

## The complaint

Mr D's complaint arises from his mortgage held with Santander UK Plc. Mr D is unhappy that, when he was discussing a payment arrangement with Santander in October 2023, he wasn't made aware that a formal arrangement would need to be put in place in order to stop the account being referred to solicitors.

To settle the complaint Mr D would like Santander to capitalise £10,000 of arrears, remove all legal fees and pay compensation.

## What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, Santander has acknowledged it made a mistake in not giving Mr D the correct information about what was required in order to prevent a referral to solicitors. I don't therefore need to analyse the events in detail in order to determine if Santander is at fault; all I need to decide is what the bank needs to do to put things right.

Finally our decisions are published, so it's important I don't include any information that might lead to Mr D being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Santander accepts that, during a call on 24 October 2023 when discussing how Mr D would pay off his arrears, he wasn't told that a budget planner would need to be completed in order to set up a formal payment arrangement on the account. Mr D also wasn't told that, in order to stop legal action, a formal arrangement would be necessary.

It therefore came as a shock to Mr D to receive notification of a court hearing due to take place in January 2024. Mr D complained to Santander. However, Santander would not recall the account from solicitors. This was because of previous broken payment arrangements and the high level of arrears. Santander declined to capitalise the arrears, but offered Mr D compensation of £200 for the distress caused by the account having been referred to solicitors prematurely.

Unhappy with Santander's response Mr D contacted our service. An Investigator looked at what had happened. He noted Santander had agreed to adjourn the court proceedings.

He was satisfied that Santander wasn't required to capitalise the arrears, because this didn't meet Santander's criteria. Mr D hadn't made twelve consecutive payments, and so the Investigator didn't think Santander needed to do anything further about this.

However, the Investigator thought Santander should remove the legal fees incurred in referring the matter to solicitors. That's because Santander hadn't made Mr D aware of the potential consequences of not setting up a formal payment arrangement when he spoke to the bank on 24 October 2023. The Investigator thought that, if Santander had told Mr D that legal action would take place without a formal arrangement, he'd have complied with this requirement.

The Investigator also thought Santander should increase its offer of compensation to £400.

Santander didn't agree with this and asked for an Ombudsman to review the complaint. The bank said that, although Mr D hadn't been told of the consequences of not setting up a formal payment arrangement, he wanted to make lump sum payments without a payment arrangement in place.

Santander also said that, although Mr D had said he'd wanted to reduce the arrears by making lump sum payments, no such payments had been made, and the account was still over £12,000 in arrears. So although during the call on 24 October 2023 Mr D had said he'd wanted to reduce the arrears to less than 6 months' outstanding payments, this hadn't happened.

### **Provisional decision of 24 May 2024**

I issued a provisional decision in which I made the following findings.

It's clear from the call on 24 October 2023 that Mr D wanted to make an arrangement to reduce the arrears to a level where Santander would then consider capitalisation. He told Santander he'd do this by making *ad hoc* lump sum payments. In order to consider capitalisation, Mr D was told he'd need to make twelve consecutive monthly repayments.

Mr D was told that his repayment due on 28 October 2023 would be the first payment, and that Mr D was at that point at nine months of arrears (that is, missed payments adding up to the equivalent of nine monthly repayments). Mr D was also told that if, in addition to making the consecutive monthly payments, Mr D was able to manage to reduce the arrears to three months equivalent arrears, then Santander would then be able to consider capitalisation.

I agree that Santander didn't make it sufficiently clear that a budget planner would need to be completed and a formal payment arrangement put in place to stop the account being passed to solicitors. I think that it is likely that, if Mr D had been told this, he'd have agreed to completing the budget planner and payment arrangement.

In the circumstances, I don't think Santander was justified in referring the matter to solicitors. As a result, I don't think it was fair that legal costs were incurred.

On the face of it, therefore, those costs have been incurred unnecessarily. But on the other hand, although Mr D has made his monthly repayments in full since October 2024, the promised lump sum payments to reduce the arrears haven't been made. This means that the arrears haven't been reduced at all, and there is no payment arrangement in place to clear them.

