

## **The complaint**

Miss A complains about the interest and charges that have been added to her mortgage held with Santander UK Plc. She questions the arrears on her mortgage and is unhappy that Santander has started legal proceedings.

## **What happened**

Miss A has had a mortgage with Santander since 2006. She's been in arrears for a number of years. Over the years she's held this mortgage, Miss A has made a number of complaints about the arrears, the fees associated with the arrears and legal action being taken by Santander in relation to the arrears.

In late 2022, Miss A complained again to Santander about the account being referred for litigation. Santander responded to this complaint on 9 November 2022. It didn't uphold the complaint.

Unhappy with this response, Miss A referred the complaint to our service. She said she'd also now found out that a number of fees and charges had been added without her knowledge over the lifetime of the mortgage.

One of our Investigators looked into the complaint. He first considered the matter of our Service's jurisdiction. He noted that Santander had responded to similar complaint about fees and charges a number of times since 2016. The most recent response, prior to Santander's response of 9 November 2022, was on 28 December 2021. This addressed the fees, charges and litigation on Miss A's account.

Our Investigator explained that as Miss A hadn't referred her complaint to us within six months of the letter date 28 December 2021, we couldn't consider the fees or litigation that occurred prior to this. He said that the next final response letter from Santander to Miss A was on 9 November 2022. Miss A had referred this complaint to us within six months of the letter so we could consider this complaint. Our Investigator told Miss A and Santander that we could only consider any fees, charges or litigation on Miss A's mortgage account from January 2022 to December 2022.

Santander accepted this and Miss A didn't respond. So, our Investigator proceeded to consider Santander's conduct during the time period he thought we were able to look at. Having done so, he didn't think the complaint should be upheld. He noted only one charge had been applied to the account during this time and this was in line with the mortgage fees tariff. And he was satisfied Santander had tried to work with Miss A to reach a payment arrangement but hadn't been successful in doing so. So, he didn't think it was unreasonable for it to start legal proceedings.

Miss A didn't accept this and asked for an Ombudsman to review the complaint. It's been passed to me to consider and make a final decision.

## **What I've decided – and why**

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

## **What we can and can't consider**

Miss A hasn't disagreed with our Investigator's opinion that some of this complaint falls outside of our jurisdiction for timeliness reasons. But, for completeness, I've also considered this.

The rules under which we operate are known as the DISP rules and can be found in the Financial Conduct Authority Handbook. These rules say that we are unable to consider a complaint if it's referred to us more than six months after a business issues its final response in writing.

Miss A has complained about similar matters a number of times over the years. Santander has issued final responses on 21 September 2016, 20 March 2018, 22 October 2019, 28 April 2021 and 28 December 2021. Each of these final responses addressed either the fees and arrears on the mortgage account, litigation being started, or a combination of the two. They all told Miss A that she had six months from the date of each letter to refer her complaint to us. Miss A didn't refer a complaint to us until May 2023. She therefore referred complaints about everything that's been addressed within the final response letters up until 28 December 2021 (the most recent of the above final response letters) too late under our rules.

The DISP rules do say that I can set aside these time limits if the delay in referring the complaint to our Service was as a result of exceptional circumstances. But I've not been made aware of any reason why Miss A couldn't refer her complaint sooner. So, I'm satisfied that there are no exceptional circumstances here for us to consider these complaint points up to 28 December 2021.

Miss A next complaint to Santander was in late 2022. Santander issued another final response letter on 9 November 2022. This again addressed fees on the account and the litigation proceedings Santander was taking. Miss A did refer her complaint to us within six months of this letter, so I'm satisfied we can consider this part of her complaint.

Whilst Miss A's most recent complaint was about the fees, charges and arrears Miss A has incurred over a number of years, I've set out why I can't consider anything prior to 28 December 2021. I've therefore considered this complaint for the timeframe of 29 December 2021 to 9 November 2022, the date of the most recent final response which has been referred to us in time.

## **Fees, charges and action taken since 29 December 2021**

During this period only one charge has been applied to Miss A's mortgage account. This was £120 for Solicitors being instructed. I'm satisfied this is in line with the mortgage tariff of charges. But I need to decide whether it was fair for Santander to instruct solicitors at this time and start litigation proceedings.

I can see that Miss A has been in arrears since around 2007. Miss A disputes the arrears balance. I can't fully audit the account, but I've seen nothing to suggest the arrears balance is incorrect. Whilst I can't consider any actions by Santander prior to December 2021, I can see that Santander have been in regular contact with Miss A through the lifetime of the mortgage regarding the arrears.

Since December 2021, the contact between Miss A and Santander has continued. I can see a number of payment arrangements have been agreed by Santander to help Miss A. Some of these have been kept to by Miss A, others haven't. But I'm satisfied Santander has tried to assist Miss A and taken reasonable steps to assist her and help her stay in her property. It seems that Santander has spoken with Miss A a number of times to potentially arrange a new, lower interest rate. This includes going so far as to produce an illustration on the new costs for her. But Miss A has never proceeded with any interest rate change.

Ultimately, it seems that Miss A simply cannot afford to make the minimum payment required in order to cover the monthly mortgage payments and reduce the arrears or stop the arrears increasing. Miss A has told Santander she's been out of work for some time and has been relying on family to help her make ends meet. Whilst this is a very tough situation for Miss A, I don't think taking legal action at this stage is unfair.

As I've already said, Miss A had been in arrears since around 2007. There seems to be no chance of her being able to reduce these in the short term, and they are likely to increase. Relying on family has clearly helped, but this assistance could stop at any time. It seems to me that stopping any legal action at this stage is only likely to delay Miss A having to sell her property or having it taken into possession. This would potentially further increase her arrears and incur even more charges meaning any equity she may have if the property is sold would reduce.

I'd also note that there have been times where Miss A hasn't engaged sufficiently with Santander. Nor has she taken certain steps to help herself such as switching to a lower interest rate. If Miss A does want to stop any legal action going further, she will need to contact and engage with Santander and find a way to maintain her payments and reduce her arrears. I recognise this will be hard for Miss A, and there may not be much more Santander can do to help her at this stage.

Matters have moved on since this complaint was referred to us. As I've set out above, I can only look at what's happened up to when Santander issued its final response on 9 November 2022. That's because we can only look into a complaint once the business has had a chance to put things right. If Miss A is unhappy with how things have been handled on her mortgage account since November 2022, she needs to first raise this with Santander. She then may be able to bring this to us as a new complaint.

Whilst I can see Miss A feels strongly about this matter. I don't think Santander has done anything wrong during the time period I am able to look into. So, I'm not going to ask it to take any further action.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 February 2024.

Rob Deadman  
**Ombudsman**