

## The complaint

Mr S complains about action taken by Santander UK Plc (Santander) in relation to arrears on his mortgage account and charges which have been added to the account.

## What happened

Mr S has brought a series of complaints to this Service over the years in relation to his mortgage with Santander.

On 19 January 2024, another Ombudsman issued a decision saying that this Service had already considered the majority of the issues Mr S was complaining about at that stage and that this Service would therefore not consider them again. The Ombudsman considered that there were two issues raised by Mr S which had not previously been dealt with - regarding legal costs for a court hearing in January 2023 and regarding the outcome of a court hearing in November 2023. However, Mr S had not yet raised these issues with Santander, so the Ombudsman set out that he would need to do this first before he could refer the matters to this Service. The Ombudsman also set out in her decision that any complaints about a lender refusing to deal with a DSAR request could be referred to the Information Commissioner who regulates this activity.

In this complaint, Mr S has complained about:

- Delays in Santander responding to his Data Subject Access Request (DSAR).
- Legal action taken in relation to the account.
- Legal costs for the court hearings on 30 January 2023 and 13 November 2023 being added to the mortgage account when the court confirmed that Mr S would not be liable for these.
- Santander not honouring the three-month stay of proceedings ordered during the court hearing on 13 November 2023.

Since he referred his complaint to this Service, Mr S has instructed a forensic accountant to inspect the documents he received as a result of the DSAR. The accountant has provided an email dated 8 July 2024, setting out various allegations against the mortgage broker, lender and Mr S's accountant at the time the mortgage was taken out. The email suggests that the mortgage was mis-sold; that Mr S didn't know he was taking out an interest-only mortgage; and that Santander didn't carry out sufficient checks when the mortgage and additional borrowing were taken out. The email from the accountant also refers to there being a longstanding dispute about ground rent/service charges with the management company for the property and Santander paying these and applying the amount to the mortgage despite Mr S's requests.

Santander says that it received a written DSAR request from Mr S on 21 November 2023 and wrote to him on 22 November 2023. It received his response on 11 December 2023 (dated 4 December 2023) and sent him the documents on 8 January 2024, which is within the one calendar month timeframe required.

Santander says that any costs would be added to the balance of Mr S's mortgage as per the terms and conditions of the account. Santander says that it had reviewed its notes from the court hearing on 30 January 2023 and there was no mention of costs, therefore the costs

would be passed onto Mr S, In respect of the hearing on 13 November 2023, Santander says that it paid the costs of £120 as instructed and no legal costs were applied to the mortgage due to this hearing.

Santander says that it was agreed at the court hearing on 13 November 2023 that it would place a hold on taking any further action for three months. It subsequently applied for a court date on 6 March 2024, which was more than three months since 13 November 2023. Therefore, it says that it has not breached the order.

Our Investigator looked into Mr S's complaint and didn't think that Santander needed to take any further action. In respect of the ground rent, the Investigator found that our Service had already looked into this part of Mr S's complaint, so we wouldn't consider the same complaint again, and no ground rent had been added to the mortgage since then. He didn't think it was unreasonable for Santander to be taking legal action given the increasing arrears on the account. He was satisfied that it was fair and reasonable for Santander to pass the costs of the court hearing on 30 January 2023 on to Mr S and also that Santander had not applied any costs to the mortgage in respect of the hearing on 13 November 2023. The Investigator was also of the view that Santander did not do anything wrong in respect of making an application to the court following the stay of proceedings for three months in November 2023, as the application was not due to be heard until the end of that stay.

Mr S disagrees with the Investigator's view, so the case has come to me to make a 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.

Having looked at the evidence, I agree with the Investigator's view for broadly the same reasons, and I've explained my reasons further below.

#### Sale of the mortgage and lending decisions

In relation to the sale of the mortgage by the broker and the lending decisions by Santander, our Investigator has explained to Mr S that he has not complained to Santander about these issues before referring the complaint to this Service. These issues would need to be raised with the broker and/or Santander respectively in the first instance before this Service could look into them. Therefore, I will not be considering these issues any further in this decision.

#### Ground rent/service charge being added to the mortgage

An Ombudsman at this Service issued a final decision on 28 February 2023 in respect of action taken by the freeholder to recover outstanding ground rent/service charges. The Ombudsman concluded that it was reasonable for Santander to apply this to the mortgage and to proceed with legal action in respect of this. It was explained that any action taken by the freeholder had the potential to result in the forfeiture of the lease under which Mr S purchased the property, which forms the security Santander holds for the money Mr S owes it.

I am satisfied from the documentation provided that the last occasion on which ground rent/service charge amounts were paid and added to the mortgage was February 2019, for around £37,000. This was before the Ombudsman's final decision and we would not look at the same issue again. As no further amounts in respect of ground rent/service charges has been applied to the mortgage since the Ombudsman's decision in February 2023, I am satisfied that Santander has not acted unfairly or unreasonably in respect of this issue.

#### Delays with DSAR request

As previously advised by the Ombudsman in the final decision dated 19 January 2024, Mr S should make any complaints about a lender refusing to deal with a DSAR request appropriately to the Information Commissioner, who regulates this activity.

