

The complaint

Miss K and Mr R's complaint is about their former mortgage lender, Santander UK Plc. They are unhappy with its decisions and actions when their mortgage ended and they were unable to repay the capital owed.

What happened

Miss K and Mr R took out their mortgage with Santander in 2006 with a term of 15 years; ending in March 2021. The mortgage was arranged on an interest-only basis and so the capital they borrowed had to be repaid at the end of the term as a lump sum.

Miss K and Mr R confirmed to Santander that they were selling the property in November 2020. However, that had not happened by the time the term ended in March 2021 and Miss K and Mr R were unable to repay the amount owed.

An offer was accepted for the property, but the sale didn't complete. While the property was put back on the market for sale, Miss K and Mr R also started looking at the option of re-mortgaging to a different lender.

Santander offered Miss K and Mr R a short-term extension toward the end of 2021 – this meant that the mortgage didn't need to be repaid until January 2023. A fixed interest rate product was also added to the mortgage. The mortgage was not repaid at the end of the extended term.

Miss K and Mr R continued to tell Santander about their plans to re-mortgage. Santander said in the spring of 2023 that it could look at whether it could offer them a re-mortgage itself, but it would have to be based on Miss K's income and age, as Mr R's age meant a repayment mortgage to Santander's maximum age would be unaffordable because the term would be so short. Unfortunately, this would have meant that Mr R would have to move out of the property and so it was not pursued.

A complaint was made about the information Miss K had been given, as she considered she'd had her time wasted. The complaint was upheld in April 2023 and Santander paid Miss K some compensation. Subsequently the complaint was referred to this Service – we did not uphold it.

Miss K and Mr R's Member of Parliament raised a complaint in June 2023:

- That a re-mortgage had been declined because of Mr R's age.
- That when Miss K approached Santander for a mortgage in just her name, as she'd been led to believe was possible, she was told that Mr R would not only have to be removed from the property title and mortgage, but he would also have to move out of the property.
- The mortgage was mis-sold.
- They had been overcharged interest for many years.

Santander responded to the third and fourth complaint points in July 2023 by explaining that it had not sold the mortgage to them, and an independent broker was responsible. It

responded to the part of the complaint about the interest rate, but it didn't uphold it. In that response, Santander made a mistake as it believed the broker was no longer trading – Miss K and Mr R complained about this error and Santander paid them £50 compensation. It forwarded the complaint to the broker.

Miss K and Mr R asked this Service to consider their concerns about the mortgage having been mis-sold and the interest rate they had been charged. Neither complaint was upheld.

A further complaint response was sent on 21 August 2023 in relation to the points about Mr R's age and the incorrect information Miss K had been given about taking a mortgage in her name.

Communications continued about Miss K and Mr R's plans for repaying the mortgage. By the end of 2023, they were reporting that they had a mortgage offer for sufficient to repay the Santander mortgage. They were asked to provide a copy of the re-mortgage offer so that the account could be put on hold, which would prevent any move to start legal action. It doesn't appear Miss K and Mr R provided a copy.

In February 2024 Miss K and Mr R again informed Santander that the property was being sold, although there was still mention of the possibility of a re-mortgage. It was confirmed to Miss K that there was no hold in place on the account. As such, at the end of that month a 'letter before action' was sent. This informed Miss K and Mr R that Santander would start legal action unless an agreement was reached. They contacted Santander and told it the first viewings of the property were booked for that day. It was explained that a hold could not be put on the legal action process, and Santander would need a memorandum of sale before it did so.

A complaint was made about the receipt of the letter before action, with Miss K and Mr R saying that they had not been told this would be sent to them. Santander responded to the complaint in a letter of 11 March 2024, in which it confirmed that they had been advised in advance of potential litigation action being taken. It reiterated that in order to prevent further action Miss K and Mr R would need to send in a memorandum of sale. Santander apologised if its communications had upset them, but it was satisfied that it had not done anything wrong.

Miss K and Mr R provided a copy of the memorandum of sale on 22 March 2024, and a hold was placed on potential legal action until 25 April 2024 to allow the sale to progress. It was noted on Santander's records that the memorandum didn't include a proposed completion date. Miss K called Santander's solicitors on 28 March 2024 to check a hold had been placed on the account and she had it confirmed there was, and the date the hold would expire.

In the middle of July 2024 Santander's solicitors informed Miss K and Mr R that legal action had been started and it sent the relevant documentation to the court. Miss K and Mr R questioned this, as they had provided a memorandum of sale as they'd been asked to. In addition, Santander was told that they were due to exchange contracts in the next two to three weeks. Santander told them that a memorandum of sale with a completion date was needed. A complaint was raised about Miss K and Mr R not being told they needed to keep the solicitors up to date with the sale. A hold was placed on the account until 15 August 2024 to allow the complaint to be dealt with.

