

complaint

Mr M complains that Santander Consumer (UK) Plc ('Santander') pursued him for a debt that he never took out.

background

Mr M says in 2012 Santander began to pursue him for a debt in relation to a car finance agreement ('Agreement A'). He says that despite telling Santander it wasn't his debt (and receiving apologies and reassurances it wouldn't happen again) it continued to contact him about it over many years. During 2017 it sold the debt to a third party. Mr M says that he had visits from bailiffs in relation to the debt and was summoned to court about it in early 2018.

Santander responded to Mr M's initial complaint in April 2018. In summary, it said:

- in 2012 it instructed a collection agent to trace its customer, but because of Mr M's similar personal details it wrongly located him and pursued him for the debt
- soon after Mr M contacted Santander and told it they had the wrong person
- it apologised and said it wouldn't continue to send him letters about the debt
- unfortunately it continued to contact Mr M about the debt due to further errors when tracing their customer
- its collection agent advised it that its customer and Mr M had their credit files merged by the credit reference agency ('CRA') which caused the tracing errors and that it was aware that Mr M had applied to the CRA for a notice of correction
- it acknowledges that Mr M was requested to attend court about the matter and apologised for the distress and inconvenience this caused
- it wanted to offer Mr M £1,050 in recognition of its errors

Our investigator looked into the matter. In summary, he said that Santander's actions had a substantial impact on Mr M and the offer was not sufficient to cover this. In considering everything that has happened he considered that Santander should increase the compensation payment to £2,000 in recognition of the degree of trouble and upset caused. He also said that Santander should take all necessary action to fix any negative reporting to Mr M's credit file in relation to this credit agreement it was wrongfully pursuing him for.

Santander agreed to the recommendations of the investigator. However, Mr M did not think this compensation went far enough for the level of distress and inconvenience he has experienced over the years he has been pursued for the debt.

In July 2019 Mr M said he was still receiving letters about the debt and said there was no guarantee that he will not be pursued in the future. He provided the letters to this service.

In light of these developments Santander offered £2,500 in full and final settlement of the issue. However, Mr M was not confident that the problems would not continue and felt he should be entitled to more compensation than this. He asked for the matter to be considered again by an ombudsman.

I issued a provisional decision on this case on 26 March 2020. In this I said:

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

Santander initially questioned whether Mr M was eligible to complain to this service about this matter. The investigator said he was eligible and Santander did not challenge this further. As the jurisdiction does not appear to be in dispute I am going to move on to consider the merits of this case.

who is at fault?

I am not considering whether Mr M should have been pursued for the debt in relation to Agreement A. I say this because Santander has confirmed Mr M is not the person who took out Agreement A.

There appears no dispute that Mr M has been wrongfully pursued. However, Santander has indicated that it might not be wholly to blame for what has happened. And for that reason I consider it necessary to cover this point as it will (to a certain extent) affect how I decide what is fair and reasonable for Santander to do to put things right.

Santander has indicated that the CRA has merged two records together (namely Mr M and its customer) in error which caused it to identify and pursue Mr M.

This service has looked into what happened and it is fair to say the situation is not entirely clear. The CRA strongly denies that it has merged two records together by mistake (what it calls a 'matching issue'). It maintains that it provided a debt trace for Santander with a list of possible matches for Santander's customer (people with similar details). But it was for Santander to carry out the appropriate due diligence to ensure they had the correct person.

This service has asked Santander to shed more light on its attempts to trace the actual debtor for Agreement A and the specifics of the process followed. However, Santander has said that it is 'not in receipt of the documentation of how [its agent] trace consumers'. And despite this service contacting the agent, it hasn't in my view provided persuasive evidence that the problems originated with the CRA rather than its own tracing activity.

It is fair to say there is some grey area as to what actually went wrong here. And I acknowledge there have been ongoing concerns with how Mr M has come to be linked with addresses and other credit agreements that are not his. I note that Mr M has been associated with other accounts and details which he says are nothing to do with him. It appears he discovered this when he was applying for a mortgage around 2015 and contacted the CRA to say he believed he had possibly been a victim of identity fraud.

