

The complaint

Miss T complains that Santander UK Plc won't remove her ex-husband from the mortgage in line with a Court Order. She said this is causing her a great deal of stress and putting her at risk of harm.

What happened

Miss T has a mortgage with Santander and in June 2023, she made an application to remove her ex-husband from the mortgage. She said she has a Court Order from May 2023 which specifies that she had to pay her ex-husband £11,000 and use her best endeavours to take over the property in her sole name.

Miss T said that Santander carried out an affordability assessment and said she couldn't borrow enough to take over the mortgage. She said she wanted Santander to also extend the term of the mortgage but they won't do that either without her ex-husband agreeing to it – something that she said he will never do.

Miss T has explained that she wants to maintain her home for her and her children and she said that Santander not agreeing to transfer the mortgage into her sole name, is putting her at risk.

She said she has suffered domestic abuse and her ex-husband is trying to control what she does and that she has also obtained a non-molestation order. Miss T said she is vulnerable and she feels that Santander haven't treated her fairly.

Santander said that they considered Miss T's income including additional benefits that they don't usually allow, as a reasonable adjustment to try and help her. But they wanted Miss T to provide payslips so that they could confirm her salary and without this, the most they could allow her to borrow was £108,000, which they said wasn't enough to take the mortgage over on her own.

Santander said they have seen the non-molestation order and there is nothing on there that says that the lender has to remove Miss T's ex-husband from the mortgage. Santander said they would like to try and help Miss T but without her income evidence, they can't proceed.

Miss T wasn't happy with what Santander said so she brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator didn't think that Santander had acted unfairly. He said that Santander had tried to help by taking additional benefits that Miss T gets from the Department of Work and Pensions (DWP), but said it wasn't enough for Miss T to take the mortgage over on her own.

The investigator also didn't think that Santander had done anything wrong by not agreeing to a term extension without Miss T's ex-husband's consent. He said that Santander were acting in accordance with their policy, so he thought they had acted reasonably.

Miss T disagreed with the investigator. She said she has told Santander that she is not working at the moment due to the personal issues she has encountered which is why she cannot provide them with any payslips.

She said she feels she is constantly repeating herself, but no-one is listening. Miss T said her interpretation is that Santander is conducting their business policy and allowing her to continue to suffer domestic abuse – something that the investigator hasn't addressed.

Miss T said it isn't clear what Santander have done to take into account her best interests and how they have supported her as a vulnerable consumer. She said that the Domestic Abuse Act 2021 has come into force, as have others that allow lenders to apply more flexibility in situations where someone is or has been subject to domestic abuse.

Miss T also questioned how Santander have applied their affordability criteria. She doesn't understand how it can be lawful for Santander to assess affordability in the circumstances provided.

Miss T has also made reference to another final decision that our service concluded on – which was similar to hers.

As Miss T disagreed with the investigator, she asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

I issued a provisional decision on 30 April 2024. I said:

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

Having considered everything very carefully, I've reached a different outcome to our investigator, and I'll explain why.

In considering what is fair and reasonable in all the circumstances of the case, I have taken into account law and regulations, regulator's rules, guidance and standards and what I consider to have been good industry practice at the time.

Miss T has explained the difficult and stressful situation that she finds herself in. She wants the other party to be removed from the mortgage because she feels she is at harm and that this is affecting her ability to be able to move on due to the sensitive personal circumstances she is dealing with.

Miss T is a vulnerable consumer due to her personal circumstances and is especially susceptible to harm, particularly where a business is not acting with appropriate levels of care. So I need to think about what this means for Miss T and whether Santander are doing enough to help her.

As it stands, Miss T is unable to take the mortgage over in her own name and she is not able to extend the term of the mortgage because her ex-husband won't agree to this.

Having considered everything carefully, I don't think that Santander is treating Miss T fairly. I appreciate they have said they have tried to help her, but under Principle 6 of the Financial Conduct Authority's handbook – customer's interest's – I don't think they are treating Miss T fairly.

Miss T is now living in this property on her own and from what I can see, she has been paying the mortgage on her own for the last few years.

Santander have said they are unable to remove Miss T's ex-husband because the mortgage is not affordable for Miss T on her own. They said they have tried to help Miss T and have included income in the affordability assessment such as benefits from DWP, that they don't usually accept – but it's still showing as unaffordable. Santander said they requested more proof of income from Miss T to see if they could help any further, but Miss T hasn't provided anything.

Miss T has explained that she doesn't have any payslips because she isn't working at the moment due to the personal issues she has encountered and how these have affected her. So she is paying for the mortgage using the benefits that she gets which Santander have seen evidence of. Miss T said she is still with her employer but is currently unpaid. She said she cannot work at the moment and has explained her situation as a full-time carer for her daughter. I understand that Santander have said

they need to assess Miss T's affordability to ensure the mortgage is affordable, but we have to look at the circumstances of this complaint and what might be in Miss T's best interests.

I need to decide what is fair and reasonable in the individual circumstances of this complaint. The rules we operate under say that in doing so, I must take account, amongst other things, the relevant rules and regulations. The rules for regulated mortgage contracts are set out in the Financial Conduct Authority's Mortgage and Home Finance: Conduct of Business sourcebook (MCOB).