Santander upheld the complaint in a letter of 26 July 2024. It said that its solicitors should have asked for an update before it started the process with the courts. Santander placed the legal action on hold until the end of October 2024.

Santander's solicitors confirmed the hold in an email of 30 August 2024. It also confirmed that if a hearing was listed during that period, it would be adjourned.

Miss K and Mr R's solicitors contacted Santander's solicitors on 14 August 2024 – it asked for a redemption statement. The information available indicates that no redemption date was confirmed, and Santander's solicitors responded by asking for one.

A week later Miss K asked for a redemption statement to be issued and chased its provision a week after that. This was sent to her on 3 September 2024, with an assumed redemption date of 30 September 2024.

On 10 September 2024 Miss K and Mr R's solicitors contacted Santander and informed it that it had wanted a redemption statement for 4 October 2024. A new statement was produced and sent on 26 September 2024.

On 19 September 2024 Miss K and Mr R were notified that a date for the possession hearing had been set for 15 October 2024. On the same day, Santander's solicitors wrote to the court to have the hearing adjourned, and it wrote to Miss K and Mr R to confirm that it had done so. The adjournment was confirmed by the court on 1 October 2024.

The mortgage was repaid shortly thereafter. Santander's solicitors has confirmed that it wrote to the court on 18 October 2024 to inform it that the mortgage had been repaid and the action was stopped. However, Miss K and Mr R received notification from the court for two further hearing dates in December 2024 and March 2025.

Miss K and Mr R referred their complaint to this Service and one of our Investigators considered the complaint. He upheld the complaint as he didn't think Santander should have started legal action when it did, given it had been told the property was being marketed and it had reiterated just three days earlier that legal action could be put on hold if the memorandum of sale was provided. In addition, the Investigator didn't think Santander had been clear about Miss K and Mr R needing to provide updates on the sale following provision of the memorandum of sale. He recommended Santander refund the legal charges and associated interest and pay Miss K and Mr R £300 compensation for the upset and confusion the legal action and poor communication may have caused.

Santander didn't accept the Investigator's conclusions. It said that while the Investigator had focussed on the three days between the complaint response in March 2024 and when it had instructed legal action, it didn't consider that showed the full picture. It highlighted that the mortgage term had ended in March 2021, and that it had given Miss K and Mr R until January 2023 to come up with a way to repay the mortgage, and it instructed its solicitors over a year after that date.

Miss K and Mr R said that they were grateful for what we were doing, but they didn't feel £300 compensation was enough to 'cover the appalling way we have and still are being treated.'

As agreement could not be reached, it was decided that the complaint should be referred to an Ombudsman for review.

I issued a provisional decision on 20 February 2025, in which I set out my conclusions and my reasons for reaching them. Below is an excerpt.

'As our Investigator explained, this decision will not reconsider any of the matters that Miss K and Mrs R have previously brought complaints to this Service about. As such, I will restrict my consideration to the events of 2024, albeit bearing in mind what happened before that.'

At the beginning of 2024 Miss K and Mr R informed Santander that they were again intending to sell their property. They had told Santander that this is what they were intending to do on previous occasions, but the property had not been sold. In light of this and the fact that it was over a year since the term extension had expired and almost three years since the original term had ended, Santander decided that it would not place a hold on taking legal action until there was evidence of the property being sold. I don't consider this was unreasonable and Miss K and Mr R were made aware that there was no hold on legal action. As such, I can't find it was wrong of Santander to send the pre-action letter on 20 February 2024, giving them 15 days to contact it with a firm plan to repay the mortgage.

Miss K and Mr R contacted Santander toward the end of that 15-day period and told it that the property was being marketed and viewings had been arranged. Santander told Miss K and Mr R that it would not put the potential legal action on hold unless a sale had been agreed and it received a memorandum of sale, thereby proving this. This was again not unreasonable.

A week after the 15-day timescale Santander had given Miss K and Mr R to reach an agreement with it, Santander instructed solicitors to start legal action. While this was only three days after the complaint response had reiterated what evidence Miss K and Mr R needed to provide to prevent legal action moving forward, I don't consider it was unreasonable in the overall circumstances. This is especially given Santander had already given them in excess of three additional years to repay their mortgage, and they had indicated on numerous occasions that a plan for repayment was in place, which then didn't come to fruition.