As a result, the account isn't yet at the stage where Santander could consider capitalisation. This is because twelve consecutive monthly repayments haven't been

made, and the lump sum payments Mr D said he'd make (by drawing down from his pension) also haven't been made.

To settle the complaint I thought Santander should do the following:

In the circumstances, I think that Santander should remove the legal fees and all interest charged on those fees (and adjust the account balance accordingly) in October 2024. But the bank will only be required to do this if by that time Mr D has done the following:

- made twelve consecutive monthly repayments in full and on time;
- reduced the arrears to the equivalent of three months' outstanding repayments by making *ad hoc* lump sum payments, as he said he'd do in October 2023.

Mr D believed he'd come to an arrangement with Santander in October 2023, and so it was a shock to him to receive notification of the court hearing due to take place in January 2024. This caused him distress and upset, and I am satisfied a payment of £400 for this is fair, reasonable, and proportionate to the distress caused.

### **Responses to the provisional decision**

Despite a reminder, Mr D didn't respond to the provisional decision.

Santander has responded and made the following points.

- The bank agrees with the £400 compensation.
- However, Santander doesn't think it's fair for the legal fees to be removed. This is because Mr D hasn't made the lump sum payments he promised.
- The bank has since agreed a term extension to make payments more affordable and during this Mr D amended his budget figures to fit the solution, rather than providing factual information.
- During the term extension application Mr D promised to make lump sum payments, but didn't do so.
- Mr D has had ample opportunity to set up a payment arrangement, but there is still no arrangement in place.

### **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 done so, I'm not persuaded to change the findings in my provisional decision. I've noted what Santander has said – that Mr D hasn't come to a payment arrangement or made the lump sum payments he'd promised to make.

Santander is aware that it is required to take appropriate action when it identifies loss or harm its actions have caused to customers. There is no doubt that starting court proceedings without telling Mr D it was intending to do so caused him harm, particularly given Mr D had thought he'd come to an arrangement with Santander. However, I don't think the resolution set out in my provisional decision prejudices Santander's position in any way.

This is because I think it is only fair to give Mr D the opportunity to mitigate his position, by doing what he said he would do in October 2023. Therefore, if by October 2024 Mr D is able to reduce the arrears to three months' equivalent outstanding payments, *and* made twelve

consecutive monthly payments in full and on time, the legal costs should be removed. This is the arrangement Mr D thought he had come to during the call, and so referring the matter to solicitors and commencing litigation without telling Mr D was unfair.

Santander says that since October 2023 Mr D hasn't made any effort to set up a payment arrangement or reduce the arrears with the *ad hoc* lump sum payment he'd promised to make. The bank suggests this shows either a lack of good faith on Mr D's part, or that he's run into further financial difficulties which have prevented him from reducing the arrears as he'd promised.

But if that's the case, then if by October 2024 the arrears haven't been paid down as Mr D promised, or if payments haven't been maintained in full or on time for twelve consecutive months, I don't think he could have any argument against Santander having referred the matter to solicitors without telling him in the October 2023 call. But I don't think Santander can reasonably justify an action that it's acknowledged was unfair by saying that Mr D's later conduct has since proved it was right all along in referring the matter to solicitors.

In the circumstances, I remain of the opinion that the complaint should be upheld. Of course, if Mr D doesn't pay down the arrears and make twelve consecutive full repayments, Santander's position will not have been prejudiced. The resolution I am ordering is contingent on Mr D making the payments he'd promised to make in October 2023.

### **Putting things right**

Santander should remove the legal fees and all interest charged on those fees (and adjust the account balance accordingly) in October 2024. But the bank will only be required to do this if by that time Mr D has done the following:

- made twelve consecutive monthly repayments in full and on time; and
- reduced the arrears to the equivalent of three months' outstanding repayments by making *ad hoc* lump sum payments, as he said he'd do in October 2023.

Santander must also pay Mr D £400 compensation for distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint. I direct Santander UK Plc to settle the complaint as directed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 July 2024.

Jan O'Leary  
**Ombudsman**