

complaint

Mr M complained because Santander UK Plc refused to write off the amount he owes on his credit card even though he can't afford to make the repayments and his financial situation is unlikely to change.

background

The outstanding balance on Mr M's credit card is just over £2,000. He asked Santander to write the balance off because of his medical situation. Santander refused to do so. Mr M brought a complaint to us about that and one of my colleagues decided that Santander's decision was reasonable.

Mr M then asked Santander to write the balance off because of his financial situation. He said he was never likely to pay the amount owing as his income wasn't likely to change, and the terms of a lifetime mortgage he held mean it's unlikely there'll be any funds in his estate that could be used to pay the balance. Santander again refused to write the debt off.

Our investigator didn't think the complaint should be upheld. He felt the most likely way the balance would be repaid is if there are funds in Mr M's estate. And he felt if the house was sold in the next 12/13 years there might be some proceeds leftover from the sale after the mortgage had been repaid which could be used to pay Santander. He didn't therefore think it was fair to ask Santander to write off the debt. Mr M didn't agree with our investigator's conclusion so the complaint has been passed to me to review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M has borrowed the money from Santander and has had the use of that money. So, on that basis it's not unreasonable for him to be expected to repay that money. However Santander, like all other lenders, has a duty to treat customers fairly and to be sympathetic to consumers in financial difficulty.

Santander agreed to stop applying interest and fees to the account, and it told Mr M that as long as he was classed as a vulnerable consumer the debt wouldn't be sold on to a third party. I think in doing this Santander treated Mr M fairly. The issue is whether it needs to go a step further and write the debt off now.

Unless Mr M's circumstances change, I agree that the most likely way the credit card will be repaid is if there are funds available in his estate. And it seems from what I've seen that if there are any funds in the estate they will come from any surplus once the house is sold and the mortgage repaid. However, I'm not persuaded that's sufficient ground for me to conclude that it's fair to make Santander write the debt off.

Mr M's argument is largely based on there being no surplus because any funds from the sale of the house would go towards paying off the mortgage. That's true to an extent, but the amount needed to repay the mortgage will depend on how much the outstanding mortgage balance is at the time. If, for example, the mortgage ran until 2034 the outstanding balance would be nearly £290,000. And if the value of Mr M's house increased by 1% per year in that time it would be valued at approximately £296,000. So I can see some logic in the argument

that all funds from the sale of the house would go towards repaying the mortgage – leaving nothing to go into Mr M's estate.

But at the other end of the scale, in 2023 (for example) the outstanding balance on the mortgage would be around £153,000. And if the value of Mr M's house increased by 1% per year in that time it would be valued at approximately £265,000. So if the house was sold then there'd be more than enough money from the sale proceeds to repay the mortgage. In fact, it would take until around 2031/2032 before the outstanding balance on the mortgage came close to the value of the house. So, if the house is sold in the next 12/13 years there's a distinct possibility that the proceeds from the sale will cover the outstanding mortgage amount, with money left over. And if that happens Santander might be able to claim some of the surplus from Mr M's estate to repay the amount outstanding on the credit card. If I make Santander write the debt off now it will lose that potential opportunity – which I think is unfair.

It is of course possible that the value of Mr M's house will decrease over the expected term of the mortgage. But given the general trends of the property market I think it's fair to work on the basis that the most likely scenario is that the value is going to increase.

To summarise, no-one knows when the house will be sold, how much it will sell for, how much (if anything) will be leftover once the mortgage is repaid, or if any surplus will go to Mr M's estate. But as things currently stand, there remains a reasonable possibility that there will be money left over once the mortgage is paid off, which in turn might go into Mr M's estate. And whilst that's a reasonable possibility, I don't think it's fair to make Santander write the debt off now. In my opinion, Santander has treated Mr M fairly by freezing further interest and charges and agreeing to not sell the debt on¹. It goes too far to make Santander go a step further and write the whole debt off now as I think it's too much of a stretch to fairly conclude that Mr M's estate won't have any funds available to repay the credit card.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 June 2019.

Paul Daniel
ombudsman

¹ I know things might have now changed in respect of Santander selling the debt on but we're considering a separate complaint about Santander's decision whether or not to default the debt.