So, I acknowledge the wider issues with Mr M's credit file possibly caused by other parties. However, as the original creditor seeking to recover the balance of Agreement A from its customer the onus should fairly be on Santander to persuasively show it wasn't at fault for the initial mix up. And I don't think it has done that here. I can also see that while Mr M does have the same first and surname to its customer (and the same date of birth), his middle name is different. So it seems that Santander (or its agent) didn't do enough due diligence on the initial trace to ensure it had the correct person from the outset. Had more care been taken it appears likely that Mr M would not have been contacted in the first place.

Aside from the technical reasons for the original mix up, I note that at a fairly early stage Santander was on notice from Mr M that he wasn't its customer. From that point onwards Santander and its agent clearly did not do enough to ensure the matter was rectified as it continued to chase Mr M for the debt.

Mr M appears to have continued to engage with Santander. He says that each time he received a letter about the debt he phoned Santander to prove his identity and show he was not the debtor for Agreement A. What he says is credible and detailed. And in the circumstances it appears especially unfair that (despite Santander's reassurances) he continued to receive communication about the debt.

I also note that Mr M was not only receiving letters about the debt. The fact he had debt collection agents attend his house and had to attend court about it are particularly aggravating factors here.

I think Santander's decision to sell the debt to a third party, after several years of pursuing Mr M in error, was unfair. It knew the history and was arguably in a better position to take steps to ensure that Mr M was no longer contacted. I note that after the sale the third party debt purchaser also continued to chase Mr M in error. And despite Santander no longer owning the debt at this point I think in these particular circumstances it needs to take at least some responsibility for the errors that followed as a direct result of its decision to sell a debt in this situation.

what is the impact on Mr M?

Mr M has described how this matter has affected him. He says it has caused him a great deal of frustration, anxiety and stress and has disrupted his health and his home life with his partner.

I have no doubt that being chased for a relatively sizable debt (around £6,000+) over many years would cause a great deal of problems, like those he has described. And I note that having debt collectors come to your home and receiving court summons would understandably cause anxiety, especially when Mr M had previously received reassurances from Santander that it was going to stop. Mr M has described the details of the home visit, he says it was early one morning and caused considerable embarrassment, stress and upset. He says 'You cannot appreciate the stress, upset and embarrassment experienced when one turns up at your door'. I can certainly see how this would be the case.

Mr M has also had to attend court in an attempt to show he wasn't the debtor. He says he was hand delivered a court summons with his name on it but a different address. He writes. 'I was told if I didn't attend court there would be a warrant out for my arrest. I can't begin to tell you the worry and anguish I went through upon hearing this'. I can see this must have been extremely stressful for him.

Mr M has described the long term impact of being pursued in this way. He says he cannot relax in his own home and every time someone comes to the door he and his partner are on edge in case it is more debt collectors or court summons.

I also note that fairly recently (and despite previous agreement by Santander that Mr M was not the debtor) Mr M had continued to receive debt collection letters from a law firm acting on behalf of the debt purchaser which now owns the debt. This was understandably especially disturbing for Mr M considering what he had already been through and the tone of this correspondence threatening court action. And as I have said before, although Santander no longer own the debt I think it is fair that in this particular case it take at least some responsibility for these more recent events because of the circumstances in which it chose to sell the debt on.

Mr M has said this matter has affected his credit report and made it difficult to take out a mortgage. I note there were other issues with Mr M's credit report around this time relating to numerous accounts which Mr M says were not his and caused him to file reports with various agencies including the CRA. And I think there are also a lot of variables when applying for a mortgage. I also don't see any obviously adverse information on his credit report from 2015 in relation to Agreement A although I acknowledge there is some link by association on there. Overall, I am not persuaded that Santander's actions solely caused the issues he was having getting further credit. But I do acknowledge that Santander's actions have likely contributed to incorrect information appearing his credit file which might have had a wider impact on his ability to get credit.

Mr M has said he had to subscribe to credit services as a result of this issue costing him £60 a month for 12 months. He has not provided receipts for this, and I think there are other reasons why Mr M might have wanted to subscribe to these services (including the wider concerns about identity theft). But in deciding how to put things right I do acknowledge that part of the reason he might want to sign up to service like these would be the actions of Santander.

Mr M's representative has explained in detail about his health concerns. For example, she says he has erratic blood pressure, is having anxiety attacks at night and it is affecting his quality of sleep. There is no medical evidence confirming the extent of Mr M's health concerns and possible causes, and Mr M's representative has described other things that are contributing to his stress. However, I have considered the credible testimony provided and I accept this situation around Agreement A has likely caused Mr M significant distress and impacted his wellbeing in its own right. I think that any award against Santander should take this into account.

