't think it would be fair and reasonable to ask Santander to refund those fees, since the mortgage was in significant arrears at that time and no payments were being made. Although Mr W had told Santander about his personal and health circumstances in 2010 and again in February 2011, there was no further contact after he began to miss payments, or updates about his proposed benefits claim.

Repossession didn't go ahead, as Mr W completed his benefits claim and payments started to be made from August 2011, and also resumed making payments himself from December 2011 (he'd been paying a nominal £10 per month before that). But that doesn't mean it was unreasonable for Santander to have considered legal action, including instructing solicitors, at that time. I don't therefore intend to require Santander to refund the 2011 fees.

Mr W has also asked me to refund legal fees charged in connection with the 2014 legal

action. I've said that I can't consider a complaint about the 2014 proceedings, because Mr W didn't refer the December 2014 final response to us within six months. But I've noted that a £95 litigation instruction fee added to the balance in July 2013 was reversed in October 2013.

I've also seen that fees of £264 were added to the balance in January 2015, and £156 in July 2015. Those fees were added after the December 2014 final response and so are not out of time because of it. In that final response Santander accepted that it shouldn't have taken further legal action in 2014, and wouldn't add legal fees in respect of that action to the balance. I'm therefore satisfied that Santander shouldn't have added these later fees to the balance, and should remove them now, including interest charged on them since.

The crux of this complaint, it seems to me, is the action Santander took and failed to take following the ending of the term on the 2002 borrowing tranche in 2017. I said in my provisional decision that it wasn't fair and reasonable for Santander to have treated Mr W's mortgage as being out of term from then on – it ought, acting fairly, to have extended the term of that part of the mortgage to align with the rest of it, ending in 2021.

I haven't changed my mind about that. Nor have I changed my mind about the unfairness of the consequences which flowed from that decision – including refusing to agree further payment arrangements from 2019, and taking legal action from 2022 shortly after the expiry of the terms on the remainder of the mortgage. I think that if Santander had acted fairly in 2017, what happened since would have been very different.

Putting things right

Santander said it would abide by my decision, and didn't make any further arguments. Mr W made some points about the earlier period, which I've said is out of time and I can't look into. In respect of this part of the complaint, his submissions focussed on the impact of Santander's actions on him and what it ought to do to put matters right.

I've noted that the PPI compensation was paid to the IVA practitioner, meaning Mr W wasn't able to use it to reduce the mortgage balance. But I don't think that's a matter I can take into account as something Santander did wrong. Mr W entered into the IVA because of his wider financial difficulties, having relied on debt when he was unwell and unable to work. Under the terms of the IVA, any compensation would be payable to the IVA practitioner for the benefit of Mr W's creditors. That's not something Santander was responsible for, or had any control over.

And the PPI compensation wasn't paid by Santander, and wasn't for PPI taken out in connection with the mortgage. So Santander wasn't responsible for the mis-sold PPI which led to the compensation either. Mr W did at one time have MPPI in connection with this mortgage, but as I said above that came to an end in the 1990s, and Mr W received a payment of three years' worth of mortgage interest in 1995. So I don't think the more recent PPI compensation, paid to the IVA practitioner, has any bearing on the outcome of this complaint.

Mr W says that the failure to resolve the issue with the ending of the term of one part of his mortgage in 2017 limited his options, and has left him in a much worse position than he would have been in had he been treated fairly at the time. In particular, he says that in 2017 he was around 70 years old, and would have been able to re-finance to pay off this mortgage. But now, at 77, he can no longer do so – which has substantially prejudiced him in resolving his situation.

I've thought carefully about that. But I'm not persuaded that, even if Santander had aligned

the terms in 2017, Mr W would have been able to repay this mortgage by re-financing. Firstly, I've not seen any evidence that he actually tried to do so – and I don't think the fact that part of his mortgage ended in 2017 rather than 2021 would have made any difference to an application for a new mortgage to another lender. Mr W says he didn't feel able to explore re-financing because he didn't want to jeopardise his complaint, and didn't want to do so until he was sure the balance he would repay was correct. But he would have been able to continue his complaint even after the mortgage had been repaid.

