

The complaint

This complaint is about a mortgage Mr O holds with Santander UK Plc. At the heart of the complaint is Santander's treatment of Mr O over an extended period of financial pressure and mortgage arrears. Mr O believes his treatment hasn't just been unfair but that it has been discriminatory.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll give a brief summary of the key events and then focus on giving the reasons for my decision. In doing so, I'll be rounding any figures to avoid the risk of identification by including information that is overly specific. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr O has had the mortgage since 2018, and it has been in arrears to varying degrees since 2019. He brought a complaint of unfair treatment to our service in 2021; that was determined by a fellow ombudsman. I won't be revisiting that decision; I mention it for context only.

The current complaint was brought to us on 28 February 2024, and is primarily about events in 2023, during a period when a firm of solicitors I'll refer to as E was pursuing litigation action against Mr O on Santander's behalf. The complaint has been the subject of two final responses, one was from Santander dated 1 September 2023, and the other was from E dated 17 October 2023.

Our Investigator's main finding on the case was that Santander should not have started litigation in the spring of 2023, because Mr O reasonably believed that he was in a payment arrangement following a phone conversation with E in December 2023. If that hadn't happened, the investigator concluded that a new dialogue taking place would most likely have led to a new payment arrangement being agreed going forward from May 2023. To put things right, the Investigator recommended Santander do the following:

- amend Mr O's credit file to show him as being in a payment arrangement between May and September 2023 inclusive;
- remove from Mr O's mortgage account the legal fees and charges, and interest charged thereon, levied in connection with the 2023 litigation; and
- pay Mr O £300 compensation.

Santander was initially minded to accept the proposed settlement, but later changed its mind. It disagreed with the finding that a new payment arrangement could have been agreed in May 2023, citing as relevant factors (amongst other things) the longevity and level of arrears and the fact that Mr O had rented out the property without consent.

Mr O didn't agree either; he didn't consider that the proposed redress, in particular the compensation element, went far enough. He emphasised his view that Santander had discriminated against him and proposed the following remedy:

- a letter of apology from Santander;
- compensation of £25,000;
- consolidation of the arrears;
- amendment of his credit to show the correct status; and
- the removal of legal fees and associated interest.

With no prospect of any common ground or a mutually-agreed settlement being reached, the case came to me for review.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts, nor in any way interfere with that work.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture. It's also for us to decide when we have enough evidence to reach a fair conclusion.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

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 following conclusions.

Just as the investigator did, I've listened to a recording of Mr O's conversation with E on 29 December 2022. Having done so, I've reached much the same conclusion. That is, in the absence of a later call to say otherwise, Mr O could reasonably infer that a payment arrangement had been agreed, which he then kept to between January and March 2023. In that context, I find that the decision to begin litigation wasn't justified and amounted to unfair treatment.

I've noted what Santander has said about why it disagrees with the Investigator's finding that if the litigation hadn't happened, it's likely another payment arrangement would have been agreed in May 2023. However, I'm not convinced by it. All of the factors that Santander have

cited as to why that would not have been likely seem to have been known to it for some time, and don't appear to have prevented other payment arrangements being agreed.

So, on the main premise of the Investigator's assessment, I agree that the litigation action was unfair and most likely prevented a new payment arrangement being agreed for May 2023 onwards. What I have to consider next is what constitutes reasonable redress.

Two aspects of that are relatively straightforward. The litigation should not have taken place, so the costs arising from it should not be borne by Mr O. Meanwhile, it follows that Santander's credit file reporting should reflect my finding that, but for the litigation, a new payment arrangement would more likely than not have been agreed starting in May 2023. Both of those form part of what Mr O is seeking by way of redress, so I now turn to the other components of his redress claim.

Consolidation of arrears into the mortgage balance (known as capitalisation) is one of a number of forbearance options that a lender might consider offering a borrower in financial hardship. But it's not something lenders are required to agree to; capitalisation increases the mortgage account balance and the contractual monthly payment (CMP) and lenders should not commit borrowers to higher payments that might not be affordable.

It's an onerous concession, and lenders' policies typically reflect that. So it's not something I could reasonably award as redress here; that would not be appropriate. If Mr O thinks his arrears should be capitalised, he can (if he has not already done so) ask Santander to consider doing so, subject to him meeting its qualifying criteria, which are almost certain to include an affordability assessment. I'd expect Santander to assess such a request fairly, but more than that is not for me to say here.

As far as an apology is concerned, even where I have found a business to have erred, as I have here, I don't generally include the provision of an apology in the redress I order. There's good reason for that. If Mr O accepted my final decision, it would be binding on Santander to comply with it, so Santander would be apologising because it was *required* to, not because it thought it *should*. An apology given under duress has no value, so I prefer to leave it to Santander to decide for itself if an apology is due to Mr O.

Finally, that leaves the level of compensation. I understand how strongly Mr O feels that in Santander treated him in a discriminatory fashion. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment", when subject to the stresses that are inherent in dealing with a problem where the wider context is enduring financial difficulty. It's not easy to say that one party's reaction is any less valid than the other's.

The simple fact is that I have to take a step back and assess things objectively. When I do that here, I'm not persuaded of any intent on the part of Santander to treat Mr O differently from other customers in broadly similar circumstances or otherwise knowingly discriminate against him on the grounds of any protected characteristics. Overall, in all the circumstances, taking into account everything that both parties have said and provided, I consider £300 to be fair compensation for Mr O's time, trouble and upset.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr O feels. That's a natural, subjective reaction, and entirely understandable. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate legal conclusion; sometimes it's about compromising to reach a *fair* conclusion which both parties can accept in a spirit of conciliation, I've done that here. All I can do further is express the hope that both parties can move on from here without recrimination over what has gone before.

My final decision

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Santander UK Plc to take the following action:

- amend Mr O's credit file to show him as being in a payment arrangement between May and September 2023 inclusive;
- remove from Mr O's mortgage account the legal fees and charges, and interest charged thereon, levied in connection with the 2023 litigation; and
- pay Mr O £300 compensation.

I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

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

Jeff Parrington

Ombudsman