DRN-5610570

The complaint

Mr and Mrs S complain that Santander UK PLC failed to comply with the terms of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 for the following reasons:

1. Santander didn't apply to cancel the scheduled court hearing once it was made aware of the breathing space moratorium and this led to a possession order being wrongly granted by the court;
2. During the moratorium, Santander sent Mr and Mrs S a letter confirming solicitors fees had been added to their mortgage; and
3. During the moratorium, Santander's solicitor sent Mr and Mrs S a letter about their mortgage.

What happened

Mr and Mrs S had an interest only mortgage with Santander. The mortgage term ended on 28 November 2022 which meant full repayment of the outstanding capital was due.

Due to non-payment of the capital balance due, in January 2024 Santander started legal action to take possession of the property. A court hearing was arranged for 6 June 2024.

Mr and Mrs S sought debt advice and they appointed a repossession expert to represent them. On 1 June 2024 Mr S was granted breathing space under the Debt Respite Scheme. The scheme gives someone in problem debt temporary protection from their creditors while they get debt advice and make a plan. Mr S was granted temporary protection for up to 60 days – until 31 July 2024.

On 4 June 2024 Mr and Mrs S' representative called the solicitors representing Santander (who I'll refer to as T) to request an adjournment of the court hearing. The representative was told by T that it would contact the court to request that the hearing be adjourned until after the expiry of the breathing space moratorium.

The following day, Mr and Mrs S' representative sent an email to Santander requesting an adjournment of the court hearing. The court and T were also copied in. The email read…

> *"Mr S was entered into breathing space by the debt charity…and was advised that his lender Santander (the claimant) should adjourn the hearing until after the 60 days respite, which expires on the 31/07/2024. We ask that Santander, through their solicitor [T], Adjourn the hearing. We have included the court within the notification as we have had other cases where the court have not been informed, and a possession order has been set in the defendants absence. We therefore further ask of the court; in the event that the claimants solicitors (also copied in) do NOT adjourn the application themselves, that the court adjourn the proceedings until the first available date after the 1st August 2024 in order for Mr S to achieve exactly what the breathing space is designed to do and then attend court with the opportunity to defend his case."*

The court hearing wasn't adjourned, and it went ahead on 6 June 2025. Having thought that

the hearing wasn't taking place, Mr and Mrs S didn't attend court.

In their absence the court ordered that:

"… 1. The defendant give the claimant possession of [the property] on or before 4 July 2024

2. This possession is NOT to be enforced while the defendants remain in breathing space

3. There is a Money Judgement for the defendant to pay the claimant the sum of £162,500 (for the outstanding mortgage debt)

4. Silent as to costs."

On 21 June 2024 Santander sent Mr and Mrs S a letter informing them of the legal costs incurred as a result of the legal action taken – totalling £1,149.40.

On 16 July 2024 T wrote to Mr and Mrs S providing a copy of the possession order and explaining next steps and what this meant for Mr and Mrs S. The letter said that Santander could apply to the court for an eviction date on or after 4 July 2024 if the outstanding balance hasn't been paid by that date. T accepts that the wrong date was given. As per the court order, possession was unenforceable until after the breathing space ended on 31 July 2024.

Following instruction from Santander, on 2 August 2024 T sent a letter to the court requesting a warrant of possession (eviction date). Mr and Mrs S were notified of this.

On 11 August 2024 Mr and Mrs S complained to Santander and T about the actions taken during the breathing space moratorium.

T answered part of Mr and Mrs S' complaint about points 1 and 3. The complaint was partially upheld. T didn't accept that it had breached the breathing space terms by allowing the possession hearing to go ahead on 6 June 2024. It also didn't think it had acted unfairly by subsequently writing to Mr and Mrs S with details of the possession order.

T did however accept that under the Civil Procedure Rules it should've obtained permission from the court before it requested a warrant of possession. But this didn't happen. T said it would take steps to put this right.

