

complaint

Ms D complains that Banco Santander Totta SA has treated her unfairly in its handling of her mortgage account after it fell into arrears.

our initial conclusions

Two adjudicators considered the complaint. The first didn't recommend it should be upheld. The second noted that, whilst there were arrears, she considered the information Santander had provided about this was unclear. She recommended Santander pay £200 compensation for this. Santander disagreed. In summary it says that inadequate payments were made, or they were made late.

my final decision

To decide what is fair and reasonable in this complaint, I have considered everything that Ms D and the business have provided.

Having done so I agree with the second adjudicator that the information provided to the Portuguese lawyer that Ms D hadn't made the payment due in June 2012 or subsequent payments was misleading. During the period January 2012 to August 2012 Ms D made payments in excess of the repayments due and had reduced the arrears balance by the end of August 2012. I consider the lawyer's statement is likely to have influenced the court. I have no power to consider a complaint about the proceedings in Portugal; our jurisdiction extends only to the United Kingdom. But I'm satisfied that the lawyer's statement was made in reliance on information provided by Santander, and this information did not present a wholly accurate picture of the payments that had been made.

For this reason I agree with the adjudicator that the complaint should be upheld and a payment of compensation for distress made to Ms D. She can elect either to have this paid to her direct or applied towards reduction of the arrears.

My final decision is that I uphold this complaint. In settlement Banco Santander Totta SA must pay Ms D £200 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms D either to accept or reject my decision before 14 January 2014.

Jan O'Leary

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

Ms D has raised further issues since the complaint was brought to us, relating to the arrears on the mortgage. But I can't add new issues to an existing complaint. Ms D will first need to raise these matters with the bank before the Financial Ombudsman Service is able to consider them.

I also have no jurisdiction to consider the registration of a penhora on her property in Portugal. That's because our jurisdiction extends only to events taking place within the United Kingdom.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.