

## **The complaint**

Mr K complains that Santander UK Plc (Santander) will not put possession proceedings on hold until his financial remedy application has been determined by the Family Court following his divorce.

## **What happened**

Mr K took out an interest-only mortgage with Santander in February 2021, for which the mortgage term expired in April 2022. Mr K has continued to make the monthly repayments since then but has been unable to repay the outstanding capital. Santander wrote to Mr K on 17 July 2023 informing him that the mortgage account was due to be referred to its legal department, with the possibility of court action which could lead to the repossession of his home. A final demand was sent to Mr K on 28 August 2023, with the outstanding balance as of that date being £75,184.

Mr K says that he has been in the process of getting divorced since April 2022 and has made a financial remedy application to the Family Court. Due to this, he has been unable to use his pension to repay the capital while the proceedings are ongoing. He expects to be able to repay the mortgage in full when the court application has been concluded and says that he has provided Santander with his pension statement to demonstrate that there are sufficient funds to repay the balance, even if this is split in half as a result of the court proceedings. Mr K has also made enquiries about getting a lifetime mortgage to repay the capital. However, he would again not be able to secure such a mortgage whilst the court proceedings are still in progress.

Mr K wants Santander to wait until his divorce proceedings have concluded before taking legal action as this will mean that he can use his pension to pay off the outstanding capital. He says that the threat of legal action has caused him anxiety and worry.

Santander says that Mr K's mortgage account was correctly referred to its solicitors as it had no evidence regarding Mr K's divorce proceedings. The court hearing to resolve Mr K's financial remedy application was initially due to take place in October 2023. Once Mr K had sent it the required evidence regarding the court proceedings, Santander agreed to put his account on hold as an exception until after the proceedings in October 2023.

The hearing in October 2023 was then postponed and Mr K's solicitor contacted Santander asking it not to take any action to collect the money owed until the proceedings have been concluded. At that stage, Santander would not agree to postpone legal action and said that it was unable to hold proceedings indefinitely. However, following a request from this Service, Santander agreed in December 2023 to place legal proceedings on hold whilst we investigated Mr K's complaint. The new hearing was due to take place on 21 February 2024 and Santander agreed to put legal proceedings on hold until March 2024.

Our Investigator found that it wasn't unreasonable for Santander to begin legal proceedings in the first instance, as Mr K's mortgage term expired in April 2022 and Santander was entitled to protect its security in the property. Santander had paused legal proceedings on two separate occasions, so the Investigator thought it had taken positive action and tried to help Mr K through the process. At the time the Investigator issued his view, Santander had agreed to pause legal proceedings until the end of March 2024 and he didn't think this timeframe was unreasonable. Although it wasn't certain that Mr K would have access to his

funds from February 2024 onwards, the Investigator didn't think it was reasonable for Santander to put a hold on the legal proceedings indefinitely, as it was owed a significant amount of money and it was unknown when the next court date would be. He therefore didn't recommend that Santander did anything further.

Mr K disagreed with the Investigator's view so the case came to me to make a decision. He says (through his solicitors) that the Family Court is due to make a decision with regard to the mortgaged property, which is still occupied by both Mr K and his ex-partner. He is hoping for an outcome which will enable him to pay off the mortgage in full and become sole occupier of the property. The solicitors say that there is considerable equity in the property, which has been valued at £430,000, with the amount owing on the mortgage being around £75,000. The solicitors therefore say that there cannot be any prejudice in Santander agreeing to delay the issue of possession proceedings until the Family Court has made its decision and that it would be extremely unlikely that the Court would make a possession order before the Family Court application has been determined.

I set out in my provisional decision dated 16 August 2024 (reproduced below) why I was minded to find that it was unreasonable for Santander to progress repossession proceedings against Mr K in the circumstances. I also set out that I was minded to direct that Santander should not take any legal action in respect of Mr K's property until the end of October 2024, should review the situation following the Family Court hearing on 2 October 2024 and should pay Mr K £500 for the distress and inconvenience caused.

I invited both parties to let me have any further comments and evidence by 30 August 2024. Both parties responded prior to the deadline. Santander responded to say that it agreed with the provisional decision. Mr K responded with some further comments, which I shall detail further below.

### **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 the responses to my provisional decision dated 16 August 2024, I remain of the view that it was unreasonable for Santander to progress repossession proceedings against Mr K in the circumstances and that this complaint should be upheld.

In my provisional decision I set out the following:

"I accept that Mr K's mortgage came to an end in April 2022 and that it was fair for Santander to expect Mr K to repay the capital at the end of this term. However, Santander is still required to offer reasonable forbearance and act fairly to explore the available options for Mr K if he is unable to do that, and legal action to repossess his property should be a last resort.

Mr K is over 70 and Santander has said that its maximum term for an interest-only mortgage would only run until age 70 for the customer. Therefore, it says that it would be unable to extend the term of the mortgage. However, I note that Mr K has not specifically asked for the term to be extended; rather he has requested that possession proceedings are put on hold until the Family Court proceedings have been put on hold.

Even if Mr K was asking for a term extension, the fact that it does not meet Santander's usual lending criteria would not be sufficient reason in itself to refuse this request. Santander must also consider whether this would be in Mr K's best interests as set out in MCOB 11.7.1.

In this case, Mr K has indicated that he has a repayment strategy to pay off the mortgage balance in full. He has provided evidence to show that the Cash Equivalent

Transfer Value/ Cash Equivalent Benefit Value payable on his pension was estimated to be just under £175,000 as of May 2022. This would be more than sufficient to cover the mortgage balance owed.