I also think the worry Mr M has experienced has gradually got worse over time and that even if infrequent, each new contact over this extensive time period has contributed. I note Mr M's representative has insinuated that recent contact has led Mr M to think that this is not going to stop and they are just going around 'in circles'. This is clearly a terribly worrying situation for him and I can see why over the years it would have affected his home life and general wellbeing.

what needs to be done to put things right?

I think there can be no doubt that Santander could have done much better here. I know that Mr M wants compensation and I intend to award this, but I don't think that alone is the answer here. From reading Mr M's submissions my understanding is that ultimately he wants some reassurance that the collections activity will stop so he can get on with his life. I get the impression this is the most important thing for him.

While there will never be a guarantee against future events (and I note the existence of possible wider issues with past identity theft/credit reporting) I think steps can be taken to reduce the risk that Mr M will be pursued about Agreement A going forward. One of those is for Santander to buy back the debt (and not sell it again) so following this decision it is able to closely keep tabs on future collections activity and ensure Mr M is not chased again in connection with it. It would also be fair for Santander to provide Mr M with a contact of an individual or team privy to the details of this case (and my decision) which he can communicate with directly in the (hopefully unlikely) event of any future contact about Agreement A.

I think the steps outlined will hopefully provide Mr M with the reassurance he wants going forward and alleviate his concern.

Of course I agree that compensation is also due for what has happened in the past. I am not able to consider compensation for what Mr M's partner has been through. However, I can of course consider how the impact on his home life has affected Mr M as a whole.

Compensation is not a scientific exercise. But it should broadly fairly reflect the seriousness of what has happened. In considering the level of award I have taken into account the overall circumstances including:

- Mr M has been wrongfully pursued for the debt over a significant period of time (now around 7- 8 years) and he has continued to be pursued despite informing Santander of its error at an early stage;*
- Santander has not persuasively shown that it was not responsible for the initial error, and in any event it should have recognised that it was chasing the wrong person from the start;*

- *the recovery action involved several letters over a course of years and has involved at least one early morning home visit which Mr M described as extremely distressing;*
- *Mr M had to attend court in relation to the debt many years after first contact in an effort to show he was being wrongfully pursued;*
- *Santander sold the debt on despite the historical issues with the wrongfully identified debtor;*
- *Mr M has received distressing correspondence from a law firm about court action in relation to this matter at the end of 2019;*
- *there appear to have been links to Agreement A added to his credit file as a result of Santander's actions which has possibly contributed to difficulties in getting credit; and*
- *the detailed testimony provided in relation to the impact this matter has had on Mr M's overall wellbeing and his home life*

One of the key things here is just how long this has been going on for. And while Mr M appears not to have had constant contact about the debt relating to Agreement A, the contact has been spread over a very significant period of time. As a result it has caused an accumulation of considerable distress, uncertainty and inconvenience. I think the award should reflect the severity of this situation and ongoing worry caused. Therefore, I am provisionally directing Santander to pay Mr M an increased compensation figure of £3,000 in addition to the other actions it needs to take to reduce the risk of Mr M being contacted again about the debt.

my provisional decision

I uphold this complaint and direct Santander Consumer (UK) Plc to:

- *pay Mr M £3,000 in compensation;*
- *buy back the debt relating to Agreement A permanently and take steps to ensure Mr M is not contacted in relation to it going forward;*
- *if applicable ensure any information relating to Agreement A is removed from Mr M's credit file;*
- *provide Mr M with contact details of a team or individual familiar with this case who he can call in the event of any further issues in relation to contact about this debt*

Santander agreed with my provisional decision. Mr M agreed with aspects of the provisional decision but said, in summary:

- *he is still concerned this would not be the end of the matter and wants reassurances that Santander will stop contacting him;*
- *by accepting compensation he is worried that Santander will not take responsibility for any future debt recovery action;*
- *he is still being contacted in relation to debts other than Agreement A and wonders what happens about this and future contact from other companies (when it is clear to him that Santander and the CRA are responsible);*
- *he wants to emphasise this situation has affected his health, personal life and work;*
- *he doesn't think £3,000 is enough compensation for 7-8 years of problems and Santander will not 'feel' or notice this unless it is higher – it needs to be more substantial so that it is properly acknowledged by the 'powers that be' and steps are taken to prevent it happening again; and*
- *he wants to provide further medical evidence and offered further information about the costs incurred for identify protection services.*

