

## **complaint**

Miss M complains that she had to pay a debt to release a charging order Santander UK Plc (previously Alliance and Leicester) placed on her property when she says she had already settled the debt years earlier. She says she felt bullied into paying the money.

Miss M complains that Santander refuses to refund her the money she paid – an amount of around £20,000.

## **background**

I include a brief summary of the events leading up to this complaint, but I have carefully read and considered everything both parties have submitted as part of this complaint.

- In 2004 Miss M took out an unsecured loan. Miss M maintained her loan repayments until around a year later when her financial situation changed. This caused her to miss her contractual payments and ultimately she couldn't service the debt.
- Shortly afterwards Santander defaulted the loan and passed the debt on to its collections department.
- Towards the middle of 2006, Santander says it applied for and was granted a charging order through the courts securing the debt against Miss M's home.
- Miss M says that in 2009 she sought help and consolidated her finances to pay all her creditors. She says offers were made in full and final settlement and says this included Santander who accepted £1,000.
- Miss M recently applied for borrowing against her home and through this process discovered that the charging order was still showing.
- When Miss M queried this with Santander it said that to remove the charge, Miss M needed to settle the debt. To allow this new transaction to happen, Miss M chose to repay the debt in full.
- Miss M complained to Santander raising the points referred to above. In doing so she produced a receipt / statement she says she got from a Santander branch, which shows her loan account balance at nil.
- Santander said it didn't uphold Miss M's complaint that her debt was settled many years ago. It said its records show an offer to settle was made in 2009, but it was declined. It said the receipt Miss M had from the branch which showed a nil balance owed is because the branch did not have access to the collections team records where the balance was held. In conclusion it said it would not refund her the amount as the money was owed to it – the debt was still outstanding. It did nevertheless confirm receipt of Miss M's full payment to settle the debt and that the charging would be removed.
- Our adjudicator concluded that there was not enough evidence to show Miss M had previously settled the debt, so he thought Santander was right to tell Miss M that she had to repay the debt to remove the charge.

But as part of his investigation he noticed that Santander had incorrectly reapplied a previously refunded interest charge to the outstanding debt – interest was suspended at the point it defaulted - so Miss M had in fact overpaid. He asked Santander to refund this amount to Miss M as a fair way to settle the complaint.

- Santander agreed to the refund – an amount just under £1,500 plus 8% interest.
- Miss M disagrees with the adjudicator's findings, so the complaint comes 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.

I am sorry to disappoint Miss M – I know this isn't the answer she was hoping for. But I think the adjudicator has reached the right answer here and I think he's set out the position clearly – there's not much more I can usefully add to what he's already told Miss M.

Because the events complained about happened more than six years ago – and they relate to a business subsequently taken over by Santander – I think it's important to stress that Santander doesn't now have all of the information about this matter. Businesses aren't obliged to hold records for more than six years, so it wouldn't be fair for me to hold this against Santander.

From the information Santander has provided, I can see this shows that Miss M defaulted on her loan in 2005. And in 2006 a final charging order was successfully granted by a court, which meant the debt was secured against Miss M's home. On the basis a court ruled the debt was owed, I think it's fair and reasonable for me to conclude the debt was outstanding at this point.

Miss M says as part of the consolidation of her finances later on in 2009, with the help of a third party, she offered Santander £1,000 in full and final settlement of the debt. She says Santander agreed to this, so at this point the debt was no longer owed.

But this is not what Santander's records show. While Miss M's offer of £1,000 is recorded in its files, I can see its system notes say this offer was declined...*'any payments made to the account reduce debt and liability'*

I don't doubt Miss M's honest recollections of what happened in 2009, but she's not provided me with enough evidence to challenge what Santander has provided in the form of its system notes or persuade me that she settled the debt on or around this time. I have considered the one thing Miss M has provided - the receipt or statement from a branch which shows the loan account balance at nil. But I don't think this shows Miss M previously settled the loan as she's described.

Santander has said because this receipt/statement was produced by a branch, it would show a nil balance at the time because the loan and its balance was held with its collections department. And I think, more likely than not, this was the case. I say this because I have also seen a transaction history report for Miss M's loan, which shows the loan account being credited with the outstanding balance at the point it was 'written off' / passed to Santander's collections department.

This is the kind of entry keeping I would expect to see in this type of situation. It therefore follows that any balance request made on the loan account itself would show the balance at nil – the ‘debit’ balance being held with the collections department.

So overall, and having carefully considered all of the evidence in this case, I find no persuasive evidence to show that Miss M previously settled the debt as she’s described. I therefore think it was fair and reasonable for Santander to insist Miss M repaid the debt to allow the release of the charge placed on her home because at this point in time, the debt remained outstanding. I don’t think Santander did anything wrong.

I can see Miss M’s representative says that Santander didn’t pursue Miss M for the debt from 2009 onwards, which supports her view that the debt was settled. But I disagree.

In Miss M’s case Santander chose to seek repayment of the debt by applying for a charging order. This meant Santander could, and chose, to simply wait for repayment of the debt owed until Miss M chose to sell her home at some point in the future. It could rely on this rather than pursue her for immediate repayment or via a repayment plan for example, which might not have been appropriate given Miss M’s financial situation. And Santander was clearly prepared to wait for repayment this way because it chose not to exercise the option to apply for an order of sale to force the sale of Miss M’s property and thus repayment of the debt.

So I am not persuaded that, because Santander chose not to pursue Miss M for repayment of the debt between 2009 and 2016, this supports Miss M’s view that the debt had previously been settled. For the reasons I have already set out, I don’t think this was the case.

I can see as part of the adjudicator’s assessment of Miss M’s complaint, he noticed that Santander had incorrectly re-applied interest to her debt – interest that had previously been refunded as part of the default process – which meant Miss M had in fact overpaid when she settled the debt. He asked Santander to refund it and Santander agreed to this including adding interest at 8%. Given what I have found above, and because Santander’s offer corrects the position Miss M would otherwise have been in, I think this is a fair way to settle this complaint.

### **my final decision**

For the reasons I’ve set out above, I have decided that Santander UK Plc did not act unfairly or unreasonably in its dealings with Miss M about insisting on repayment of her outstanding debt to release the charge against her property, and that she’s not lost out here.

Santander UK Plc has offered to refund the overpaid interest incorrectly re-applied to Miss M’s debt and I have decided in the circumstances of this complaint that this is a fair way to settle matters. I understand Santander UK Plc has already paid this to Miss M, so if that’s the case, there’s nothing more it needs to do to put things right.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 17 August 2017.

Paul Featherstone  
**ombudsman**