However, Mr K has also explained (and it has been confirmed by his legal representative) that he is unable to utilise these funds at the moment due to the ongoing financial proceedings between him and his ex-wife. So, whilst it is not possible for him to redeem the mortgage at the moment, I am satisfied that this is his intention once the financial proceedings have been determined. I also note that Mr K is continuing to pay the interest on the mortgage balance (presumably at Santander's follow-on rate), so I am satisfied that Santander has not been prejudiced by the delay in this respect.

How Mr K redeems the mortgage is largely dependent on the outcome of the financial proceedings, which could mean that he uses his pension to repay the balance in full, as is his intention. I am also mindful that the property may need be sold to meet any financial settlement between Mr K and his wife, albeit this doesn't appear to be Mr K's preferred outcome. Therefore, it seems to me that Santander commencing repossession proceedings at this stage could also potentially prejudice the ongoing financial proceedings. Once the financial proceedings are determined, then Mr K will know which route he will use for repayment of the balance and he will need some time to release the funds to implement this.

Mr K's solicitors have confirmed that the next hearing at the Family Court is listed for 2 October 2024, which both parties are due to attend. The solicitors have confirmed that if it is not possible for the parties to reach agreement, a final hearing will need to be listed following this.

In the circumstances this case and for the reasons set out above, I don't think it would be reasonable for Santander to start repossession proceedings now in these circumstances and I don't think it is unfair for Santander to wait until Mr K's Family Court proceedings have concluded before taking any further action in relation to the property.

Whilst I don't think it would be reasonable to ask Santander to put its legal proceedings on hold indefinitely, in the circumstances I am minded to find that any possession proceedings should be put on hold until after the Family Court hearing on 2 October 2024. Mr K – either himself or via his solicitors – should notify Santander of the outcome of those proceedings and any next steps as soon as practicable thereafter. It will be for Santander to review the situation at that stage, having regard to the relevant regulations and Mr K's best interests. If Mr K is unhappy with how Santander deal with the matter at that stage, then it will be open to him to make a further complaint.

In terms of the way Santander has dealt with this issue, I think it was reasonable for Santander to require evidence of the Family Court proceedings before it put any legal proceedings on hold. So I don't think any action that it took prior to being aware of Mr K's situation and having evidence of this was unreasonable. Mr K provided the evidence in October 2023 and Santander confirmed that it had put the account on hold 'as an exception' until after the Family Court proceedings that month.

The 18 October 2023 court date was subsequently vacated, and Mr K's solicitors wrote to Santander's agent on 17 October 2023 to inform it of this and that the hearing was likely to be relisted early in 2024. The solicitors requesting confirmation that Santander would not take action to recover the balance until the financial remedy application had been determined. Santander's agent responded on 25 October 2024 saying that the request to hold action had been declined on the basis that *"This is not a joint mortgage and therefore we are unable to get involved in domestic disputes"*.

Mr K's solicitors responded repeating their request in a letter dated 31 October 2023. However, on 1 November 2023, Santander's agent responded confirming that Santander had confirmed that it would not agree to hold legal action.

It was only following the involvement of this Service that Santander agreed to put any legal action on hold until the end of March 2024. The memo it has provided dated 19 December 2023 sets out *"Due to request from FOS. I have approved to hold action until end of March 2024 to allow an outcome from the courts re Mr divorce. Mr will be using his pension to redeem the full balance on the account."*

In the circumstances of this case and for the reasons given above, I am minded to find that it was unreasonable for Santander not to agree to continue to hold off of taking legal action in October 2023, after it was advised by Mr K's solicitors that the Family Court proceedings had been adjourned. Mr K has said that the threat of legal action has caused him anxiety and worry and I can understand that the threat of his home being repossessed would have added to the stress of the ongoing Family Court proceedings. I am therefore minded to ask Santander to pay Mr K £500 for the distress and inconvenience caused."

As set out above, Santander has agreed with the provisional decision and has asked for Mr K to provide it with his account details if he accepts the decision or otherwise confirm that he would like payment by cheque.

Mr K says that he does not have any further information in response to the provisional decision. However, he says that he would like to reassure Santander that he will maintain the monthly mortgage repayments and that he will repay the mortgage in full as soon as his divorce process comes to an end. Mr K has also said that he wishes to forego the £500 which I said that I was minded to award for the distress and inconvenience caused to him. He says that this is because the only thing that he is asking for is that Santander allows him to repay the mortgage when his funds have been released following the divorce process.

I have considered what Mr K has said and wish to reiterate that I have not asked Santander to put its possession proceedings on hold indefinitely. At this stage, I have asked Santander to hold proceedings until the end of October 2024 and to then review the situation following the outcome of the Family Court hearing on 2 October 2024. As I set out in my provisional decision, if Mr K is unhappy with how Santander deal with the matter at that stage, then it will be open to him to make a further complaint to Santander.

It remains my view that Santander should pay Mr K £500 in respect of the distress and inconvenience caused by this matter, for the reasons I set out in my provisional decision. However, it is clearly a matter for Mr K as to whether he accepts this. I should say by way of reassurance that if Mr K accepts the £500 this will not impact the outcome of the complaint or how Santander deals with Mr K's case going forward following the hearing in October. If Mr K still does not want the £500 then he should notify Santander of this. Otherwise, he will need to provide his account details or confirm that he wishes to receive a cheque in respect of the payment.

### **Putting things right**

For the reasons set out in my provisional decision and above, I require Santander to:

- Not take any legal action in respect of Mr K's property until the end of October 2024.
- Review the situation following the Family Court hearing on 2 October 2024, taking into account reasonable forbearance, fairness and Mr K's best interests in line with the relevant regulations.
- Pay Mr K £500 in respect of the distress and inconvenience caused (unless he notifies Santander that he does not want this).

### **My final decision**

For the reasons I've explained in my provisional decision and above, my decision is that I uphold this complaint against Santander UK Plc and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 September 2024.

Rachel Ellis  
**Ombudsman**