

## **complaint**

This complaint initially concerned the sale of a payment protection insurance (PPI) policy by Santander UK Plc in connection with a personal loan taken by Mr J in 2002. In February 2011, Santander admitted that the policy had been mis-sold and made an offer to put things right. When it made the offer, Santander mistakenly said that Mr J's loan was in arrears and that some of his redress would be retained to repay these arrears.

Mr J challenged this – he said that his loan was up to date and Santander should not withhold any of his redress. Santander later acknowledged that it had made a mistake and that Mr J's loan was not in arrears. It amended its records and agreed not to make any deductions from Mr J's redress.

Nevertheless, although Mr J had indicated that he was happy with the offer as it stood in February 2011 (but for the threat of withholding part of his redress to cover non-existent arrears), he now believes that it needs revising to take account of the delays in settlement and other issues.

## **background**

An adjudicator at this service has considered Mr J's complaint and recommended that Santander make adjustments to its offer to reflect the delays in settlement. He also recommended that Santander pay £250 to Mr J in respect of their failures in handing the complaint.

Mr J would like to accept these findings in partial settlement of his complaint. He believes that there are other issues outstanding which he would like to pursue through other channels. He has therefore referred his complaint to an ombudsman for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

At the outset, I should explain that where a mis-sale is shown to have occurred, our approach is to ensure that the consumer is put *back into the position they would have been in* if the mis-sale had not occurred. We do not award damages to consumers for the fact of having been mis-sold a PPI policy, nor do we fine or punish firms for having done the mis-selling.

Mr J has said the policy was mis-sold because he was self-employed at the time of sale. He has not made any allegations which suggest that the mis-sale might have occurred for unusual or exceptional reasons. Santander has admitted that Mr J should not have been sold the policy. So, whilst I understand that Mr J feels aggrieved about the mis-sale, an investigation into the reasons *why* it happened will not move this complaint forward.

Therefore, whilst Mr J has asked me to investigate the full circumstances of the sale as part of this decision, I have concluded that my decision should focus solely on the issues which are in dispute – specifically, whether Santander's offer to put right its failings is fair, reasonable, and in line with our standard approach in cases like these.

In addition to undoing any financial losses suffered by consumers, it is also within my remit to make proportionate additional awards where a consumer has suffered distress and inconvenience due to the actions of the business (for example, in the way it has handled a consumer's complaint). I will set out my thoughts on this later.

Having acknowledged that the policy was mis-sold, Santander made an offer to Mr J in February 2011 for an amount which would have refunded his PPI premiums plus an additional amount (equivalent to 8% simple interest on each premium payment from the date it was made to the date of settlement). Mr J would have accepted this offer were it not for the fact that Santander had mistakenly said it intended to withhold part of his redress because his loan account was in arrears. Mr J's account was not in arrears and he therefore challenged the offer.

Some months later, Santander acknowledged its error and agreed not to withhold any of Mr J's redress. However, even after it acknowledged that no arrears existed on the loan, Santander did not update its PPI offer (specifically the 8% simple interest calculation) to reflect the fact that the date of settlement had been delayed and Mr J had been out of pocket for longer than anticipated when the initial offer was made. As a result of the mediation undertaken by our adjudicator, Santander has now agreed to add 8% simple interest on the amount it offered in February 2011 from that time to the date of settlement. I confirm that I require Santander to adhere to this commitment because this is fair and reasonable in light of the additional delays that have occurred since the original offer.

Mr J has also alleged that the sale of the PPI policy has caused him to incur charges on his current account as a result of going overdrawn. Mr J submitted a table that he had compiled showing these alleged charges. It is very difficult to establish that charges levied on one account (Mr J's current account) have been caused by Santander's failures on another account (the loan and associated PPI policy). Nevertheless, we have asked Mr J to evidence what he says with further information about the account, ideally including statements or other documentation to show these charges, but no such evidence has been provided. Having carefully considered this matter, I cannot conclude that these charges – if they were levied – were attributable to the PPI policy that Mr J was mis-sold.

