

## **The complaint**

This complaint is about a mortgage in the joint names of Mr and Mrs M taken out with Santander UK Plc.

Mrs M, who has brought the complaint with the consent of Mr M, is unhappy that, after Santander told her a 30-day hold would be put on the account, a possession hearing still went ahead, which caused Mrs M stress and anxiety.

To settle the complaint Mrs M would like Santander to compensate her for the distress she was caused, and to give her time to sort out her finances so she can deal with the mortgage arrears.

## **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, Santander has accepted it made a mistake, and has offered compensation. I therefore don't need to analyse the events in detail in order to determine whether the bank is at fault; all I need to decide is whether the compensation offered by Santander is fair, or if there is more the bank needs to do to put things right.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mrs M 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 2012 Mr and Mrs M took out a mortgage with Santander. Mr and Mrs M separated in 2021, with Mrs M remaining in the property with their child.

Unfortunately the mortgage fell into arrears. In a detailed witness statement produced for the court dated 21 July 2024 Mrs M has set out all the personal and financial circumstances that led to Santander applying to the court for a possession order. I won't repeat the details here, but I confirm I've read this statement.

Mrs M spoke to Santander on 24 May 2024 to discuss her situation. She was trying to sort out her benefits and arrangements with other credits, with the assistance of a debt advice agency. Santander told her there would be a 30-day hold on the account and that the possession hearing would not take place. However, the legal action wasn't cancelled, and Mrs M received notification of a court hearing on 22 July 2024.

Mrs M assumed this wasn't going ahead, but was told on 18 June 2024 that this wasn't the case and that the hearing would proceed. I understand that the court granted a possession order, but further action is currently on hold pending the outcome of this complaint.

Mrs M complained to Santander. The bank apologised and offered £100 compensation for failing to be clear that the hearing would be going ahead on 22 July 2024.

Dissatisfied with this, Mrs M raised her complaint with our service. An Investigator explained that we had no power to overturn the court order, but that we could look at Santander's customer service. The Investigator was satisfied that the £100 offered by Santander was fair in all the circumstances. He explained that the hearing on 22 July 2024 would still have gone ahead in any event (unless firm payment proposals could be made). The only difference is that Mrs M would have known about this on 24 May 2024 rather than 18 June 2024.

Mrs M disagreed with the Investigator's findings. She said that, not only was she misinformed, but Santander failed to comply with the requirements of the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB). Mrs M says that MCOB says that, whilst a borrower is awaiting a decision from the Department of Work & Pensions about benefits, possession action cannot take place. Mrs M therefore believes she was treated unfairly.

### **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 done so, I've reached the same decision as the Investigator, for broadly the same reasons.

I am aware that Mrs M has had significant health issues over the last few years, and has also gone through the breakdown of her marriage. She is faced with the potential loss of her home, and I have no doubt that this has been an extremely stressful time for her. However, I have to put aside my natural feelings of empathy for her and decide the case on the basis of the evidence, rather than being swayed by emotion.

I will explain that there is nothing in MCOB that says a lender is prevented from commencing possession proceedings pending the outcome of a borrower's claim for benefits. It might be a provision of the Pre-action Protocol for Possession Claims based on Mortgage Arrears in Respect of Residential Properties ("the Protocol"), which sets out steps the court would expect a lender to follow, but it is not part of the mortgage regulations contained in MCOB.

Before granting the possession order, the judge had been provided with Mrs M's witness statement which set out in detail the reasons why the mortgage had fallen into arrears. If the judge had thought Santander had breached the Protocol, they had discretion to not grant a possession order. As the Investigator explained, we have no power to overturn the court's decision to grant a possession order. If Mrs M believes the order shouldn't have been made due to Santander breaching the Protocol, that's something she'll need to take up with the court.

Santander has accepted it made an error on 24 May 2024 when it led Mrs M to believe that the possession hearing wouldn't go ahead. This error was corrected on 18 June 2024, just over three weeks later. Mrs M still had four weeks to prepare for the hearing, and I see that she did so with the aid of Citizens Advice. I'm not persuaded, therefore, that Mrs M wasn't unable to present her case to the court due to the actions of Santander, because she did so in her detailed witness statement.

But I accept that it would have come as a shock to Mrs M to learn on 18 June 2024 that the hearing was going ahead on 22 July 2024. Santander has accepted that its actions caused Mrs M some upset. Overall, I think the £100 compensation offered by Santander is fair and reasonable, taking into account that Mrs M found out in good time to prepare for the hearing that it was going ahead. I'm therefore not going to order Santander to do anything further.

I know this isn't the outcome Mrs M was hoping for. I can see that in July 2024 Mrs M told the court that she had recently received the application for Support for Mortgage Interest (SMI) and was applying for this. I don't know what the position is with Mrs M's claim for SMI, but the mortgage hasn't been paid since April 2023 and the arrears are now about £35,000. I am aware of Mrs M's vulnerabilities, as is Santander. The bank is required to take these into consideration when deciding what further action to take. In addition, recent changes that came into effect on 4 November 2024 give Santander more options to help customers in financial difficulty. But that doesn't mean that Santander is under any regulatory obligation to allow the arrears to increase if there is no possibility of them being cleared.

I am aware that Mrs M had previously put the property on the market but sales had fallen through. Mrs M explained in her witness statement why it's so important for her to remain in the property. I would therefore urge Mrs M to discuss her current situation with Santander, and provide the bank with evidence of her income, outgoings, and an update (with documentation, if available) of the progress of her claim for SMI, so that Santander can consider whether there is a long-term solution to Mrs M's current financial difficulties.

Overall, after careful consideration of the evidence, I'm satisfied that the compensation of £100 offered by Santander is fair and reasonable in all the circumstances. I'm therefore not persuaded that Santander is required to do anything further in relation to the error it made in relation to the possession hearing.

### **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 and Mrs M to accept or reject my decision before 15 January 2025.

Jan O'Leary  
**Ombudsman**