

complaint

Mr and Mrs L complain that Santander UK Plc has unfairly reported information about their mortgage to the credit reference agencies.

background

Mr and Mrs L have an interest only mortgage with Santander. Some years ago, Mr L became seriously unwell and Mrs L has power of attorney to act on his behalf in financial matters. She's dealt with this complaint throughout.

The term of the interest only mortgage came to an end in 2015 but Mr and Mrs L weren't in a position to repay the capital balance. They raised a number of complaints about actions taken by Santander over the years, and took the view that as a result of Santander's actions their debt should be deemed to have been repaid and the mortgage discharged.

An ombudsman looked at Mr and Mrs L's complaint. She thought that Santander had made mistakes, but didn't think it would be right to write off the mortgage debt. She also noted that Mr and Mrs L's circumstances were such that they couldn't pay off the mortgage but equally it wouldn't be right, in their particular situation, to have to worry about losing their home. She directed Santander to:

- Extend the term of the interest only mortgage for five years. At the end of that time, if Mr and Mrs L confirm their circumstances haven't changed, it should extend it again – and keep doing so until the property is sold or transferred, or until the death of the last survivor;
- Allow Mr and Mrs L to make unlimited overpayments in the meantime; and
- Pay Mr and Mrs L compensation for their trouble and upset.

As Mr and Mrs L accepted the ombudsman's decision, it became binding on them and Santander.

Santander implemented the decision. In doing so, it noted that Mr and Mrs L had stopped making payments to their mortgage while they were in dispute with Santander. As a result, arrears had arisen and a number of fees and charges had been added to the balance.

Although the ombudsman had found in her decision that Mr and Mrs L did owe the mortgage balance – and that they were required to pay interest until the balance was cleared – as a gesture of goodwill Santander agree to remove the fees it had charged while no payments were being made, and to write off the arrears. This brought Mr and Mrs L's mortgage balance back down to what it had been at the end of the term in 2015. It agreed to do this because it hadn't replied to letters Mrs L had sent it, after they'd complained, saying they would withhold mortgage payments pending the outcome of the complaint.

Some time later, Mr L's bank wrote to him to say that it was withdrawing his overdraft facility and requesting that he repay the outstanding balance on it. Mrs L says that the bank says this was because of the missed payments Santander had recorded on his credit record while they weren't making mortgage payments. She said that this had upset Mr L greatly and had led directly to his hospitalisation for a period. She said that he wasn't capable of managing his financial affairs and in that situation Santander shouldn't be recording information on his credit file. She said that making a report amounted to disability discrimination and that Santander shouldn't make a report as a reasonable adjustment. And, she said, Santander

shouldn't record the missed payments on either her or Mr L's record because – by writing off the arrears and fees – it had acknowledged it had done wrong.

Mrs L also said that Santander had mis-managed the mortgage account and got the balance wrong. It had offered to write off £3,200 of arrears but had in fact only written off just over £3,000. And it kept telling them they were still in arrears and mis-calculating what they'd paid.

Our investigator didn't think that Santander should be required to remove the reports from Mr and Mrs L's credit records. He said they accurately recorded that Mr and Mrs L hadn't made payments to their mortgage. He noted that the ombudsman had said that Mr and Mrs L did owe the mortgage and interest on it. He noted that Santander had failed to reverse one £40 fee but, that apart, thought it had got the balance right. But he said that a complaint handler had initially told Mrs L the entries could be removed from the credit record before Santander confirmed it wouldn't be able to do that. He said Santander should pay Mr and Mrs L £100 compensation for the distress caused by wrongly raising their expectations.

Mrs L didn't accept what the investigator said. She asked for an ombudsman to make a final decision on the complaint.

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 should say at the outset that – as we've already told Mrs L – an ombudsman's decision is final. That means that I can't change or set aside the decision of the previous ombudsman. And it means that the facts she found are the facts I must also work from in this decision.

In particular, she found that Mr and Mrs L did owe their mortgage balance – and Santander was right to expect interest on it to be paid until such time as the capital was repaid, even though (at the time) the term had ended.

I recognise they were in dispute with Santander at the time. But that didn't change the fact that they owed, and were required to make, the monthly payments. By withholding them, they did let their account go into arrears.

In their particular circumstances, and in light of the ombudsman's decision (even though not required to by it), Santander wrote off both the arrears and the arrears fees.

I don't think it would be fair to require Santander to remove the missed payments from the credit files as well. Mr and Mrs L were required to pay their mortgage – and, for about a year, chose not to do so. That's what their credit files record. The credit files are an accurate reflection of how their account was managed at the time.

Santander should have responded to their letters threatening to withhold payments. But the fact it didn't reply doesn't in my view remove their liability to pay those payments, or mean that the reports aren't accurate.

I'm very aware of Mr L's circumstances, and I'm sympathetic to the considerable impact they have on both Mr and Mrs L. I've taken them into account. But I don't think the fact that a

borrower can't manage their own affairs means a lender must not report the conduct of the account to the agencies.

I agree that Mr L has the protected characteristic of disability, and I've taken into account the effect of the Equality Act 2010. But I don't think that Santander's reports to the agencies are because of Mr L's disability, directly or indirectly, or are a matter arising out of his disability. Nor do I think that Santander is required to stop reporting the account as a reasonable adjustment. The purpose of making a reasonable adjustment is to ensure a person with a disability isn't put at a substantial disadvantage compared to a person without a disability – but Mr L's credit record is in exactly the same position as that of any other person who misses mortgage payments.

I agree that Santander initially told Mrs L that it would remove the entries, and then told her it wouldn't. That shouldn't have happened. In telling her that, it made a mistake. But where someone is given wrong information, the remedy is to put them back in the position they would have been had they been given the right information – not the position they would have been in had the information been true. Applying that to this case, Mrs L should have been told from the start that the entries wouldn't be removed. Its failure to do that means that Santander should compensate her for the upset caused – but doesn't mean it should be required to remove them. In the circumstances, I agree that £100 is fair compensation for the trouble and upset caused.

Finally, I can see that Santander didn't remove one arrears fee even though it said it would remove all of them. It should remove that fee. Apart from that, I think it has done what it said. Even though it quoted a different figure to begin with, the actual amount of fees charges and arrears removed had the effect of reducing the balance back down to the starting figure of £75,000 – which is where it should have been.

I don't think Santander has mis-managed the account because it's currently moving between being in credit and being in arrears. The reason for that is because one single monthly payment is due – but Mrs L is paying smaller amounts each week. That means that, depending on when the monthly payment falls due and how much she pays each week, in some weeks she's ahead of what she needs to pay and in some weeks she's behind. But overall, the mortgage is currently on track.

I am sorry to hear of Mr and Mrs L's very difficult circumstances. I know things haven't been easy for them – and I know they feel very strongly about their mortgage. I'm pleased they're no longer in any danger of losing their home. I have looked at everything very carefully. Having done so, I do think that Santander has overall treated them fairly by writing off a substantial amount of money and working with them to keep the mortgage on track. It shouldn't have misled Mrs L about removing the credit record entries but beyond compensating for that I don't think it needs to do anything more.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint in part, and direct Santander UK Plc to:

- Remove the remaining £40 fee, and any interest charged on it, from the mortgage account; and
- Pay Mr and Mrs L £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 25 October 2017.

Simon Pugh
ombudsman