I say this because of the separateness of the two accounts and the fact that he used his current account, which incurred the charges, for purposes other than servicing his loan. It is therefore not possible for me to say that it was solely the sale of the PPI policy that led to these charges, and I cannot require Santander to take these alleged charges into account in its PPI mis-sale redress. If Mr J believes he has legitimate concerns about bank charges, then he should raise these separately as a new complaint with Santander. It is outside the scope of this PPI decision to investigate those charges or to say whether they were fair beyond assessing whether the mis-sale of PPI caused them to be levied. On that point, my finding is that I have insufficient evidence to conclude that the charges would not have arisen *but for* the mis-sale of Mr J's PPI policy.

Separately, Mr J has complained that the errors within Santander's offer of February 2011 delayed the date of settlement and the payment of his redress. He says that he had an overdraft on his current account which would not have existed but for the error with Santander's PPI offer. He says this overdraft caused ongoing bank charges and harassment from debt collection agencies.

I have considered this argument carefully, but it seems to me that the existence of the overdraft (and the resulting recovery activity) cannot be found to have been caused by the error in Santander's February 2011 offer.

I make this finding based on the information that Mr J has himself summarised in his own complaint timetable. This says he received a warning letter about his overdraft on 9 February 2011. Even if this was the first such warning, it suggests that the problem had been developing for some time. But he was not made an offer of redress in respect of his mis-sold PPI policy until 23 February 2011. So Mr J's overdraft and Santander's efforts to recover it *pre-dates* the offer of redress he received from Santander. It is outside the scope of this decision to determine the causes of Mr J's overdraft or whether Santander's recovery activity was reasonable. My finding is that *it cannot be established* that Mr J's overdraft problems flowed from the errors in the initial PPI offer.

Nevertheless, I do recognise that this mistake *prolonged* these issues. I cannot quantify how much of Mr J's financial loss on the overdraft is attributable to the incorrect offer, but I am satisfied that the mistake with the first PPI offer resulted in Mr J being the subject of activity to recover an overdraft debt that he could have repaid if Santander's offer had been accurate. By its nature, debt recovery activity is stressful, even when justified and carried out reasonably, so I am satisfied that Mr J endured a greater degree of *distress and inconvenience* than would have been the case if Santander's original offer had been accurate. It seems to me that an award to reflect this is the fairest way to deal with this aspect of the complaint and I will come to this later.

To be absolutely clear, I make no comment on the fact of Mr J's overdraft or about whether Santander's debt recovery activity was reasonable. I do find that these problems could have been resolved more quickly (and much of the debt activity could have been avoided altogether) if the error with the February 2011 PPI offer had not happened. So if Mr J has concerns about how his overdraft developed or the way that Santander attempted to recover the debt, then he may wish to raise these as separate issues with the bank as they are not covered by this decision.

Mr J has told us about Santander's failure to update its records in the light of changes to his name and his title. Both Mr J and this service have informed Santander about these changes, but Santander holds multiple databases and did not update these details throughout.

The changes in Mr J's personal circumstances were (and are) hugely significant to him. Mr J says that Santander's failure to update its records has resulted in him being unable to get through security checks when he has called to discuss his complaint and, furthermore, have necessitated several "humiliating" discussions about his personal circumstances with different employees of Santander. I have enormous sympathy for Mr J when he says that he found these experiences upsetting. I agree with the adjudicator that an award to Mr J in recognition of the avoidable, foreseeable, and significant distress that he has suffered is appropriate and I will come onto this later.

It appears that this may be a wider and ongoing issue for Mr J. He is within his rights to raise a separate complaint with Santander if the problem persists.

Finally, Mr J has highlighted that he has suffered from stress-related medical problems in recent years which he attributes to the mis-sale of the PPI policy and, in particular, to the way that Santander has handled his complaint. He says that this illness has resulted in a loss of wages. I have carefully considered this point.