Complaint point 2 was addressed by Santander who didn't uphold the complaint. It said that it had acted in accordance with the breathing space terms by applying costs incurred as a result of legal action that pre-dated the breathing space period and that as a responsible lender it had a duty to notify Mr and Mrs S of those fees and charges added to the mortgage.

Following the complaint, on 11 October 2024, T sent a request to the court to cancel the initial request for a warrant. On the same day it submitted an application to the court requesting permission to enforce the possession order.

On 14 November 2024, the court granted T's application for permission to enforce possession, and a court order followed that said:

"…Upon considering the claimant's application and that the defendant's breathing space has ended

IT IS ORDERED THAT

1. *The claimant be granted permission to enforce the possession order of Deputy*

Judge…dated 6 June 2024 pursuant to CPR 83.2(3)(E)

2. *AND the possession order shall remain enforceable for 6 years from the date of this order without the need for the claimant to seek further permission from the court"*

An eviction date was set for 10 March 2025.

On 16 January 2025 Mr and Mrs S made an application to the court to set aside the possession order. A hearing for an application to suspend the eviction was set for 6 March 2025. On 4 March 2025 the court enforcement officer emailed Mr S to say that Santander had put proceedings on hold and the eviction date of 10 March 2025 had been cancelled.

Mr and Mrs S brought their complaint to the Financial Ombudsman Service. An investigator explained to Mr and Mrs S that whilst parts of the complaint had been answered by T, Santander is responsible for the complaint, including any actions by T, as T was acting as an agent of Santander by handling the legal action on its behalf. Mr and Mrs S accepted this, and the complaint was considered as a whole against Santander.

The investigator looked into things and thought that the complaint should be upheld. In summary he said that whilst he didn't think that Santander had breached the breathing space terms by proceeding with court action, he did think that it gave false hope that the hearing would be adjourned. That said he thought the outcome of the court hearing would likely be the same in any event. The court was aware of the breathing space arrangement and so enforcement of the order wasn't granted until after the expiry of the breathing space. The investigator also thought that the letters sent by Santander and T during the moratorium breached the breathing space terms.

To put things right the investigator said that Santander should do the following:

- *"Rework the mortgage so that the June 2024 legal fees aren't added to the mortgage until after 31 July 2024. This should ensure that any interest charged on those fees isn't charged until after the breathing space ended.*

- *This will also mean Mr and Mrs S overpaid at times because the balance was higher than it should be and more interest was charged than should have been. Generally, we'd say overpayments should be refunded to the customer. However, in this situation, the entire balance is arrears and due to be repaid. So, Santander should use any overpayments to reduce the capital balance.*

- *Pay Mr and Mrs S £250 compensation for the distress and inconvenience they've experienced."*

Santander accepted the investigator's opinion. Mr and Mrs S didn't agree and asked for their case to be decided by an Ombudsman. They gave several reasons why they were specifically unhappy with the investigator's interpretation of the breathing space regulations and guidance when answering complaint point 1. The other points weren't disputed. In summary they said:

- The investigator has incorrectly relied on section 3.8 of the Debt Respite Scheme (Breathing Space) guidance for creditors when reaching his opinion, when in fact the relevant sections that should be applied here are 3.4 and 3.7.

- Under section 3.8 of the Debt Respite Scheme (Breathing Space) guidance for creditors, the court didn't give Santander permission to proceed with legal action

during the breathing space – as required.

- While the legal action may have started before the breathing space moratorium, under sections 3.4 and 3.9 of the Debt Respite Scheme (Breathing Space) guidance for creditors, Santander and T were still obligated to pause any enforcement action (including the court hearing).

- Santander later cancelled the judgment on 14 November 2024. This action strongly indicates that the court action on 6 June 2024 was unlawful.

- The court order issued on 6 June 2024, included contradictory dates and set an unlawful deadline within the breathing space period.

The investigator considered Mr and Mrs S' objections but explained why his opinion remained unchanged.

