

## **The complaint**

Mr F complains that Santander UK Plc didn't treat him fairly when he went into arrears on his mortgage – in particular, that it didn't make the consequences of arrears clear to him.

## **What happened**

Mr F has a mortgage with Santander. In 2023, the mortgage began to fall into arrears. In 2024, Santander issued possession proceedings and obtained a possession order. At the same time, Mr F had agreed a sale of the property. He said he was unaware of the possession proceedings, and once he became aware that caused the sale to fall through.

Mr F said that he was in regular contact with Santander throughout the period of the arrears. He wasn't living in the property at the time and he had told Santander his new correspondence address, but Santander continued to send arrears and other letters to the mortgaged property, so Mr F didn't see them. He said that when he spoke to Santander he kept it up to date with his situation and told it that he was in the process of selling the property. He said that Santander didn't tell him that it was considering – or that it had taken – legal action.

Mr F only learned that Santander had instructed solicitors and begun legal action in July 2024. He complained to Santander and explained that he had now agreed a sale of the property, subject to contract, and the sale was moving forward.

In a final response dated 9 July, Santander accepted that Mr F had told it of his new address in January 2024 and that the agent he spoke to should have updated his address on its system but had failed to do so. It also accepted that while Mr F had been told, when he spoke to Santander, that any arrears would be reported to his credit file, it hadn't told him that the arrears could result in legal action. It paid him £100 compensation as an apology for this. Santander said that once it received a copy of the memorandum of sale from Mr F, it would instruct its solicitors to stop further legal action.

Mr F says he sent the memorandum of sale to Santander by recorded delivery as agreed. He then heard nothing further until he received a letter from Santander's solicitors dated 4 August. The letter said that Santander had obtained a possession order on 24 June, and it said that unless the full balance was repaid by 22 July, they would apply for an eviction date.

Mr F was concerned about this letter – both because he had been told further action would be put on hold, and because the deadline of 22 July had already passed when the letter had been sent to him. He said he was worried that the property could be repossessed at any moment even though a sale was in progress. Mr F said he told his solicitor and the buyer of the property about the situation, which led to the buyer pulling out of the sale.

Mr F said he spoke to the person at Santander who had dealt with his previous complaint, and she told him that the solicitors should not have written to him in those terms and Santander had not instructed them to do so. But then he received another final response dated 13 August 2024, which said that the solicitors had written to him to confirm the court order, but also that further action had been put on hold pending the sale of the property.

Santander said Mr F would need to contact its solicitors to discuss next steps.

Mr F said he tried to contact Santander's solicitors without success. He said that he had since put the property back on the market, but had been advised he now needed to reduce the asking price. He has received another offer which is £28,000 below the previous agreed sale price. Mr F has accepted that offer to conclude the sale and repay the mortgage. But he complains that Santander caused him to lose the previous offer, and he wants it to refund the amount he has lost as a result. He said the situation had also caused him great stress and worry.

Our investigator said that Santander should pay Mr F a further £300 compensation and should remove any legal fees added to the mortgage balance. But he didn't think it would be fair to ask Santander to refund the difference between the two sale prices, because while he accepted that the solicitor's letter had caused confusion, Santander had already told Mr F that further action was on hold for him to complete the sale.

Santander accepted that but Mr F didn't, so the complaint comes to me 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'm sorry to hear of the difficulties Mr F has faced. He's explained that because of rising interest rates the mortgage has become increasingly unaffordable for him. I can see he was in regular contact with Santander, and explained his situation. Mr F had previously decided to sell the property but was unable to because he discovered that his former wife had placed a restriction on the title. It had taken him some time to resolve that, but by 2024 he was ready to try again to sell.

In the meantime, Mr F spoke to Santander when he first began to go into arrears in 2023. There wasn't specific discussion of the risk of litigation or repossession at that time.

The arrears increased later in 2023 and into 2024. Santander sent various letters to the property. But Mr F wasn't living here. He'd told Santander that several times. And he'd asked it to update his correspondence address – but it didn't do that. So Mr F didn't receive the letters.

I don't think this was fair. It meant that Mr F didn't receive the arrears letters Santander sent. And it also meant that he didn't receive letters from its solicitors or the court before the repossession proceedings which led to the possession order. Mr F didn't know there had been a possession order until after it happened.