At the point the memorandum of sale was provided, a hold on legal action had already been put in place, but I am satisfied that if that hold had not already been in place, one would have been applied. The hold ended on 25 April 2024, at which time Santander has confirmed its solicitors should have checked in with Miss K and Mr R to see what was happening with the sale. It didn't do that at the time or at any point in the following weeks before it submitted a claim to the court for possession of the mortgaged property.

When Miss K and Mr R provided Santander with an update on the sale after this happened, it placed the legal action on hold again. In light of that, I think that had Santander's solicitors done what they should have, the application to the court would not have been made, but rather the hold on the account would have been extended, and it is also likely that hold would have been extended again until the property was sold. This would also have meant that the multiple hearings would not have been scheduled by the court, and Miss K and Mr R would not have been worrying for months after the mortgage was paid off. While it may be that the additional hearings being scheduled was a mistake by the court, or due to correspondence going missing in transit, had Santander's solicitors done what they should have in April 2024, the claim would never have been registered with the court and none of the hearing dates would have been scheduled.

As such, I am minded to conclude that the legal fees charged on the account should be reviewed. I am satisfied that the costs associated with the actions the solicitors undertook until the end of April 2024 were reasonably payable by Miss K and Mr R. However, thereafter, all that the solicitors should have done was two check-ins with Miss K and Mr R and the administration of extending the hold on the account.

Santander should establish what charges would have been made by their solicitors for these actions. It should refund the difference between that amount and the charges that were actually applied to the mortgage. Any mortgage interest that accrued on those charges after they were added to the mortgage balance should also be refunded. In addition, interest at 8% simple should be paid on the resultant sum from the date of redemption of the mortgage

to the date of settlement. If Santander considers it is required to deduct income tax from the interest paid, it should provide Miss K and Mr R with evidence of this for use with HMRC if needed.

It is clear that the legal action being started upset Miss K and Mr R, along with the ongoing contact from the court about hearings. As I have said above, I don't consider that Santander instructing solicitors was unreasonable in the circumstances, so Miss K and Mr R would have experienced some of that upset simply because of the situation with their mortgage. However, had Santander, or its representative, done what it should have when the April 2024 hold ended, I think their stress and upset would have been much lower, as they would not have been told legal action had been started and they would not have received any court dates to worry about. As such, I am satisfied that it is appropriate for Santander to pay Miss K and Mr R some compensation. In the circumstances, I think a payment of £500 is appropriate.'

Miss K and Mr R said that they did not feel that the whole picture had been taken into consideration when I reached my conclusions, and they provided some background information regarding their personal and health circumstances from 2018 onward. They highlighted that Santander had not made it clear what it needed them to do when they were selling their home and highlighted that they needed this guidance as it was the first time they'd sold a house. Miss K and Mr R summarised that they had never missed a payment to Santander, had never tried to not pay it what they owed, and there had been no need for Santander to have taken them to court.

Santander accepted my provisional 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 would like to thank Miss K and Mr R for sharing the information they have about their circumstances in the years prior to their mortgage term ending and Mr R's more recent health concerns. I in no way meant to imply in my provisional decision that they had not done what they could in order to repay their mortgage. However, while I can understand the position they were in, I have to take a step back and consider what happened independently.

Nothing Miss K and Mr R has said has changed my conclusions. I remain satisfied that it was not unreasonable for Santander not to put a hold on the legal action until it received documentation confirming that a sale had been agreed on their property. However, from that point onwards, I remain of the opinion that Santander's solicitors should have done more to check on the progress of the sale, and had it done so, the legal action would not have proceeded further.

Overall, while I have considered everything Miss K and Mr R have said in response to my provisional decision, my conclusions have not changed.

Putting things right

In settlement of the complaint Santander should:

- Establish what charges its solicitors would have charged if, after April 2024, all it did was two check-ins with Miss R and Mr K and administration of extensions of the hold on the account. Santander should then refund the difference between those hypothetical charges and the actual charges from April 2024.

- Any mortgage interest that accrued on those charges after they were added to the mortgage balance should also be refunded.
- Interest at 8% simple should be paid on the resultant sum from the date of redemption of the mortgage to the date of settlement. If Santander considers it is required to deduct income tax from the interest paid, it should provide Miss K and Mr R with evidence of this for use with HMRC if needed.
- Pay £500 compensation for the upset and inconvenience caused.

My final decision

My final decision is that I uphold this complaint in part. Santander should settle the complaint as detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K and Mr R to accept or reject my decision before 17 April 2025.

Derry Baxter
Ombudsman