With regards to Mr and Mrs S' concerns about the information provided in the court order, the investigator explained why our service doesn't have jurisdiction to consider a complaint about the actions of the court. Mr and Mrs S accepted this, but they asked for a final decision from an Ombudsman to address the remainder of their concerns.

Because an agreement hasn't been reached, the case has been passed to me to decide.

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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach a fair outcome.

Having considered everything provided by both parties, I agree with the outcome that has been reached by the investigator. I'll explain why.

I've thought about what the relevant regulations and Government guidance say about the effects of a moratorium and the actions a creditor is prohibited from taking during it.

The key thing to note here is that initiating a possession hearing (to obtain a possession order from the court) and enforcing that possession order (e.g. applying for a warrant of possession – to set a date for eviction) are two different things. I'll explain further.

Section 3.1 of the guidance for creditors (as derived from section 7(6) of the regulations) says:

"You must make sure you stop:

- *the debtor having to pay certain interest, fees, penalties or charges for that debt during the breathing space*

- *any enforcement or recovery action to recover that debt, by you or any agent you've appointed*

- *contacting the debtor to request repayment of that debt, unless you've got permission from the court*

Interest can still be charged on the principal in secured debt, but not on the arrears."

Enforcement action is defined in section 7(7) of the regulations. The relevant parts say:

"Effect of a moratorium

7. (1) A moratorium has the effect specified in this regulation in relation to moratorium debt during a moratorium period….

(7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt—

> *(a) take a step to collect a moratorium debt from a debtor,*
>
> *(b) take a step to enforce a judgment or order issued by a court or tribunal before or during a moratorium period regarding a moratorium debt,*
>
> *(c) enforce security held in respect of a moratorium debt,*
>
> *(d) obtain a warrant,*
>
> *(e) subject to regulation 12(4)(d), sell or take control of a debtor's property or goods,*
>
> *(f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,*
>
> *(g) make an application for a default judgment in respect of a claim for money against the debtor"*

It is clear in this case that Santander had started legal action prior to the moratorium. Santander has shown that legal action started in January 2024 and a court hearing date had been set for 6 June 2024. This is what led Mr and Mrs S to seeking debt advice and appointing a repossession expert. The moratorium started on 1 June 2024 – five days before the court hearing date. I've seen enough to satisfy me that a court date was set before the moratorium started.

And so it follows that taking into account what the regulations say (specifically section 7(7)(f), I don't think Santander acted unfairly because it did not start legal action or proceedings during the moratorium.

Section 3.7 of the guidance (as derived from section 10(2) of the regulations) says:

"Where a court judgment or order has not yet been issued…

> *Any court that receives notification about a breathing space debt where a bankruptcy petition has started, must stop the bankruptcy proceedings, until the breathing space ends or is cancelled. Other court proceedings about the debt (other than enforcement of court judgments or orders) can continue until the court or tribunal makes an order or judgment."*

As per the regulations and guidance, existing legal action and court proceedings can continue until the court makes an order – which is what happened here.

I appreciate that following the call with T on 4 June 2024 Mr and Mrs S were given false hope that the court hearing could be adjourned until after the expiry of the moratorium. I agree that they should be compensated for any loss of expectation here as it was unlikely

that the court hearing could in fact be adjourned at such short notice. It's also important to note that Mr and Mrs S' representative also wrote to the court ahead of the hearing to ask that in the absence of a request for adjournment from Santander or T, that the court makes its own decision to adjourn the hearing.

It's clear from the court order that the Judge was aware of the breathing space moratorium, and that did not prevent him from proceeding with the hearing and granting a possession order. This therefore supports my finding that Santander did not act unfairly by allowing the hearing to proceed.

Mr and Mrs S say that section 3.8 of the guidance applies to prevent a hearing from taking place during the moratorium. Our investigator has explained why that's not the case and that section 3.8 in fact relates to the enforcement of a court order during breathing space – and I agree.