In any case, even if Mr W had tried to re-finance at that time I don't think he would have been successful. In 2017, Mr W was in arrears and had been in arrears for at least six years. Although he was making regular payments and reducing the arrears balance gradually over time, the fact is that there were still outstanding arrears. In my experience, current or recent arrears severely restricts the availability of mortgage lending.

There's also the fact that this is an interest only mortgage. Since the financial crisis of 2007-8, and resulting changes to lending regulations introduced in 2014, it's now much harder to get an interest only mortgage. Those lenders that do offer them require a clear and evidenced repayment strategy (which generally shouldn't be sale of the property) – but Mr W didn't have a repayment strategy. So he wouldn't have been able to take another interest only mortgage to repay this one.

I don't think a repayment mortgage would have been available, either. A repayment mortgage is much more expensive than an interest only mortgage, because each month the borrower has to repay a portion of the capital as well as the interest. At age 70, as he was in 2017, Mr W would only have been able to borrow over a term of perhaps five or ten years – a repayment mortgage with a balance of over £300,000 would have been prohibitively expensive over such a short term and wouldn't have been affordable for Mr W.

Another option would be a lifetime mortgage – a form of equity release. As an older borrower, Mr W would have been eligible for a lifetime mortgage. There would have been no affordability concerns, because monthly payments aren't required. But at this time Mr W's loan to value was (and still is) over 60%. That's substantially more than any lifetime mortgage provider would have been willing to agree to. Lifetime mortgages are only available with a much lower loan to value than standard mortgages – because no payments are made, and compound interest is added to the balance, and because the mortgage lasts for the rest of the borrower's life, lenders require a low loan to value to allow room for the balance to grow over time without entering negative equity.

There is one remaining possibility – a retirement interest only mortgage (sometimes known as a RIO). This is a form of later life lending where, unlike a lifetime mortgage, interest (but not capital) payments are required. But because payments are required, a lender must carry out an affordability assessment. Given what Mr W has said of his financial circumstances at the time, and given the history of arrears, I don't think it's likely he would have passed an affordability assessment.

In any case – unlike most standard mortgages – a RIO has no upper age limit. It's only generally available to borrowers who've already retired, and is designed to last for the rest of their lives. So Mr W is no less able to apply for a RIO now than he would have been in 2017. It's not something Santander offers, but other lenders do. If this is an option he wants to explore, he should consult an independent mortgage adviser. Alternatively, although Santander doesn't offer RIOs itself, it has a relationship with a RIO provider, so Mr W could ask Santander to refer him to its partner. But there's no guarantee a RIO will be available to him.

I'm not therefore persuaded that Mr W's position is significantly worse now than it was in

2017 because of Santander's failings. In 2017, he had an interest only mortgage with no means of repaying it other than re-financing or selling the property; that's still the case now. And I don't think it's likely that he had a realistic chance of re-financing to repay the mortgage in 2017, or that his chances of doing so then were significantly greater than they are now. Mr W doesn't agree about this, saying that Santander lent him further money between 2004 and 2008, so another lender may have lent to him in 2017. But I'm not persuaded by this, because both Mr W's situation and the regulations for mortgage lending were very different in 2004-8 compared to 2017.

I do think that Santander didn't treat Mr W fairly in 2017, or thereafter. And I think there's more it could do to assist him now. But I don't think there were options, likely to resolve the situation with Mr W's ability to repay the mortgage capital, that were realistically available in 2017 but aren't available now.

That brings me to the action I think Santander ought fairly to take now. I don't think it would be fair and reasonable for Santander to postpone collection of the outstanding balance indefinitely. It is entitled to be repaid, and Mr W agreed that he would repay when he borrowed the money. As with any mortgage, the starting point must be that a lender is entitled to be repaid what it lent.

