

The complaint

Mr W complains that Santander UK Plc hasn't treated him fairly when he experienced financial difficulty with his mortgage. In particular, it took repossession action against him. When his family cleared the arrears Santander refused to convert the mortgage from repayment to interest only terms, and to reduce the interest rate. Mr W is represented in this complaint by his sister Ms W.

What happened

Mr W took out a mortgage with Santander in 2006. He borrowed around £84,000 on repayment terms over 25 years. Mr R took an initial fixed rate of two years. In 2008 Mr W took a further three year fixed rate. Since 2011 the mortgage has been on Santander's standard variable rate (SVR).

In December 2019, the mortgage fell into arrears when Mr W's direct debit bounced. The missed payment was not made up, and further payments were missed between May and December 2022. The arrears were cleared in January 2023.

Ms W says that Mr W has a history of mental illness, which was made worse by the coronavirus pandemic and the isolation of lockdowns. As a result he wasn't engaging with Santander or his mortgage. His family only discovered the situation when Santander took legal action in late 2022.

Ms W says that Mr W was unable to engage with Santander, or face up to what was happening. It was only on the day of the scheduled eviction that he was able to tell his family. When she discovered the situation Ms W immediately contacted Santander and cleared the arrears, and the eviction didn't go ahead. Since then Ms W has supported Mr W with his mortgage and with dealing with Santander.

Ms W says that Mr W is unable to work because of his illness and although – with family support – payments are being made, the mortgage remains unaffordable for him. She complains that she has asked Santander to convert the mortgage to interest only and to reduce the interest rate to reduce the monthly payments, but Santander has refused to consider doing so. Ms W says that Mr W's current mortgage balance is less than £40,000 and he has two pensions which he will be able to access at the age of 55, which he can use to repay the outstanding balance at that point. Ms W says that Mr W is very vulnerable and Santander has failed to take that into account or to support him as it should. And it has made it very hard for her to engage with Santander on his behalf.

Santander said that it couldn't convert the mortgage to interest only. But now that the arrears had been cleared Mr W – or Ms W on his behalf – could apply for a new interest rate to reduce the monthly payments. It said it had failed to register Mr W's written authority for Ms W to act on his behalf, meaning he had to authorise it every time Ms W called on his behalf. It offered £100 compensation for this.

I set out my thoughts on the complaint in a provisional decision, allowing the parties a further chance to respond and make any further submissions they wanted me to take into account

in making a final decision.

I said:

“There are, it seems to me, two key issues here – the action Santander took leading up to the repossession, and the action it has taken since.

It’s clear from everything that Ms W has said that Mr W is a very vulnerable customer, and that’s a relevant factor to take into account.

However, it doesn’t seem that Santander was aware of Mr W’s vulnerability or his wider circumstances before the scheduled eviction date, when it was told about this by Ms W. It wasn’t therefore something that Santander could or should have taken into account.

Even so, I don’t think Santander acted fairly in moving to repossession as soon as it did. It seems that Santander had a possession order from previous proceedings. I don’t know when those proceedings were – and, despite me asking, Santander hasn’t provided a copy of the possession order or information about the earlier proceedings.

I think it’s likely that the possession order was obtained at some before 2019. Other than the missed payment in 2019, Mr W’s mortgage wasn’t in arrears between 2019 and 2022. So the possession order must date to before that.

When Mr W began to miss further payments from May 2022, Santander sent letters to him. It also sent a field agent in July who was unable to make contact with Mr W. So it decided in August 2022 that it would take further litigation following on from the previous proceedings. It instructed its solicitors, the solicitors applied to the court to enforce the earlier possession order, and a warrant of eviction was issued on 14 December, with the eviction set for 14 January 2023.

I don’t think this was fair and reasonable or showed appropriate forbearance. Under the rules of mortgage regulation, repossession is supposed to be a last resort. With that in mind, I asked Santander to explain what it did before deciding to evict Mr W. It hasn’t replied. But according to its contact notes, between when Mr W missed the first payment (other than the one off in December 2019) on 3 May and when it instructed its solicitors to seek possession in August, Santander sent four letters and a field agent.

Had Santander made further efforts to contact Mr W, it may well have been unsuccessful given his condition. But Santander didn’t know that at the time – and I don’t think it’s fair to say that it had reached the last resort without making those further efforts.

