

The complaint

Mr H's complaint about Santander UK Plc (Santander) relates to the way in which Santander dealt with his application to remove his ex-wife (W) from their jointly held mortgage, otherwise known as a Change of Borrower (CoB) application.

What happened

In 2005 Mr H and W took out a mortgage with Santander on a property which they had shared ownership (the property). Santander accepted that, but also that it had not recorded the shared ownership on their systems. W stopped living in the property in or around 2020. Some long time later, W entered into an Individual Voluntary Arrangement (IVA) as a result of which a second charge was added to the property title.

In September 2022 Mr H made a CoB application as he wished to change the mortgage product. His then current mortgage product was due to expire around September 2023. Santander did not pick up on the fact that the property was held on a shared ownership basis and as a result the application was ultimately abandoned.

In January 2024 Mr H began another CoB application and raised a second complaint with Santander. The application did not proceed because Santander said it had not received confirmation that W's IVA holder had no interest in the property. Santander asked Mr H to obtain confirmation of this and Mr H said he was unable to obtain such confirmation because the IVA holder refused to give him it citing data protection.

When Mr H's mortgage product expired, the interest rate changed to Santander's Standard Variable Rate (SVR). This was a higher rate than those of other products available. Santander issued their final response letter (FRL) on 13/3/24 upholding his complaint, accepting that a shared ownership flag had not been added to his mortgage account from the outset. By way of recompense for their error in failing to note the property had been in shared ownership, and for the delay in dealing with the complaint, Santander credited his account with £250.

Mr H feels he has now reached an impasse since Santander won't progress his CoB application until the IVA holder has confirmed their interest has cleared and he is also waiting for a financial clean break Order with respect to the financial remedy application against W before the Court.

In bringing the complaint Mr H also complains that having had made a Data Subject Access Request (DSAR) he subsequently received personal data relating to a third party. This concerned him since he wondered whether his own data had been kept secure. He was also unhappy that some information appeared to be missing from the DSAR. Santander accepted that there had been a failure in service and credited Mr H's account with £75 in recompense.

Mr H was unhappy with Santander's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that Santander hadn't done anything wrong and had dealt with the complaint fairly.

Mr H didn't agree and asked for the complaint to be passed to an Ombudsman for a final 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.

I know the parties provided more detail than that set out in the above summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service, that being an informal dispute resolution service and an alternative to taking Court action. My approach is to look at what happened and determine whether I think a business has been unfair or unreasonable. We are an impartial service and so we don't take sides – I'll only ask a business to take further action if there is enough evidence to justify doing so.

If I've not mentioned something in my summary then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr H and Santander together with the available evidence.

The accepted facts are that in Mr H and W remain as having an interest in the property. W's interest is of course subject to her IVA and to any Order the Court may have made regarding hers and Mr H's respective interests in the property. Whilst both those issues may now have been resolved, at the time of the complaint to Santander, they were not.

I find that Santander have applied their terms and conditions correctly and followed their policy as they would in any similar situation with their other customers. In order to progress with the CoB application, Mr W must be able to show that W no longer has an interest in the property. I appreciate that he has explained the hurdles he faces regarding getting information from W's IVA holder, but equally those are the same hurdles facing Santander. Whilst I understand the frustration Mr H feels if W is not willing to relinquish her interest in the property, or give her consent to disclose information to him, that is not something over which Santander have any control or influence.

So, it must follow that the reason Mr H could not move his mortgage product from an SVR to a better rate, relates to the difficulties he faced with W, not as a result of anything Santander did or didn't do. Even if Santander had correctly recorded the shared ownership of the property, the CoB application would have failed because of the problems he faced with W. That means that the mortgage would always have changed to the SVR rate in September 2023 when the old mortgage product rate expired.

I've not seen anything showing me Santander acted unfairly towards Mr H and I won't be asking them to do anything further about this element of the complaint. I know Mr H feels Santander are being unreasonable but I'm afraid I must disagree. Santander are entitled to operate its business as it wishes, and I am unable to recommend how it should conduct or arrange its commercial operations and processes. I don't have any powers to make rules for financial businesses, nor can I direct that they change their policy or procedures. We can only look at what happened, in the circumstances of the individual complaint, and check the business followed its rules and procedures and applied them fairly. Any overall concerns about 'business process' would need to be raised with the Financial Conduct Authority (FCA).

Santander have accepted that it made an error when another customer's data was sent to him in his DSAR pack. In recognition of that error, it paid Mr H £75. In addition, it also

acknowledged it failed to note the shared ownership issue, and there was a delay in dealing with the complaint for which a further £250 was paid.

I have noted the time and costs Mr H has stated he has spent dealing with the matter, but I cannot say that this all flows from any Santander error, for the reasons I have stated above. I accept that it will have been frustrating for Mr H to learn that the shared ownership had not been properly recorded, but as I have explained this wouldn't have made any difference to his CoB application.

The issue for me is whether the level of compensation already paid adequately compensates Mr H for the distress and inconvenience he has experienced by virtue of any errors/mistakes on Santander's part. When I consider the issue of compensation, I start from the point that any award for the trouble and upset caused should be balanced against the ups and downs of everyday life which we all face when dealing with other people, businesses, and organisations, and recognising that at times this can be inconvenient. It is also important to remember that there is no set figure for compensatory awards, since the facts of each case are different. Ultimately it is an exercise of judgement, looking at all the circumstances and coming to a figure which feels fair, when set against the effect of any failures in service on the person bringing the complaint. In my view I think £325 is a fair and reasonable level of compensation.

Finally, I have seen within the papers submitted by Mr H a reference to a FRL to a complaint made in 2022. That FRL was sent to him in December 2022. I am not looking into this complaint because it is out of time as our investigator has explained and for the sake of completeness I will repeat the reasons why.

The rules that govern what complaints our service can and can't look into are set out in the Financial Conduct Authority's Handbook: specifically, the DISP rules.

DISP 2.8.2R (1) provides that I can't consider a complaint referred to our service more than six-months after the date of the business' FRL unless that business consents to our service looking into it, or there exist exceptional circumstances which prevented the complaint being made in time.

Mr H referred his complaint to our service in September 2024, which is more than six months after that FRL. The FRL was clear that it was a final response and that Mr H had six months from the date on the letter to refer his complaint to us. And Santander haven't given consent to our looking into the complaint outside that timeframe.

This six-month time limit can only be waived if there are exceptional circumstances which existed preventing Mr H from doing so. The FCA's definition of exceptional circumstances is very strict. In short it means a person would need to show they were incapacitated in some way unable to do anything at all in a state of severe impairment, such as being in care or hospitalised. No such circumstances exist here.

My final decision

Santander UK Plc has already paid Mr H £325 to settle this complaint, and I think that is fair and reasonable. So, my final decision is that I don't require it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 March 2025.

Jonathan Willis
Ombudsman