

## **The complaint**

Mr and Mrs B complain about how Santander have treated them whilst the amount of arrears on their mortgage has been in dispute.

## **What happened**

In February 2023, Mr and Mrs B applied for a new retention rate to be applied to their mortgage. In February 2024, this still hadn't been applied to Mr and Mrs B's mortgage. The mortgage was in arrears, but the application of the incorrect rate meant the arrears were showing as higher than they should've been. Santander paid Mr and Mrs B £250 compensation for this mistake.

In May 2024, the new rate still hadn't been applied. Santander confirmed that this meant the arrears balance was still currently showing as higher than it should be. However, Santander wasn't able to confirm a timescale for when a remediation to amend the arrears balance would be completed. Santander paid Mr and Mrs B £100 compensation for this.

Throughout 2024, Santander repeatedly wrote to Mr and Mrs B saying it would be taking legal action due to the level of arrears on his account. Mr and Mrs B say they were continually reassured by Santander that they should ignore the letters from its solicitors until the remediation had taken place.

In July 2024, Santander confirmed that remediation had been carried out on Mr and Mrs B's account, and the arrears balance stood at around £13,0000. Santander confirmed that this meant the mortgage still met the threshold for legal action to be taken and that this would continue. Santander paid Mr and Mrs B £200 for the distress and inconvenience caused by the delayed remediation of the account.

Our Investigator upheld the complaint and recommended any litigation fees up to the point in June 2024, when the remediation was completed, be refunded by Santander. He was satisfied that the total compensation of £550 was fair in the circumstances.

Mr and Mrs B didn't accept this. They said the fixed rate they took in 2023 should've been for two years rather than one year. Mr and Mrs B also thought the amount of compensation wasn't high enough.

Mr and Mrs B maintained that solicitors shouldn't have been instructed whilst there was still a dispute about the level of arrears. Santander said that the fees it incurred leading up to the remediation taking place always would've been incurred, just after the remediation had taken place instead.

The complaint is now with me to make 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.

First, I should explain that we are not the industry regulator, that's the Financial Conduct Authority. We do not have powers to fine or punish businesses as part of the outcome of a complaint as Mr and Mrs B have requested. Our compensation awards are not designed to fine or punish a business either.

It's not for us to specifically look for regulatory breaches as Mr and Mrs B say has occurred here. We consider complaints in the round, taking into account relevant law, regulations and what we consider to be industry best practice. But our overarching remit requires us to reach what we consider an overall fair and reasonable outcome.

I'd also note that Mr and Mrs B have submitted the complaint to us in great detail raising many points. I want to reassure Mr and Mrs B I've read everything they and the business have provided. Our Service is set up as an informal alternative to the courts. Because of this, I won't address each and every point raised. Instead, I'll focus on addressing what I consider to be the crux of the complaint. I hope Mr and Mrs B realise I mean no disrespect by this. It simply reflects the informal nature of our Service.

I'm also aware that Mr and Mrs B believe there is certain evidence we should have requested but haven't. What evidence we need is a matter for us to decide. But I will explain later on why I've not requested the evidence Mr and Mrs B consider I should have asked for.

Having looked at Mr and Mrs B's account, I can see that Santander has completed the remediation work as if the account was on the fixed rate it should've been on from February 2023 rather than the variable rate. Whilst we are unable to audit an account, from what I've seen, I see no obvious errors in the way in which Santander has reworked the account. I'm aware Mr and Mrs B say the rate should've applied for two year rather than one, and I'll come back to this later in the decision.

The fact remains that Mr and Mrs B's mortgage is still in a significant level of arrears. Even after the remediation was carried out, Mr and Mrs B's arrears stood at around £13,000 or just over six months' worth of payments.

I agree with Mr and Mrs B that Santander shouldn't have taken legal action when it did based on not knowing the correct level of arrears. However, ultimately, when the remediation was carried out, the account still met Santander's threshold for legal action to be taken. Based on this, I consider the situation would've been the same, regardless of the account showing the incorrect level of arrears – that is that litigation would've proceeded.

Mr and Mrs B say they were continually told when they called to ignore the letters they were receiving and that legal action was on hold until the remediation was completed. I'm happy to accept Mr and Mrs B were told this without the need for evidence of this. And from what I can see, no action was formally taken until just before the remediation took place. Mr and Mrs B did get letters from Santander regarding legal action, but it seems these were automatically generated letters and, as Mr and Mrs B have said, they were told to ignore them.

Our Investigator said that any legal fees that were incurred prior to the remediation being carried out should be refunded by Santander. Santander said that these fees would've been incurred regardless. This may be the case, however I agree that Santander was hasty in instructing solicitors whilst the level of arrears was unknown. So, I agree with our Investigator, and I'm going to tell it to refund any solicitors fees applied to the account prior to the remediation being carried out as this action shouldn't have taken place.

Mr and Mrs B also say that the fixed rate they took in 2023 should've run for two years rather than one. We haven't been provided with a copy of this call, and Mr and Mrs B say that this is key for the overall outcome, but I disagree.

Santander has told us that it simply didn't offer fixed rates for more than one year in the situation Mr and Mrs B were in. So, this wasn't an option that was available to Mr and Mrs B. Therefore, even if they were incorrectly told it was two-year rate, the remedy wouldn't be for Santander to honour incorrect information and provide Mr and Mrs B with a rate that was never available to him. In this case, Santander allowed the rate to last for a few more months before Mr and Mrs B were able to select a new fixed rate immediately after. I'm satisfied this is fair in the circumstances. And this has not had any significant impact on the level of arrears.

Mr and Mrs B have said they have requested transcripts of these calls numerous times. Businesses won't typically hold transcripts of calls and will only hold recordings for a limited period. Instead, they rely on call notes which usually record a brief summary of the call rather than what was said word for word. Under a subject access request, Santander may be required to provide copies of the call notes but wouldn't be required to produce transcripts of calls that don't exist. I've seen nothing to suggest Mr and Mrs B has raised a subject access request with Santander, and if they wish to, they'd need to do so directly.

Finally, I need to decide whether further compensation is due. Whilst this situation has clearly had an impact on Mr and Mrs B, and the amount of arrears could and should've been rectified sooner, it wouldn't change the fact that the level of arrears the mortgage is in is still significant. And, ultimately, legal action would've always been likely. Based on this, I'm satisfied the amount of compensation Santander has already paid is fair in the circumstances.

Moving forward, I'd recommend Mr and Mrs B speak with Santander to agree a repayment plan if possible. Although it's possible, given the level of arrears, that litigation will recommence.

### **Putting things right**

Santander UK Plc must remove any litigation fees applied to Mr and Mrs B's mortgage account prior to the remediation of the account being carried out and remove any interest incurred as a result of these fees.

I understand Santander has paid Mr and Mrs B £550 compensation already. If it hasn't, then it should pay Mr and Mrs B whatever remains of this amount.

### **My final decision**

I uphold this complaint and 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 and Mrs B to accept or reject my decision before 5 January 2026.

Rob Deadman  
**Ombudsman**