

The complaint

Ms B and Mr I complain that Santander UK Plc treated them unfairly after the term of their interest only mortgage expired. They ask that Santander pays compensation for stress related illness, waives any solicitors fee applied to the loan and gives them a year to sell the property.

What happened

Mr I and Ms B's mortgage term expired in April 2022 with an unpaid balance of over £300,000. Santander put holds on legal action to give Mr I and Ms B time to sell the property. In September 2023 Santander instructed solicitors to start legal action. It says Mr I and Ms B had been unable to sell the property or offer another way to repay the debt.

Mr I says Santander agreed holds on action on a monthly basis and they weren't told there was a limit on this. He says they were told to pay the interest and keep Santander updated while they tried to sell the property and thought this would continue. Mr I says they weren't made aware Santander might take legal action.

Our investigator said Santander had offered forbearance after the term expired, by putting temporary holds on legal action. She said Santander told Ms B and Mr I how long the holds would be in place.

Our investigator said Santander was unable to offer any options that would allow Ms B and Mr I to stay in the property. Ms B and Mr I said they'd taken independent financial advice and been told they didn't have any options available. Our investigator said they seemed to have no way to repay the mortgage other than the sale of the property.

Mr I and Ms B didn't agree. Mr I said Santander told them on a monthly basis it would hold the account for one month and they should call again in a month to update it. He said they weren't told this would come to an end. He said as their monthly interest payments had increased and they were trying to sell the property, he assumed Santander was happy with the arrangement. Mr I sent copies of emails with Santander in late 2021 discussing what might happen if they were unable to sell the property by March 2022.

Mr I said they'd been forced to accept a very low offer for the property and would like compensation for this. He said despite having an offer, Santander had taken them to court. Mr I asked that Santander refunds legal costs. He said they're worried what would happen if the sale fell through.

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.

The temporary nature of the holds on legal action

When Mr I and Ms B took out the mortgage they agreed to repay it. As a starting point,

Santander was entitled to expect the debt to be repaid when the term expired, in April 2022.

Santander wrote to Mr I and Ms B a number of times from 2017 to remind them that their mortgage term was due to expire and to ask how they intended to repay it. This was also stated in the annual statements. Mr I says they put the house on the market for sale in 2020. I think Mr I and Ms B were aware that the debt would need to be repaid in April 2022.

Mr I and Ms B hadn't sold the property by April 2022. Santander agreed holds on legal action to give them time to sell the property. These were for a month each time. After about 18 months Santander instructed solicitors to start recovery action.

Mr I says this was unfair. He says if they'd been told there was a limit to the number of holds Santander would offer, they'd have explored re-mortgage options earlier or agreed to sell the property at a price below their asking price.

Santander had written to Mr I and Ms B a number of times prior to the term expiring, to remind them of the need to put arrangements in place to repay the debt. After the term expired, Santander held action. The purpose of this was to allow Mr I and Ms B time to arrange for the debt to be repaid. It was reasonable for Santander to expect Mr I and Ms B to be actively pursuing this.

I don't think it's fair to say that Santander misled Mr I and Ms B that it would offer holds indefinitely or that it somehow suggested they didn't need to move forward with repaying the debt. In fact, Santander's notes say it told Mr I in March 2023 that it was unable to hold action indefinitely. It agreed another hold at that time as Mr I and Ms B had recently changed estate agents. Santander told Mr I in July 2023 it couldn't agree further holds and the account was at risk of legal action. In August 2023 Santander told Mr I it could only hold action with evidence of an imminent solution. Santander had made Mr I and Ms B aware of the need to repay the debt and told Mr I in March 2023 that it was unable to hold action indefinitely. So I don't agree that this "came out of the blue".

Either Mr I and Ms B were unable to sell the property or re-mortgage – in which case they couldn't have acted differently. Or they were able to do so and chose not to do so in the hope, presumably, of achieving a better price. If so, I don't think it's fair to say that Santander was responsible for them making that decision.

Starting legal action for possession

Santander offered forbearance. It agreed holds on legal action for nearly 18 months, to give Mr I and Ms B time to sell the property.

Santander says it looked into what other options it might be able to offer Mr I and Ms B. It says a repayment mortgage wasn't affordable and they didn't meet criteria for an extension on an interest only basis. Mr I told Santander they didn't want to look into lifetime mortgages or equity release.

I should say here that rules on mortgage regulation require Santander to carry out an affordability assessment before it agrees to offer or vary a mortgage – such as by extending the term. While there are limited exceptions to this that might apply if a term extension was in Mr I and Ms B's best interests, it's not clear that would be the case here. Mr I and Ms B haven't said they'd be in a better position to repay the mortgage after an extension. They'd need to maintain mortgage payments in the meantime and, from what Mr I has said, that might be difficult for them. Mr I raised a complaint with Santander in late 2021 about the interest rate after one of their products ended, saying they'd struggle to meet the payments. Mr I said he had to work 55 or 60 hours per week, despite being over 70, to supplement his

pension and maintain mortgage payments.

It's unlikely to be in Mr I and Ms B's best interests to extend the term if this isn't affordable and they wouldn't be in a better position at the end of the extension.

Santander's notes say that Mr I had a meeting with an independent financial adviser to discuss using his pension to reduce the balance. As he didn't go ahead with this, presumably he was told this wasn't a solution. Mr I told Santander that they have a second property that they own outright. However they intend to live in that property after selling the security property.

Mr I told us they'd taken advice from an independent financial advisor. He says they were told that because of their age, their circumstances and the construction of their house he couldn't find them a re-mortgage, a buy to let mortgage, an equity release mortgage or even a bridging loan.

Taking possession of a property should be a last resort. But it does seem that Mr I and Ms B's options for repaying the debt are very limited. Mr I says they've been trying to sell the property since 2020. Mr I says they now have an offer. Hopefully this will proceed to the sale of the property and they'll be able to repay the mortgage balance in the near future.

But if this isn't the case, I can't fairly and reasonably require Santander to hold legal action for 12 months as Mr I and Ms B have requested. There's no guarantee that they'd have more success in selling the property than they have over the last several years. And, in fairness, I do need to take into account that Santander is entitled to expect the loan to be repaid and it's now more than two years since the term expired. I think Santander exercised reasonable and fair forbearance when it put holds on the account for about 18 months to give Mr I and Ms B time to sell the property or otherwise arrange to repay the debt.

In the circumstances, I don't think it's fair and reasonable to require Santander to hold action for another 12 months, refund legal costs or pay compensation to Mr I and Ms B.

Following the view, Mr I sent copies of email correspondence with Santander in late 2021 about what might happen if they were unable to sell the property by March 2022. There's nothing in that correspondence that changes what I've said above.

Mr I also said Santander had taken them to court. From he's said, it seems Santander obtained a possession order suspended for three months. Mr I is unhappy about several aspects of this. As this didn't form part of the complaint raised with Santander and brought to us, I can't look into it here.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr I to accept or reject my decision before 19 June 2024.

Ruth Stevenson
Ombudsman