

## **The complaint**

Mr H2 and Ms H are the representatives of the estate of their late father, Mr H1. They bring this complaint on the estate's behalf. They complain that:

- the mortgage was mis-sold to Mr H1 and their mother Mrs H, who predeceased Mr H1, because it was on an interest-only basis and Mr H1 and Mrs H had no plan in place to repay it; and
- Santander has treated them and the rest of their family unfairly since the deaths of Mr H1 and Mrs H, because it didn't support them appropriately or explain how the mortgage worked and has continued to add interest and charges to it.

A friend, Miss E, brings the complaint on Mr H2's and Ms H's behalf.

## **What happened**

The late Mr H1 and Mrs H took out a mortgage with Abbey National – now Santander – in 2003, through a broker. They borrowed just over £113,000 to repay their existing mortgage with another lender and some credit card debt. The mortgage was on an interest-only basis.

Mrs H died in 2008, and Mr H1 died in 2012. Mr H2 is their oldest child, and was in his early twenties in 2012. He had to look after and support his younger siblings, as well as his own young child. The family remained in the mortgaged property.

Santander was notified about what had happened and asked for Mr H1's death certificate. It received this in April 2014. It then wrote to Mr H2 confirming receipt and asking for details of who was dealing with the estate. It also set out the mortgage balance (around £127,000 at the time) and said that it was continuing to charge interest, and asked what the estate's plans were for the property and the mortgage.

In October 2014 Santander received grant of probate appointing Mr H2 and Ms H as representatives of the late Mr H1's estate.

Santander wrote to Mr H2 and Ms H multiple times in the years that followed, asking about their plans for repayment of the mortgage. It also sent field agents to visit the property. Mr H2 and Ms H said they were thinking about selling the property and also about taking a mortgage on it themselves or arranging for a family friend to do so. But none of these things happened and the mortgage remains outstanding.

Santander instructed solicitors and in August 2023 a possession order was issued. An eviction date was set for early November 2023, but cancelled shortly beforehand.

On 13 November 2023 Mr H2 made this complaint. He explained the very difficult circumstances he and his family had found themselves in after their parents died and said that Santander had failed to support them appropriately or properly explain the mortgage to them. He also said the mortgage had been mis-sold in the first place because it was interest-only. He asked for the mortgage arrears to be written off, for interest to be frozen

while the complaint is investigated, and for the mortgage to be put on a capital and interest repayment basis at a set rate of interest with affordable payments.

Santander said the late Mr H1 and Mrs H had taken out the mortgage through a broker, and Santander hadn't given any advice. It also said it had given appropriate notice before seeking repossession, and it wouldn't accept Mr H2's proposal to pay £1,000 a month because of the level of arrears.

Through Miss E, Mr H2 and Ms H referred the complaint to the Financial Ombudsman Service. Santander put repossession on hold while we consider the complaint. Following our involvement, it also offered some compensation. It said it had identified some delays in taking legal action and some duplicated legal costs. It offered to:

- refund mortgage interest applied between 6 January 2022 and 14 May 2023, and between 27 October 2023 and 9 November 2023;
- re-work the mortgage based on a lower fixed interest rate which it introduced for vulnerable customers in late 2019, with effect from 7 January 2020 until 2 November 2023;
- refund £440.80 legal fees; and
- pay £500 as a gesture of goodwill.

Our Investigator said that time limits apply to this complaint, and they mean that we can't look into anything that happened more than six years before the complaint was made on 13 November 2023.

The Investigator also concluded that Santander's offer of compensation was broadly fair. But he said that Santander had stopped offering its interest rate for vulnerable customers in February 2023, and instead has another interest rate available for certain customers which is set at 1% below Santander's standard variable rate at the point it is applied and which has no initial product fee or early repayment charge attached. The Investigator said Santander should apply interest at that rate from 3 November 2023 onwards (if doing so would result in a lower interest rate on the mortgage) given the particular circumstances of this complaint.

But the Investigator said that there appeared to be no real alternative to Santander taking possession action, because there was no plan in place to repay the mortgage and it had remained outstanding for many years with barely any payments being made, and the balance was continuing to increase, eroding any remaining equity in the property.

Neither Mr H2 and Ms H nor Santander accepted that outcome. Miss E asked for an Ombudsman's review on Mr H2's and Ms H's behalf. She said that Mr H2 and Ms H hadn't complained sooner because they had no experience in financial matters, and they were afraid to complain. They still considered that Santander had failed to support them appropriately and instead had sent them lots of standard letters which they didn't understand.

Santander said it had gone further than it usually would in allowing Mr H2, Ms H and their family to stay in the mortgaged property for as long as they had. It wasn't prepared to increase its offer of compensation in line with the Investigator's recommendation.