I'm also not persuaded it would be in Mr W's best interests for the mortgage to be extended indefinitely. The outstanding balance remains a substantial sum, and in recent years Mr W has struggled with the monthly repayments and the arrears have started to increase. It's unlikely he will be able to significantly increase his income in the future, and if the monthly payments – or his other costs – increase further, the arrears would increase too. That increases the overall balance, further increasing the interest charged, and reducing the amount of equity Mr W has in the property. The stress and worry of managing large regular monthly payments, and managing a large property, will only increase as he gets older, especially if his health deteriorates.

At the moment, he does have substantial equity, which gives him options. Even if the equity isn't quite enough for him to purchase another, smaller, property in his local area RMOs and lifetime mortgages can be used to assist with property purchases. So I would urge Mr W to explore his options and take independent financial advice.

Bearing in mind that – even if the terms had been aligned, as I've said they should have been – the term of the mortgage expired three years ago, I think it's fair and reasonable to require Santander to allow Mr W a further year from the conclusion of this complaint to explore his options.

To be clear, that does not mean that Santander will, or – acting fairly – could, take repossession action immediately once the year is up. Rather, Mr W should make use of that time to explore his options and find a way to repay the mortgage, whether by sale or re-finance. At the end of the year, if he hasn't yet been able to repay, Mr W will need to discuss his situation and next steps with Santander, and Santander will need to allow Mr W a reasonable time to complete his plans. For example, if Mr W does decide to sell the property, and has placed it on the market but not yet completed a sale by the end of the year, Santander should allow a further reasonable period for a sale to go through. Santander has an ongoing obligation to treat Mr W fairly and sympathetically for as long as the mortgage remains outstanding – and Mr W has an obligation to find a way to repay it.

Mr W is concerned about this – not only because he says Santander should allow the mortgage to continue, but also because he doesn't think it will treat him fairly at the end of the one year period in any case, bearing in mind everything that has happened to date. I do understand his concerns, but Santander has ongoing obligations to treat him fairly, and if

Mr W doesn't think it is doing so in the future, he can make a fresh complaint about that at the time.

Finally, Mr W said that if I wasn't minded to agree with his other points, he would ask that the period be set at longer than a year. He said that it's likely he'll end up having to sell the property and that one year isn't enough to allow him to prepare for and do this. But as I've said, I wouldn't expect Santander to cease all forbearance and take recovery action as soon as the year is up. If Mr W is taking active steps to work towards repayment but hasn't yet managed to do so, Santander should keep things under review and allow him a reasonable time to complete his plans.

I think a grace period of a further year, on top of the three years that have passed, strikes a reasonable balance and gives Mr W a reasonable time to consider his options – bearing in mind what I've said about longer delay not being in his best interests. But I stress again that this is not the end of Santander's obligations to act fairly and show reasonable forbearance.

Santander should also remove all legal fees added to the mortgage balance because of and since the action it took from 2022 onwards – including those added more recently during this complaint. And it should not add any further fees, legal or otherwise, in respect of any action taken to date or in future before the end of the grace period and any reasonable extension of it that may be agreed.

I said in my provisional decision that Santander should offer to Mr W, and backdate, the concessionary interest rate it has available for customers beyond the end of an interest only term. It's now provided details of the rates it had available from time to time. At the time of the expiry of the term on the final part of Mr W's mortgage, at the end of 2021, that rate was 1.99% fixed for five years. Santander should therefore apply that rate to Mr W's mortgage now, backdated to 1 January 2022.

As a five year rate, it takes Mr W beyond the end of the one year grace period I am directing Santander to offer, but that will not prejudice Mr W since there is no early repayment charge associated with this rate. Equally, the lack of an early repayment charge means there is no barrier to Mr W making periodic or lump sum overpayments to reduce the balance in the meantime, if he is able to.

Mr W said that the rate should be backdated to earlier than the end of the term. But I don't require Santander to backdate this particular rate any further, since it's only available once the term of an interest only mortgage has ended. Santander ought to have offered it as part of the forbearance it should have considered – instead of legal action – once the term ended. But this rate wasn't available to Mr W before the term ended.