If this was new possession proceedings, Mr W would have had the benefit of the pre-action protocol and a court would have considered whether to grant possession or not.

But Santander didn’t take that route either. It went straight to the final stage – a warrant of eviction – reliant on historic possession proceedings for a previous and unrelated period of financial difficulty.

In all the circumstances, I don’t think it was fair and reasonable that Santander moved to instruct its solicitors only three months after Mr W first began to miss

payments, having made relatively little effort to try other courses of action first. And I don't think it was fair and reasonable that Santander obtained a warrant of eviction, which it intended to execute, so soon after Mr W first began to miss payments either. I'm not persuaded that Santander made reasonable attempts to implement other forms of forbearance first, or that it's shown that it had reached the last resort.

It follows that I don't think it was fair and reasonable that Mr W was faced with the prospect of losing his home – although it was this that finally prompted him to seek the family help that he needed, this would nevertheless have been even more upsetting and distressing for him than it would have been for a borrower without his vulnerabilities. Even though Santander wasn't aware of those vulnerabilities, I think I can still take them into account when thinking about the impact that Santander's actions had on him. I'll say more about appropriate compensation below. In addition to compensation, I think Santander should remove all legal fees added to Mr W's mortgage balance.

Santander did agree to cancel the eviction date when Ms W cleared the arrears. This brings me to the second part of this complaint – where, again, I don't think Santander acted fairly and reasonably.

It failed to implement Mr W's instructions that Ms W act for him and deal with Santander on his behalf, even though it had letters of authority. This meant that whenever Ms W called Santander, Mr W had to re-authorise it to deal with her. This caused him further distress.

By this point, Santander was aware of Mr W's vulnerabilities. He was out of arrears, but as Ms W explained, the mortgage was still unaffordable for him.

Ms W asked Santander to reduce the interest rate, and to convert the mortgage to interest only. In respect of the interest rate, Santander advised Ms W to contact the team dealing with rate switches. I don't think this was enough. In Mr W's particular circumstances, I think it ought to have assisted him as a matter of forbearance. Santander had a rate specifically for customers in, or recently in, arrears. This was, at the time, a one year fixed rate of 5.64% with no product fee or early repayment charge. I think Santander ought, acting fairly, to have moved Mr W's mortgage on to this rate. To put matters right it should re-work his mortgage as if it had done so.

Ms W also asked for Mr W's mortgage to be moved to interest only terms. Santander said it couldn't do this, because it didn't think this was appropriate without detailed consideration of how Mr W would repay the capital at the end of the term.

I don't think it's unreasonable that Santander wouldn't permanently convert the mortgage to interest only terms. There are specific rules around this – including verification of repayment strategy – and Santander is entitled to have its own lending criteria about when it's willing to offer interest only mortgages.

However, I don't think Santander did enough to explore what lay behind this request. Ms W has explained that Mr W will be able to access lump sums from his pension which are large enough to repay the mortgage in full once he reaches the age of 55 – which will happen in April 2024. The mortgage was unaffordable for Mr W while he was unable to work. He could only repay it by selling the property, which would have a significant impact on him – but if the mortgage could be sustained until around April 2024, Mr W would then have access to enough funds to allow him to repay it and not have to worry about the monthly payments anymore.

In those circumstances, it seems to me that what Ms W was asking for was a period of forbearance to assist Mr W manage his mortgage for just over a year. I think Santander ought to have understood this. Under the rules of mortgage regulation it's required to show appropriate forbearance to assist borrowers in financial difficulty avoid the last resort of repossession. One of the options the rules say a lender can use is a reduced payment arrangement – which would include agreeing to collect only the interest and not the capital, or some other sum.

With this in mind, I think Santander ought to have considered Mr W's income and expenditure, and the concrete plan to repay the mortgage in or around April 2024, and agreed a reduced payment arrangement to allow Mr W to manage the mortgage in the meantime. This might have been an arrangement to pay only the interest, or a smaller or larger sum than that. This is not the same as converting the mortgage to interest only on a permanent basis. I think that if Santander had not simply rejected Ms W's request but had sought to understand what lay behind it, it ought to have considered and agreed to such an arrangement. I think Santander ought to put that in place now. I understand Mr W took the six month interest only switch permitted by the Mortgage Charter – and so the payment arrangement should take effect from the end of that six month period, which Ms W says expired on 1 March 2024.