Having done so, I do not rule out the possibility that the PPI mis-sale and resulting complaint process might have at least contributed to Mr J's stress-related medical condition. But I am also unable to make findings of causation that would lead me to require Santander to adjust its PPI offer in the light of Mr J's stress-related condition. I am aware of other factors in Mr J's life (for which I offer him my wholehearted support) which, it seems to me, could also have played a role in any feelings of stress or anxiety.

This decision therefore reaches no conclusion on what has caused Mr J's medical condition. To make such a determination is beyond the scope of this service, which is intended to be an informal dispute resolution mechanism.

Nevertheless, I have already identified how failings in the way Santander has handled Mr J's complaint have caused him other unnecessary distress and I make an award for this below.

#### **distress and inconvenience**

As I set out at the start of my decision, it is within my remit to make an award to consumers in respect of any distress or inconvenience suffered due to the way a business handles a complaint. When I look at the circumstances of this complaint, it seems to me that such an award is warranted. In particular, I have already noted that:

- Although neither the mis-sale nor the complaint handling process can be shown to have caused Mr J's overdraft problems, it seems to me that Santander's initial errors in the February 2011 offer delayed the resolution of this complaint, thereby preventing Mr J from quickly settling the separate overdraft debt which Santander were seeking to recover.

Mr J's PPI redress was around ten times the scale of his overdraft debt, so I am satisfied that the escalation of the overdraft problems could have been prevented if Santander had made a PPI offer in February 2011 which accurately reflected the fact that Mr J's loan was fully settled with no arrears.

Because a multitude of other factors were involved in the overdraft problems, I cannot quantify a specific financial loss (on the overdraft) which I attribute to the errors with the initial PPI offer. Nor do I make findings about what caused the overdraft to develop in the first place. Nevertheless, I am satisfied that Mr J was put to considerable inconvenience and distress as a result of this error, including becoming the subject of debt recovery proceedings on his overdraft, which could have been avoided if his complaint had been properly settled in February 2011.

- Santander did not update its systems when Mr J informed it of very sensitive changes in his personal circumstances, including his name and his title. As a result, Mr J was unable to pass through security checks when he called to discuss his complaint with Santander and was forced to have multiple discussions of the most personal nature with the bank's representatives at different times. I can well understand why these failings caused him significant upset and distress.

Taking all the events of this sale into consideration, I conclude that it can be shown that serious and repeated shortcomings in the way Santander has handled Mr J's complaint have given rise to considerable distress and inconvenience over an extended period, which was both foreseeable and avoidable. I therefore increase Mr J's distress and inconvenience award to £750. I am grateful to Santander for agreeing to this increase, which avoids the need for a provisional decision.

### **fair compensation**

In conclusion, then, I require Santander to pay redress as follows:

- (A) Pay an amount equal to all of the PPI premiums that Mr J paid in respect of this mis-sold PPI policy.
- (B) Pay an additional amount equal to 8% simple interest<sup>†</sup> on each of these payments from the date they were made to the 23 February 2011.
- (C) Pay an additional amount equal to 8% simple interest<sup>†</sup> on the total of parts (A) and (B) from 23 February 2011 to the date of settlement.
- (D) Pay the sum of £750 in respect of the significant distress and inconvenience that Mr J has suffered as a result of Santander's errors in handling his complaint.

<sup>†</sup> I understand Santander is required to deduct basic rate tax from this part of the compensation. Whether Mr J needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website. Mr J should refer back to Santander if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if he wants to know more about the tax treatment of this portion of the compensation.

### **my final decision**

My final decision is that Santander UK Plc mis-sold a PPI policy to Mr J and should put this right by paying redress as set out above.

Mr J has asked whether he can accept this decision in *partial* settlement of his complaint and then continue to seek further redress through other channels. In most cases, if a consumer accepts any award made by an ombudsman's final decision it is unlikely that they would be able to go to court to ask for further compensation.

If Mr J is thinking of doing this, he may want to consider getting independent legal advice before accepting this final decision. To give him some additional time to do so, I have extended the deadline for replying to this decision – he now has two months to accept or decline this decision.

John Wightman  
**ombudsman**