

The complaint

Mr B complains that his mortgage, which he'd originally taken out with another lender, has been transferred to Santander UK Plc. Mr B says Santander doesn't have the right to force this on him. Mr B asks that his mortgage with his previous lender is re-instated.

What happened

Mr B took out his mortgage in 2007. The original lender became part of the Santander group soon after this but Mr B's mortgage remained with the original lender. In late 2023 Mr B received a letter saying his mortgage is now with Santander.

Mr B says while Santander says this is an administrative exercise there are changes he's concerned about. This includes changes to his payments, creation of three loan accounts, different account numbers and that this is a flexi-mortgage. Mr B is withholding payments until he receives evidence of the legal instrument that obliges him to comply with the Santander mortgage.

Mr B says he struggles with anxiety and stress and likes his financial affairs to be simple and predictable. He distrusts large financial institutions. He'd like his previous mortgage to be re-instated and remain in place to the end of its term. He'd like Santander to explain its business decision to transfer mortgages within the Santander group.

Our investigator said Santander was entitled to transfer the mortgage. She said while it made some errors these were corrected. However, while Santander had written to Mr B saying there would be changes to his mortgage it hadn't explained what these changes would be. Our investigator said Santander should pay £100 for the trouble and upset caused.

Santander agreed. Mr B didn't agree. He said he wouldn't accept any compensation. He said his original mortgage has been redeemed and he's not obliged to accept the re-mortgage with Santander. He asks what in law requires him to comply with this change.

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.

Santander made a business decision to move the original lender's mortgages (including Mr B's mortgage) onto the Santander system. Financial businesses are entitled to make commercial decisions about how they manage their businesses. This isn't something we can interfere with.

What I can do is consider whether Santander made an error with Mr B's mortgage or treated him unfairly.

The right to transfer the mortgage

Santander provided a copy of the mortgage offer issued to Mr B in 2007. The mortgage was

a flexible 2-year base rate tracker. It was on a part repayment and part interest only basis with a term of 25 years.

Santander also provided a copy of the mortgage terms and conditions which applied when Mr B took out the mortgage. Condition 18 (Transfer of the mortgage) says that the lender can transfer the benefit of the mortgage or any interest in the mortgage. It says the transferee will be able to exercise all of the rights, powers and remedies of the original lender.

The mortgage terms and conditions don't set out the mechanism by which the benefit of the mortgage can be transferred. It would be for Santander and its advisers to ensure that's done correctly – without somehow negating the obligations of borrowers or having an unnecessary impact on them. Mr B questions the legal effect of the mechanism used by Santander and whether he's contractually bound by the mortgage. Ultimately that would be a question for a court.

Mr B says he's asking for evidence of the legal instrument that obliges him to perform under the mortgage with Santander. If Mr B wants a copy of the most up to date mortgage terms and conditions – which set out his obligations under the mortgage – he should contact Santander. If he's asking for the legal document(s) by which his mortgage was transferred, he could ask Santander for this. Santander might not be able to provide a copy, for instance if the terms are commercially sensitive.

Mr B didn't repay the mortgage when it was transferred. He continues to have the benefit of the mortgage loan, which is now provided by Santander rather than the original lender. I think it's reasonable for Santander to ask him to make mortgage payments and comply with the mortgage terms and conditions.

Did Santander make errors with the transfer?

Santander initially recorded £1,000 of Mr B's mortgage as on a repayment basis when this should have been included in the interest only balance. This was corrected. Santander adjusted the interest rate on part of the balance to ensure Mr B's monthly payments were the same or lower than before the transfer.

Mr B's mortgage has the same balance and the same terms and conditions as prior to the transfer. Santander says the mortgage was transferred on a like for like basis, with the benefit of flexible features (Mr B took out a flexible mortgage in 2007). The mortgage now has a savings pot facility in addition.

There's nothing to suggest Mr B was caused financial loss by the transfer. Mr B hasn't said his mortgage previously had features that were important to him and which are no longer available.

Mr B says he was happy with the previous lender, he distrusts large financial institutions, and a friend had a negative experience with Santander. Mr B now has three mortgage accounts (the interest only account, the capital repayment account and an account created by Santander to make an adjustment). This isn't unusual, but I appreciate that Mr B previously had one account, which he preferred. While I understand Mr B's concerns, I can't fairly require Santander to transfer his mortgage back to the original lender. As I said, I can't interfere in Santander's business decisions.

The transfer of the mortgage to Santander caused some inconvenience to Mr B. He pays by faster payments. He needs to use the new account details provided by Santander when making payments. Santander re-applied payments made by Mr B using the old account

details. I think that was fair. If it hadn't done so, Mr B's arrears would have increased and more interest would accrue on his account. Santander wrote to Mr B to say it had done this and to ask him to use the new account details for future payments.

Santander wrote to Mr B in mid-2023 saying it would make changes to the mortgage. The letter didn't say the mortgage would be transferred onto Santander's systems. The previous lender has been part of the Santander group for some years. However, it's clear that Mr B was upset to discover in late 2023 his mortgage had been transferred to Santander.

Santander agreed to pay £100 for the upset and inconvenience caused to Mr B. I think this is fair and reasonable in the circumstances.

What happens now?

Santander expects Mr B to make monthly mortgage payments and otherwise comply with the terms of the mortgage. I don't think that's unfair or unreasonable.

It follows that I don't think it's fair and reasonable in the circumstances to require Santander to stop requesting mortgage payments from Mr B.

Mr B's mortgage was in arrears before it was transferred to Santander. Mr B is now withholding mortgage payments. He says his original mortgage was redeemed – evidenced by a closing mortgage statement for his previous account – meaning he has no further obligations. He says he doesn't accept the Santander mortgage. Mr B expressed his views about how law applies here.

We take relevant law and regulation into account when reaching our decisions. But, ultimately, only a court can decide whether Mr B is contractually bound by the mortgage. If Mr B doesn't accept my decision he will be free to raise these issues in court, if he wants to do so. Mr B might want to consider carefully – and take advice – as to the consequences of taking legal action, or the consequence of Santander taking recovery action. He should also be aware that having arrears, missed payments or even a mortgage default on his credit file is likely to make it more difficult and more expensive to take out credit or re-mortgage.

If Mr B is struggling with his mortgage payments I'd encourage him to contact Santander and discuss what support it might be able to offer.

Mr B told us he has anxiety and stress and likes his financial affairs to be simple and predictable. Mr B says he distrusts large financial institutions. He wrote to Santander saying future correspondence would be returned. If Mr B finds contact with Santander difficult, he can look into ways to make this easier. He could consider appointing a representative (which could be a friend, family member or an independent financial adviser) to deal with Santander on his behalf. He could discuss with Santander the different options for communicating, and what support is available to assist him.

My final decision

My decision is that I uphold this complaint. I order Santander UK Plc to pay £100 to Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 August 2024.

Ruth Stevenson
Ombudsman