MCOB 11.7.1 says that a lender doesn't need to carry out an affordability assessment if the proposed transaction would be in the customer's best interests.

I think this is relevant because the changes that Miss T is asking for, are in her best interests given the personal information she has provided us with about the issues she has encountered. She hasn't got any control over the mortgage because her ex-husband is still a joint party to it, and she says that she feels she is at risk of harm so this needs to be taken into account.

Miss T has provided us with statements which shows she has been making the mortgage payments on her own with the support of DWP – which is paid to the mortgage directly. Santander have also provided us with information that suggests the mortgage account is up to date and I haven't seen anything that suggests Miss T hasn't been keeping up with the mortgage payments on her own. And it seems that she has been doing so for a while. The mortgage seems to be affordable to Miss T and something that she can sustain on her own. Therefore I think it's in her best interests for her to take this over in her sole name.

The Court Order clearly shows that the property that Miss T is living in should be transferred to her. And that Miss T should also pay her ex-husband an £11,000 lump sum which had a deadline of 15 August 2023 – which she has done. It also explains that Miss T must not increase the borrowing on the mortgage by way of additional borrowing or by accumulating arrears. Miss T hasn't asked to borrow any more money and from what I can see, the mortgage is up to date. Once Miss T's ex-husband has been removed from the mortgage, Miss T will be free to manage it as she wishes.

It's not up to Santander to remove the joint party from the title deeds – just the mortgage. So Miss T will need to arrange for the joint party to be removed from the title deeds.

Miss T has demonstrated that she has been able to afford this mortgage on her own since 2021 and I haven't seen anything from Santander that suggests the mortgage isn't up to date. What is best for all parties here is that Miss T takes over the mortgage on her own. So Santander should remove the other party from the mortgage to enable Miss T to look at other options such as extending the term, but more importantly, because of the issues surrounding her personal life which means this would be the best thing for her.

Miss T has explained how this has impacted her and without going into considerable detail, she has provided both our service and Santander with information which supports the situation that she has found herself in. I think Santander not agreeing to remove her ex-husband from the mortgage has caused her distress and further upset which needs to be recognised.

I am therefore minded to ask Santander to remove Miss T's ex-husband from the mortgage to allow her to manage it on her own and make decisions based on what is best for her and her children.

Developments

Miss T responded to the provisional decision and accepted what I had said.

Santander responded and in summary made the following comments:

- They want to support Miss T to ensure the mortgage is affordable and sustainable so as not to put her in a difficult position.
- They are able to ensure that Miss T can arrange applicable interest rate products with just one signature – which has already been implemented.
- They are also looking into whether they can agree a term extension to help lower the monthly payments also with one signature due to Miss T's vulnerabilities. They will be able to confirm the outcome of their review in the following days.
- In relation to the Court Order, their position is that they should not be required to amend the names on the account in a manner that does not reflect the proprietorship register at Land Registry. They are not bound by the Court Order.
- The Court Order does not direct the mortgage to be put in Miss T's sole name and it says Miss T should use her 'best endeavours' to get the other party removed.
- They have concerns about removing the other party from the mortgage as it has a number of legal implications which could put Miss T in a worse position and put their security at risk. The Order has a number of stipulations protecting the other party's interest in the property and which would prevent Miss T from managing the account on her own for as long as the other party remains a proprietor i.e. increased lending. So Santander removing the other party from the mortgage could expose the other party to harm and Miss T at risk of breaching the terms of the order.
- Miss T has a right to apply to court to enforce the order against the other party, to force the change of proprietorship at Land Registry and this would then make the ownership clear, including the interest which the other party is due to retain under the Order. Until this happens, it would be irresponsible for Santander to remove the other party from the mortgage. If Miss T is able to resolve the title issue at Land Registry, Santander can consider the ongoing administration of the account in light of this.

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 considered everything that Santander have said, I am in agreement with them that it would not be reasonable for them to remove the joint party from the mortgage until the title deeds and proprietorship have also been amended.

I did explain in my provisional decision that Miss T would need to arrange for this to happen but would like to make it very clear that this would need to be done first, before Santander removes the joint party from the mortgage.

Miss T should arrange for this to happen, and I know she has a solicitor in place who is helping her with this. So once the title deeds show the property as being held solely in Miss T's name, then she should provide evidence to Santander that this has been done, and Santander should then remove the joint party from the mortgage. This will then allow Miss T to manage the mortgage on her own.

It's good to see that Santander are thinking about other ways in how they can help Miss T at the moment such as a possible term extension with just one signature, and they should inform Miss T of their proposals once they have considered this.

Other than making the above point clear on what needs to happen and when, I see no reason to depart from my provisional decision.

My final decision

For the reasons given above and in my provisional decision, I uphold this complaint and direct Santander UK Plc to:

- Remove the joint party from this mortgage to enable Miss T to manage the mortgage on her own and see what options are available to her, such as a term extension for example. This should only be done once Miss T has removed the other party from the title deeds and provided evidence of that to Santander.
- Pay Miss T £400 for the distress and inconvenience she has been caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 27 June 2024.

Maria Drury
Ombudsman