Putting things right

In conclusion, then, to put matters right I intend to require Santander to:

- Remove all legal fees, and interest charged on them, in connection with the repossession action in late 2022 and early 2023;
- Put Mr W's mortgage on the one year ERC-free 5.64% interest rate, backdated to February 2023. At the expiry of that rate in February 2024, put Mr W's mortgage on the current version of the same rate. Mr W's mortgage should be re-calculated accordingly.
- Put Mr W on a temporary payment arrangement of paying solely the interest from 1 March 2024 until 30 September 2024, to allow him to reach the age of 55 and then make arrangements to use his pension to repay the mortgage balance.

In addition, I think substantial compensation is appropriate here. Even though Santander didn't know of Mr W's vulnerabilities when it obtained the warrant of eviction, the fact is that this had an even greater impact on him than it would a customer without those vulnerabilities – and I'm satisfied seeking to evict Mr W was unfair in the circumstances. The worry that he was about to lose his home, and that he had actually reached the day of eviction before feeling able to ask for help, must have been severe.

After that, Santander was aware of Mr W's vulnerabilities, but didn't take proper account of his circumstances. It failed to register his authority for Ms W to manage the mortgage on his behalf, meaning that Mr W had to continue speaking to Santander. And it didn't reduce the interest rate or agree a payment arrangement when doing so was, as I've set out, appropriate forbearance. All of this would have caused Mr W further upset, and further worry that he would continue to risk losing his home to an unaffordable mortgage.

In all the circumstances, I'm satisfied that a significant award is fair. I think Santander should pay Mr W £1,500 compensation."

Ms W responded to my provisional decision on Mr W's behalf. She emphasised that she had found dealing with Santander very difficult since she started helping her brother. It didn't seem to have considered his vulnerability or made any adjustments in light of it. It lost several letters of authority, meaning Mr W had to be present and speak to Santander every time Ms W called – causing him substantial extra stress and making her feel complicit in that. Ms W said that she wants Santander to confirm in writing what changes it makes to Mr W's mortgage so she can be sure it's done what I ask. And she asked for the £1,500 compensation to be used to reduce the mortgage balance.

Santander said it would agree to pay £1,500 compensation and to remove the legal fees from the mortgage balance, as well as reduce the interest rate. It questioned why I'd said the interest only concession should run until September 2024 if Mr W could access his pension from April.

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.

Having considered matters again, I see no reason to change my mind about the fair outcome of this complaint. Both parties broadly accepted what I said. I said that the interest only concession should run until 30 September 2024 to allow Mr W and Ms W a buffer to put arrangements in place – it's my understanding that Mr W won't receive an automatic payment when he turns 55, but will need to make arrangements with his pension provider to release funds.

It may well be that this can be done before September 2024, but I want to ensure that there's enough time to allow it to happen – including allowing scope for any delays at the pension provider. I hope it doesn't prove necessary, but in the event things do take longer I would expect Santander to treat any request for an extension sympathetically if Ms W can show that she and Mr W are doing everything they can to obtain the funds but there's been an administrative delay.

Putting things right

To put matters right, Santander should re-work Mr W's mortgage as follows:

- It should remove the legal fees charged in connection with the aborted eviction, together with all interest charged on them.
- It should implement a one year fixed interest rate of 5.64%, backdated to 28 February 2023. That should be followed from expiry in February or March 2024 with the equivalent one year ERC-free fixed rate available at that time.
- It should reduce the capital balance by £1,500, effective from the date Mr W accepts my final decision, in lieu of a payment of compensation.

Santander should then put in place a temporary interest only concession running from the end of the Mortgage Charter six month switch Mr W took to 30 September 2024.

Santander should write to Ms W on Mr W's behalf explaining what it has done – including the calculations made – setting out the revised balance and revised monthly payments (both the contractual monthly payments including capital, and the concessionary payments of interest only).

My final decision

My final decision is that I uphold this complaint and direct Santander UK Plc to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 May 2024.

Simon Pugh
Ombudsman