I think Mr F ought to have realised that there was a risk of repossession because of the arrears. All correspondence about his mortgage, from the offer onwards, includes a warning that the property might be repossessed if the payments aren't maintained. And it's well known generally that this is a risk. But understanding that there's a general risk that Santander might take possession action if the arrears continue isn't the same as being aware that it actually is intending to issue, or has issued, proceedings. Had Santander changed Mr F's correspondence address when he asked it to, that wouldn't have come as a surprise to him, and Santander might well have been able to agree a hold on further action before not after legal action.

Once Mr F did learn about this, and complained, Santander changed his address. Further correspondence was sent to the right place – including the solicitors' letter in August 2023. I

don't think this letter was fair either. It's clear that by then Santander knew of the impending sale. It had received the memorandum of sale, and had agreed to put further action on hold. So it should not have instructed its solicitors to send a letter, after that agreement, suggesting that the property was about to be repossessed. And that letter should not have been sent after the deadline it set out, it should have been sent well before the deadline.

I can understand why Mr F was very concerned about receiving the letter. He'd been assured that further action had been put on hold pending the sale, and it looked like Santander was going back on what it had said. If the property was repossessed, Mr F would lose the sale and be in a much worse position.

However, I don't think I can fairly ask Santander to deal with the consequences of the agreed property sale falling through. It seems that happened because Mr F told the buyer about the letter and what he thought was an imminent risk of repossession, leading to the buyer pulling out. But before he did that, I think it would have been reasonable to expect Mr F to have contacted Santander – as he had done before, when he first discovered the possession proceedings – to find out what was going on and whether action had been put on hold, as promised, or whether Santander now intended to repossess.

If Mr F had done that, Santander would have told him that in fact it was not intending to repossess ahead of the sale. Mr F would not have needed to tell the buyer of the risk of repossession because there was no risk, and the buyer would not have pulled out.

In addition, it's possible that this isn't the reason, or the sole reason, the buyer pulled out. There's a note in Santander's records that Mr F called Santander on 25 July – before the solicitors' letter was sent or received – to say that completion of the sale was supposed to be that day, that it hadn't gone ahead because the buyer was having difficulty in obtaining mortgage funds, and that Mr F's solicitor had given the buyer a deadline of the end of the following week before putting the property back on the market. I can't therefore rule out the possibility that the sale would not have completed even if the solicitors' letter had never been sent.

### **Putting things right**

For those reasons, I don't think it would be fair to hold Santander responsible for Mr F losing the sale and having to re-market the property at a lower price. There seems to have been a significant risk that the sale might never have gone ahead anyway. And even if the buyer had managed to get their finance in place, there was no need for Mr F to have told the buyer about the solicitors' letter before checking with Santander whether the agreement to hold further action was still in place. Had he done that, Santander would have been able to confirm the hold was still in place, Mr F wouldn't have needed to say anything to the buyer, and the sale could have proceeded.

However, it's clear that telling Mr F that further action was on hold, and then sending a letter suggesting it wasn't, caused Mr F substantial upset. I agree that it's fair that Santander increases its compensation offer to £400 to reflect this. And I agree that it's fair that Santander removes all legal fees added to Mr F's mortgage balance in connection with legal proceedings it failed to tell him about.

### **My final decision**

My final decision is that I uphold this complaint and direct Santander UK Plc to:

- Pay Mr F a further £300, in addition to the £100 already paid. This should be paid direct to Mr F, not applied to the mortgage balance, unless he asks for it to be used

to reduce the balance.

- Remove all legal fees in connection with the 2024 repossession action, together with interest charged on them, from the mortgage balance. If the mortgage is still outstanding at the date the redress is implemented, the balance should be reduced accordingly. If it has been redeemed by then, this amount should be refunded to Mr F, adding simple annual interest of 8% running from the date the mortgage was redeemed to the date of refund – in this case, Santander may deduct income tax from the 8% interest element as required by HMRC, but should tell Mr F what it has deducted so he can reclaim the tax if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 April 2025.

Simon Pugh  
**Ombudsman**