

The complaint

This complaint is about a mortgage Mr D holds with Santander UK Plc. Mr D says that Santander hasn't provided him with adequate support or acted fairly after he fell into financial difficulty.

Mr D is represented in the complaint by his wife, Mrs P.

What happened

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr D being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In a decision dated 11 December 2024 I explained that I am only able to consider events that arose from 18 February 2023 onwards.

Briefly, Mr D has a mortgage with Santander taken out in 2019. He borrowed just over £337,000 over a term of 32 years 6 months on a capital repayment basis. I am very sorry to note that in 2022 Mr D learned of a serious health issue, as a result of which he closed his business. The consequence of this was that Mr D began to experience financial difficulties.

Santander wasn't able to switch the mortgage onto an interest-only basis as a long-term solution. When the initial fixed rate expired, Santander transferred the mortgage onto a special rate, giving a contractual monthly payment (CMP) of £2,000. However, even this wasn't affordable, as Mr D could only pay £750, later increased to £1,500. A later product switch reduced the CMP to £1,900, and Mr D was able to pay £2,000 per month, which meant that £100 was paid off the arrears.

However, Mrs P, on behalf of Mr D, complained, saying that Santander hadn't done enough to help them. Santander didn't uphold the complaint, so Mr D raised it with our service. An Investigator looked at what had happened. Overall, whilst he was sympathetic to Mr D's situation, he didn't think Santander had acted unfairly.

The Investigator explained that a product switch has to be sustainable and affordable over the long-term. He thought that, by putting the mortgage on a product with no early repayment charge (ERC), Santander had acted fairly. Although Santander had lower fixed rates, the Investigator didn't think it would have been fair to have put the mortgage onto a fixed rate, given the potential impact of an ERC. The Investigator also took into account the affordability issues that had affected Mr D's ability to pay the mortgage, and noted that Mr D was only able to pay £2,000 because of help from friends and family.

After careful consideration, the Investigator didn't think Santander had done anything wrong.

Mrs P asked for an Ombudsman to review the complaint. She said (and I summarise) that Mr D had gone through a life-changing event, and that Santander should do more to help them. They were told by an outside agency that Santander could do more to help, and they've kept Santander up-to-date about their situation. The arrears are now about £13,000, but they don't have any way of repaying these. Mrs P said that she thought Santander should have offered a much lower interest rate at an earlier stage.

Because the matter is unresolved it falls to me to issue a decision.

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.

In order to preserve Mr D and Mrs P's privacy, I have deliberately not set out detailed information about their circumstances, but I have read everything they've told us about their situation. I also confirm that I've listened to the recording of Mrs P's telephone conversation with my colleague on 22 November 2024 when she set out the reasons why she believes Santander hasn't acted fairly.

In his detailed letter dated 19 November 2024 the Investigator set out the chronology of events, so I don't need to repeat those here. And as I said above, I'm only looking at what happened after 18 February 2023.

This is a regulated mortgage, and so Santander is obliged to consider its regulatory obligations to customers in financial difficulty. The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) also has its own guidelines about what it expects lenders to do to comply with MCOB, which mirror closely the requirements of MCOB.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved. Examples would be where a borrower who lost their job or has been on unpaid maternity leave is about to start work again, or where someone self-employed has been injured but has recovered and can resume their trade.

For long-term difficulties, a lender must also look at other ways to help, such as transferring the mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

Mr D's situation is a long-term one, and so Santander needs to consider carefully whether any arrangement that are put in place is likely to be sustainable. It would not be appropriate, for example, to switch the mortgage temporarily to interest-only for a concessionary period if at the end of it the monthly repayments and the overall debt increased to a level that was higher than it was before the concession was put in place.

Similarly, capitalising the arrears would increase the mortgage balance, and the CMP. Likewise a permanent switch to interest-only would not be appropriate, as there is no repayment vehicle in place. In addition, when considering long-term affordability, Santander cannot take into account payments from family and friends. Given this, the long-term options Santander can offer Mr D are extremely limited.

I note Mrs P mentioned the Mortgage Charter, which offers a six-month interest-only concession to borrowers who request it. However, this is only available where the mortgage isn't in arrears. It's therefore not something Santander is required to offer in this situation.

Transferring the mortgage to a lower fixed rate with an ERC might result in Mr D owing more in the long term, particularly if it becomes necessary to sell the property during the fixed-rate period. I'm therefore not persuaded that a fixed rate would be the most suitable option.

The situation Mr D is in – through absolutely no fault of his own – means that this mortgage has become unaffordable. It is only through the help of friends and family that the CMP is currently being maintained. The options Santander can offer to reduce the CMP over a short term are likely, in my opinion, to result in the debt increasing, making the long-term situation worse, not better.

I've noted what Mrs P has said about the advice she was given by a support agency in relation to the help banks can offer customers. In relation to unsecured debt such as credit cards or personal loans, banks have considerably more leeway to suspend interest and repayments than mortgage lenders do in respect of loans secured on property.

However, on 4 November 2024 MCOB 13 was revised to include additional provisions for lenders to help customers in financial difficulty. So it might be the case that there is more Santander can do to assist Mr D, taking into account these regulatory changes. This is something he – or more likely Mrs P – will need to discuss with Santander.

This has been a very difficult decision for me to write, because I know that the situation Mr D is in is entirely as a result of circumstances beyond his control – circumstances which have had a devastating effect on his and Mrs P's lives. I cannot imagine how difficult the last few years have been for the family. But I have to put aside my natural feelings of empathy and reach my decision on the basis of the evidence, rather than being swayed by emotion.

I know this isn't the outcome Mr D and Mrs P were hoping for. I'm conscious that their financial situation is critical. But after considering all the evidence, I'm unable to find that Santander has done anything wrong in relation to the support it's been able to offer.

That said, I know Santander is aware of Mr D's vulnerabilities and of the need to treat him with sensitivity when considering what help and support the bank is able to provide. I would ask Santander to look at every available option to help Mr D and Mrs P, in the hope that their circumstances will improve in the longer term.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2025.

Jan O'Leary

Ombudsman