

Complaint

Mr K complains that Santander UK Plc unfairly started litigation proceedings against him when his contractual repayments didn't reach his mortgage account.

Background

Mr K had a mortgage with Santander which was paid monthly by direct debit. In November 2018, Mr K changed the bank account he'd been making payments from. But in error, he included the wrong mortgage account number. This meant the payments from November 2018 to February 2019 weren't received by Santander as expected, and when they couldn't be credited to a mortgage account, the payments were returned to the bank account they'd been received from the following day. In February 2019, after Mr K had missed four payments, Santander started litigation proceedings against him.

Mr K complained to Santander as he felt it was unfair they'd started proceedings against him. He was also unhappy that he'd incurred additional costs and his credit file had been impacted, even though he'd been making the payments.

Santander didn't uphold the complaint. They said as they hadn't received more than three months payments, it was their normal process to start proceedings. Mr K didn't agree so he asked this service to look into his complaint. Santander then agreed to put the litigation proceedings on hold. Mr K then cleared the outstanding arrears amount.

Our investigator thought the complaint should be upheld. He felt that Santander had acted too quickly in starting litigation proceedings. He said that Mr K had tried to make his mortgage payments, albeit with the wrong account number, and he didn't think Santander had done enough to resolve the situation before starting litigation proceedings. So, he felt Santander should refund Mr K's litigation costs, including any interest, and pay Mr K £200 compensation for the distress and inconvenience caused.

Mr K didn't agree. He wanted to confirm that the litigation proceedings had taken place, but the judge had dismissed the case due to poor administration from Santander. And he also felt the £200 wasn't enough compensation for the distress and expense he'd been caused. So, he asked for an ombudsman to look in-to his complaint.

Santander also didn't agree. They said they'd written to Mr K four times to let him know that they hadn't received his mortgage payments. So, they felt that it was unlikely Mr K hadn't noticed the four payments had been returned to his account or contacted his bank to see if there was an issue when they'd been made.

As an agreement couldn't be reached, the case has been passed to me to decide.

My findings

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 decided to uphold it for broadly the same reasons as the investigator.

I need to consider whether I think it was fair and reasonable for Santander to start litigation proceedings against Mr K when they did. And in the circumstances, I don't think it was.

I've seen evidence that Santander tried to contact Mr K on numerous occasions by letter, text message and by sending someone personally to his home. However, they couldn't contact him over the four-month period. I acknowledge they said they had no alternative but to take further action once the account was four months in arrears – and in this case it meant starting litigation proceedings. However, I've seen Mr K's bank statements which show he did try and make the required mortgage payments, albeit with the incorrect account number, so I'm not persuaded he intended not to make the contractual payments as expected.

The Mortgage Conduct of Business Sourcebook (MCOB) says that businesses should both '*make reasonable efforts to reach an agreement with a customer over a method of repaying any payment shortfall*' and '*not repossess the property unless all other reasonable attempts to resolve the position have failed*'. But I've looked at the attempts that Santander made to contact Mr K and I don't think they did enough. I say that because I haven't seen any evidence of phone calls being made to Mr K during the four-month period, and Santander's record from 10 January 2019, says that there has been no phone contact with him in the last 60 days. And although Santander said they'd made several visits to Mr K's property, I've only seen records of one visit on 20 February 2019. Santander also told us that Mr K has an online banking facility, but they haven't shown any evidence they tried to contact him electronically. So, based on what I've seen, I think Santander could have done more to contact Mr K before starting litigation proceedings.

I recognise Mr K is unhappy that Santander couldn't locate the mortgage payments he'd made, and he feels they've acted unfairly by charging him interest and fees relating to the mortgage payments. However, I don't think Santander is completely at fault for the situation Mr K has found himself in. I acknowledge Mr K says he made his monthly payments and didn't realise there was an issue, but I'm not persuaded that's the case. Even if Mr K didn't receive the text messages or letters from Santander, I think he ought to have reasonably been aware the payments were being returned to his account each month.

I understand Mr K is self-employed and therefore it may not have been easy for him to identify these specific payments which had credited his account, especially as they weren't received from 'Santander'. However, each of the payments was in excess of £1,000 and the December 2018 credit cleared Mr K's overdraft. So, I think he ought to reasonably have been aware after receiving several of these payments, that he was getting more money into his bank account than expected. And to question what they were for - particularly as they were the exact amount's he'd paid for his mortgage direct debit - so it's likely they would have been relatively easy to reconcile.

It's Mr K's responsibility to ensure he makes his contractual mortgage payments when they are due – which he didn't do. I'm satisfied that the letters sent by Santander went to the correct registered address for Mr K, and that he would have been aware there was an issue with his mortgage account – even if he believed it was a mistake by Santander. But he didn't take any action to resolve this. So, I think Mr K should remain responsible for the late payments and associated interest, and his credit file will remain unchanged to reflect this.

I agree that Mr K was caused a great deal of distress as a result of the litigation proceedings on his family home, and I've noted that Mr K says he couldn't work for several weeks in preparation for this. Our investigator recommended that Santander should pay Mr K £200 for the trouble and upset caused, and in addition cover the litigation costs including interest due from the fees. So, considering the circumstances of how the payments were missed, Santander's attempts to contact Mr K, and their resulting litigation action, I think the compensation proposed by the investigator is reasonable.

My final decision

My final decision is that I partially uphold this complaint. I instruct Santander UK Plc to:

- Refund the litigation costs incurred by Mr K, including any added interest as a result of these costs;
- Pay Mr K £200 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 February 2020.

Jenny Lomax
ombudsman