### Current legal action

Santander has put legal action in relation to the mortgage account on hold whilst this Service investigates Mr S's complaint. It says that there have been ongoing investigations by this Service relating to Mr S's complaints dating back to 2017.

There have been arrears on the mortgage account since 2010 and these have been increasing since 2023. The arrears on the mortgage account are now over £68,000 as of April 2025, which equates to over 45 monthly repayments. I also note that Santander has paid over £62,000 in ground rent/service charges to Mr S's freeholder to prevent forfeiture of the lease and losing the security, as he has not paid these. Santander has indicated that the freeholder is now demanding a further payment of £96,000.

In the circumstances of this case, I don't think it is unreasonable for Santander to be taking legal action in relation to the mortgage account. The arrears and charges paid to the freeholder are eroding the equity Mr S has in the property and it is not in either Santander or Mr S's interests if the arrears balance continues to increase with no plan to get the mortgage back on track.

As set out above, the final decision issued by an Ombudsman at this Service on 28 February 2023 found that it was not unreasonable for Santander to proceed with legal action at that time. The only reason that the legal action was postponed was due to Mr S's complaint to this Service.

In the final decision of 28 February 2023, the Ombudsman also explained that, whilst lenders may agree to put enforcement action on hold whilst the Service looks into a complaint, they don't have to and we can't force them to. It was noted that this could create the potential risk of customers using this Service to bring complaints with the intention of obstructing a lender that was trying to take legitimate action through the courts to recover money owed to them.

### Legal costs for the court hearing on 30 January 2023

Mr S refers to there being a direction that there be "*No order as to costs, save that the Claimant may not add costs of today's hearing to the mortgage debt*". However, he says that Santander has applied costs for a hearing that happened on 30 January 2023, which was an occasion that it withdrew its claim from the court.

I have seen from the documentation provided that Santander had an eviction notice in place with a hearing scheduled to go ahead on 1 February 2023. It agreed to suspend the eviction pending the outcome of a complaint that Mr S had raised with this Service and notified the court of this on 5 January 2023. I have also seen a letter from Santander's solicitors to Mr S dated 5 January 2023 informing him that the eviction appointment had been cancelled and an email to Mr S's solicitors dated 10 January 2023 confirming the same.

Santander's solicitors became aware on 27 January 2023 that Mr S had made an application to the court to stay the warrant of possession and that a hearing had been listed for 30 January 2023. Santander's solicitors contacted the court to ask for the hearing to be vacated in light of the fact that it had withdrawn the warrant, cancelled the eviction and confirmed this to both Mr S and his solicitors. However, the hearing was not vacated and Santander therefore instructed an agent to represent it at the court hearing to ensure that it was recorded that the warrant had been withdrawn and there was no basis for the application. At the hearing, the court made no order in respect of Mr S's application as the warrant had been withdrawn pending the outcome of Mr S's complaint to this Service.

Firstly, I am satisfied that the direction referred to by Mr S above relates to the hearing which took place on 13 November 2023, and not the hearing on 30 January 2023. I have reviewed the transcript of the hearing on 30 January 2023 and note that there is no indication from the court that the costs for this hearing were not to be added to the mortgage.

Secondly, the terms and conditions of the mortgage set out that Santander is entitled to pass on costs for legal action taken in respect of the mortgage to Mr S. It was Mr S who made the application to the court for the hearing and the order sought could have impacted Santander's security. I am therefore satisfied that it was fair and reasonable for Santander to instruct a lawyer to attend the court hearing on 30 January 2023 in order to protect its interests.

#### Costs for court hearing on 13 November 2023

I have seen the judgment of the court in respect of the hearing on 13 November 2023, which sets out the order that there would be *"No order as to costs, save that the Claimant may not add costs of today's hearing to the mortgage debt"*.

Santander has said that no legal costs were applied to the mortgage due to this hearing. I have looked at the transactions on the account and I am satisfied from what I have seen that Santander didn't apply the costs of the hearing on 13 November 2023 to Mr S's mortgage account.

#### Santander listing a further hearing for 6 March 2024

The judgment of the court in respect of the hearing on 13 November 2023 sets out the order that proceedings would be stayed for three months. Mr S says that Santander did not honour this as he received notice of a claim on 10 February 2024 which was dated 22 November 2023 for a court hearing on 6 March 2023. He therefore says that Santander has breached the order of the court.

I can see that Santander made an application dated 22 November 2023 and that notice of this application was sent to Mr S dated 3 February 2024 in respect of a hearing on 6 March 2024.

The stay does not prevent Santander from making an application to the court, it simply means that no application will be heard until after the period for which proceedings were stayed. Whilst Santander made its application for a hearing within the three-month period following the order on 13 November 2023, the hearing was requested to take place after that period. Therefore, I am satisfied that Santander has not acted outside the direction of the court in this respect. In any event, if Santander had breached an order of the court, it would be a matter for that court to deal with. I also note that proceedings have been put on hold due to Mr S's complaint with this Service.

I know my decision will come as a disappointment to Mr S, but I can't say that Santander has acted unreasonably in the circumstances of this case, and I don't uphold this complaint.

#### **My final decision**

For the reasons I've explained above, I don't uphold this complaint and don't require Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 June 2025.

Rachel Ellis  
**Ombudsman**