Section 3.8 of the guidance (as derived from section 10(5) & (6) of the regulations) says:

> *"Unless the court or tribunal gives you permission to continue, the court or tribunal must make sure any action to enforce a court order or judgment about a breathing space debt stops during the breathing space."*

Examples of prohibited actions are listed, and the guidance goes on to confirm that:

> *"Existing legal proceedings can continue when the breathing space ends."*

Mr and Mrs S feel that the court order of 6 June 2024 was issued unlawfully. It's not for me to say if a court order is lawful or not, only a court can decide if it was issued properly. But bearing in mind what the regulations say it was reasonable for Santander to continue the existing legal action.

On this date the court ordered that possession should not be enforced while Mr S remained in breathing space. Santander abided to this. It wasn't until 2 August 2024 that T sent a letter to the court requesting a warrant of possession (eviction date). This was after the moratorium expiry.

T accepts that its actions were procedurally incorrect. It ought to have sought the courts permission before requesting an eviction date. I'm satisfied that T took the necessary steps to put things right and court permission was obtained before the eviction hearing went ahead.

So having considered everything, I've not seen anything to suggest that Santander has breached the breathing space terms in the way that it has proceeded with legal action in this case. It's also important to note that had there been a breach of the breathing space regulations as Mr and Mrs S suggest, the court would have intervened, the hearings would have not gone ahead, and the orders and judgements would not have been issued in the way they have been.

I note that Mr and Mrs S have quoted what they consider to be relevant case law to support their case. I've taken into account the relevant law in deciding what I consider is fair and reasonable in the individual circumstances of this complaint. I don't think the cases Mr and Mrs S have told us about help their complaint. In any event, as I've explained the court felt it was appropriate for the hearings to take place when they did, and I can't interfere with or overturn any decisions made in court.

That leads me to consider points 2 and 3 raised by Mr and Mrs S about the communication from Santander and T during the moratorium.

Our investigator has explained why, in accordance with the regulations, Santander should not have applied legal costs to Mr and Mrs S' mortgage balance during the moratorium. He's also explained why he doesn't think the letters sent during the moratorium meet the requirements of approved communication.

Both parties accept our investigator's opinion in relation to these points and they agree with his recommendation on how things should be put right. I agree with our investigator's findings here, and as these points are no longer in dispute, I have nothing further to add.

Having considered everything, I think £250 fairly compensates Mr and Mrs S in the circumstances. As I've explained, I think T could have better managed Mr and Mrs S' expectations about postponing the possession hearing at short notice. That said, Mr and Mrs S received no confirmation that the hearing had been adjourned but they still chose not to attend. In any event, I'm not persuaded that their attendance would have impacted the outcome of the hearing in any way – as in accordance with the breathing space rules the court ordered that any enforcement action could not happen until after the expiry of the moratorium – which doesn't impose recovery action during the moratorium.

I do however feel that receiving letters during the moratorium from Santander and T informing Mr and Mrs S of the extra fees incurred and asking them to address the outstanding balance would have caused unnecessary distress that the breathing space regulations are designed to avoid. Overall, I consider an award of £250 to recognise the distress and inconvenience caused by Santander (and T's) actions to be reasonable and in line with this service's guidelines on such compensation.

Putting things right

To put things right, Santander should do the following:

- Rework the mortgage so that the legal costs applied during the moratorium totalling £1,149.40 aren't added to the mortgage until after 31 July 2024. This means that any interest charged on those fees isn't applied until after the breathing space ended.

- To account for any overpayments made since the moratorium started on 1 June 2024, due to the higher interest amount charged as a result of these legal fees applied, Santander should apply the overpayments to Mr and Mrs S' mortgage account to further reduce their capital balance owed.

- Pay Mr and Mrs S £250 compensation for the distress and inconvenience they've experienced.

My final decision

My final decision is that I uphold Mr and Mrs S' complaint and I direct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 17 July 2025.

Arazu Eid
Ombudsman