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 carefully considered what Mr M said in his response to my provisional decision. I contacted him to say, in summary:

- although Santander should've taken more care in tracing its customer and has wrongly pursued him in relation to Agreement A I don't think there is enough to say it is responsible for the other issues he has been having with creditors. Particularly given the mentions of possible fraud and identity theft in the background. If Mr M is being pursued by other creditors in error this is a matter to take up with those creditors (and possibly complain to them about);
- I won't be able to guarantee that Santander don't make a mistake again going forward in respect of Agreement A. However, I am directing it to take steps to prevent this happening. If it does make a mistake again in the future Mr M would likely be able to make a complaint about these new events;
- My decision is not about the actions of the CRA. Mr M has a separate complaint against it. But as I have said in my provisional decision - I still think that regardless of what the CRA did Santander could have avoided pursuing Mr M in error by taking more care in its initial and subsequent tracing; and
- I am happy to consider additional evidence in relation to the identity protection. However, I think this is unlikely to make a difference to my award as I have already factored in what has been said about this despite the lack of supporting receipts. I am also happy to consider any medical reports if Mr M wishes to send these in - however I don't disbelieve what has already been said about the extent of the impact of this situation on him. And I have taken all of this into account in my provisional award.

In response to this Mr M sent in a personal summary of his medical history and emphasised the impact of this situation on him including stress, anxiety and trouble sleeping. He said the problem has not yet been resolved and his health is suffering. He says he has suffered humiliation, not received an apology and doesn't think £3,000 is enough compensation for what has happened.

My M is aware this service is not a regulator - so the aim of my award is not to fine the business for its actions. It is to reflect the individual circumstances of Mr M's complaint. I do not underestimate the impact of this situation on Mr M. I have asked Santander to pay him a total of £3,000 to reflect the severe trouble and upset caused. I know Mr M wants more, but as I have already said in my provisional decision – despite not having his medical records I considered the credible and detailed testimony about how this situation has affected him. And while there appear to be other factors at play, I accepted that this situation has likely caused him a lot of distress and impacted his wellbeing. I took this into account when deciding what should happen to put things right. While I appreciate the time Mr M has taken to summarise his medical history in more detail – I had already taken the previously submitted key issues into consideration in deciding the monetary award.

Putting a monetary amount on Mr M's experience is not a precise exercise. And I have kept in mind that it isn't the only factor when considering how to put things right. One thing Mr M has emphasised is how he wants Santander to stop pursuing him for Agreement A so he can move on. While I can't provide any guarantees about this my decision directs Santander not to contact him in relation to the debt going forward. Therefore, it is essential that Santander do whatever it needs to do in order to ensure Mr M is not contacted again.

By taking control of the debt once again, removing any information about it from Mr M's credit file and providing him with a point of contact familiar with his case Mr M will hopefully not have any issues going forward. I know he has said he wants a senior manager to be his point of contact. I don't think it necessary for me to direct Santander on who should be his point of contact (and I have previously said this might be a team rather than individual). The main thing is Santander abides by my decision in order that Mr M does not repeat the frustration and distress he has been through and is able to move on from this highly unfortunate situation.

So, in conjunction with what I am telling Santander to do I still think an award of £3,000 compensation is fair and reasonable in the circumstances of this case. I consider what I have said in the provisional decision and here (including my initial response to Mr M as summarised above) to be fair and reasonable. I now leave it to Mr M to decide if he wishes to accept my proposal in settlement of his complaint against Santander. It is worth noting that if Mr M is considering other action in relation to this complaint against Santander (for example, going to court to get more compensation) he should consider taking legal advice on how accepting my final decision might affect this.

my final decision

I uphold this complaint and direct Santander Consumer (UK) Plc to:

- pay Mr M £3,000 in compensation;
- buy back the debt relating to Agreement A permanently and take steps to ensure Mr M is not contacted in relation to it going forward;
- if applicable ensure any information relating to Agreement A is removed from Mr M's credit file; and
- provide Mr M with contact details of a team or individual familiar with this case who he can call in the event of any further issues in relation to contact about this debt.

If Santander does not pay the compensation within 28 days of the date on which we tell it that Mr M accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If there is an interest award and Santander considers that it is required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr M how much it has taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 June 2020.

Mark Lancod
ombudsman