I've not seen evidence in Santander's records that Mr W applied for a standard new interest rate between the expiry of the last fixed rate in 2010 and the end of the term in 2021. Mr W says that he did so regularly, and was refused. I'm aware that it was part of Santander's eligibility criteria for interest rates for much of this time that it wouldn't offer its standard interest rates to borrowers in arrears – as Mr W was from 2011 onwards.

Had things proceeded fairly, at or immediately following the end of the term, Santander ought to have discussed his plans with Mr W – thinking then about forbearance once it would have become clear that he couldn't immediately repay the capital. To allow some time for those discussions to have happened, and to implement the new rate from the start of a month, I think it's fair to say that Santander ought to have applied the concessionary rate from 1 January 2022.

Applying this rate with effect from 1 January 2022 will remove the consequences of the

recent increases in interest rates, which have made the mortgage unaffordable for Mr W. It will mean that he's made overpayments each month since then – Santander should use those overpayments to reduce the outstanding arrears balance, and then if the arrears are cleared use any remaining overpayments to reduce the capital balance. It should then tell Mr W what his new balance is, and what are the new monthly payments (at the lower rate) he will be required to make from now on. The resulting changes in the payments due, and the arrears balance, since January 2022 should be reflected in amendments to Mr W's credit record.

Finally, I said in my provisional decision that Santander should pay Mr W £1,500 compensation. Mr W didn't think that was enough. I've thought carefully about what he's said, and I've thought about the guidance on awards published on the Financial Ombudsman Service's website. I think it's important to be clear about what I'm awarding compensation for. I'm awarding compensation for the distress and inconvenience which flowed from Santander's failure to align the terms of the various parts of the mortgage in 2017. This includes removing the payment arrangement in 2019, threatening legal action, and taking legal action in 2022. But I'm not awarding compensation for the earlier matters Mr W has complained about – since I've either not upheld complaints about those, or found them to be out of time. So while I'm aware Mr W's unhappiness with his mortgage, and his belief that Santander hasn't treated him fairly, goes back many years I can't take those factors into account in deciding the level of award.

I do think that the way Santander treated Mr W, particularly from 2019 onward and especially in taking him to court in 2022, caused him very substantial upset and worry, particularly bearing in mind his circumstances. Given his age and health, this would have had a particular impact on him. £1,500 is a substantial award of compensation, and I'm satisfied it fairly reflects the distress caused.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct Santander UK Plc to:

- Remove the legal fees added to the balance in January and July 2015, together with interest charged on those fees since then.
- Remove all legal and other fees charged since 2019, together with interest charged on those fees since then, and not add any further fees in connection with the 2022 legal proceedings or related collections activity.
- Allow Mr W a one year grace period from the date he accepts this decision, if he does, to explore his options for repaying the mortgage balance. At the end of that period, if the mortgage remains outstanding, Santander should discuss Mr W's plans with him and continue to show reasonable forbearance as he works towards repayment.
- Apply the five year ERC-free concessionary fixed rate of 1.99% to Mr W's mortgage, backdated to 1 January 2022.
- Use any resulting overpayments firstly to reduce the arrears balance and secondly, if the arrears balance is cleared, to reduce the outstanding capital.
- Amend Mr W's credit file to reflect a) that the term of the whole mortgage ended in 2021 not 2017; b) that the payment arrangement continues from 2019 to the point the arrears are cleared (or is shown as ongoing if there are still arrears following the

redress); c) the revised current and historic arrears and payment position following implementation of the backdated interest rate.

- Write to Mr W to confirm:
 - The revised outstanding balance, with a full breakdown and explanation of how it has been re-calculated
 - The revised monthly payments he is required to make from now on, at the 1.99% fixed rate
 - The details of any consequential changes to his credit file.
- Pay Mr W £1,500 compensation – this should be paid direct to Mr W, unless he asks Santander to use it to reduce the mortgage balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 July 2024.

Simon Pugh
Ombudsman