The complaint was referred to me to make a decision. I came to a different conclusion to our Investigator about the Financial Ombudsman Service's power to look into this complaint, so I issued a provisional decision setting out my initial view about both the scope of my

jurisdiction and a fair outcome. I have since issued a decision confirming that:

- I can't consider the complaint about the sale of the mortgage in 2003, because that is time-barred under the time limit rules I've set out above and because the broker – not Santander – was responsible for giving advice about the suitability of the mortgage.
- I can consider whether the relationship between the estate and Santander was and is fair – taking into account all matters relevant to the fairness of that relationship whenever they occurred and even if they are time-barred if subject to a complaint in their own right.

This decision sets out my conclusions about the merits of the part of the complaint I can determine.

### **My provisional decision**

In respect of the merits of the part of the complaint I can consider, I said in my provisional decision:

“First of all, I was very sorry to read about the exceptionally difficult circumstances Mr H2, Ms H and their family found themselves in following the deaths of their parents. It's clear that they faced a very challenging situation at a young age and wanted to do their best for the rest of the family. I've taken careful account of everything they and Miss E have told us in making my decision.

[...]

When the last surviving mortgage borrower dies, the mortgage becomes payable in full. That's generally set out in the mortgage terms. Mr H2 and his siblings wouldn't necessarily have known that in 2012, however, given their ages and lack of experience of mortgages and other financial matters.

Lenders don't expect a mortgage to be repaid immediately. They will generally allow a period of time for the representatives of the estate to make arrangements to repay the mortgage – by selling the mortgaged property or taking out a mortgage in their own names. In this case, the mortgage is still outstanding more than 12 years later, and Mr H2 and Ms H don't appear to have a plan to repay it. If one or both of them were to take on the mortgage debt, they would need to go through an application process so that Santander, or another lender, could assess their circumstances and whether a mortgage would be affordable and suitable. Santander can't simply put the mortgage into their names, on terms that suit them.

I've looked carefully at the correspondence Santander has sent Mr H2 and Ms H over the years, as well as its records of phone contact and field agent visits. Having done so, I think that Santander did enough to make the situation with the mortgage – including that interest continued to be applied and that the debt needed to be repaid – clear.

On 23 April 2014 Santander wrote to Mr H2 confirming receipt of the death certificate for the late Mr H1. It also said:

There is currently £127726.85 owing on the mortgage. This is not a redemption figure and interest continues to be charged. Please let us know what the beneficiaries plan to do with both the property and the mortgage as soon as you can.

It wrote to the solicitors who were acting for the estate in arranging grant of probate along similar lines several times. It also wrote to Mr H2 and Ms H many times once it had confirmation that they were representing the estate, asking about their plans to repay the

mortgage and explaining that interest continued to be applied. The increasing debt was also set out on yearly statements. And in October and November 2015, for example, Santander sent three letters to Mr H2 and Ms H asking for an update and saying:

In the meantime, it is important to keep up the payments. If you miss any, it will mean you have to pay more to redeem the mortgage and outstanding balance.

In December 2015 it wrote again, this time saying that it would send a field agent to the property if Mr H2 and Ms H didn't get in touch, and this would result in a fee being added to the mortgage. This letter also said:

### **What happens if we can't make progress?**

We may refer your account to solicitors acting on our behalf to recover our interest in the property. The mortgage account became payable in full on the death of the late [Mr H1 and Mrs H] and there is currently £138867.20 to pay on the mortgage. This is not a redemption figure and interest will continue to be charged.

Please note that extra charges will be added to the mortgage account if we have to take legal action. If you need a copy of our full tariff of charges, or would like to discuss the probate process and the options available to you, give us a call on the number above.

Correspondence continued along similar lines in the years that followed. Santander's records also show contact with Mr H2 at various points. A field agent met with Mr H2 in July 2014. Their records say that the property wasn't for sale and a family friend would be taking over the mortgage.

Records of another field agent visit in April 2015 say the same thing. Santander had multiple phone conversations with Mr H2 from 2016; its records say that he told it at different times that the property would be sold, that a family member would be buying it, and that he would be taking a mortgage on it.

I think the evidence shows that Mr H2 knew that something needed to be done to repay the Santander mortgage. I also think that Santander's correspondence was clear that the mortgage needed to be repaid and that interest was being added. And it was later clear that it would start possession proceedings because no progress on repayment of the mortgage had been made.

In deciding this complaint I've kept in mind that Mr H2 and Ms H were young adults faced with an exceptionally difficult situation when they were appointed to represent their late parents' estate, and I've noted everything Miss E has told us about their lack of understanding of the mortgage. However, they had a solicitor involved in arranging probate and Santander was in regular contact with them explaining in clear terms that the mortgage balance was going up and needed to be repaid. It also sent field agents to talk to them in person, spoke to them on the phone, and invited them to visit a branch or call to discuss the matter.

Very few payments have been made to the mortgage since 2012 – by January 2024 the arrears balance had reached around £85,000 and the mortgage debt had increased significantly. I recognise that it's upsetting for Mr H2, Ms H and their family to see the debt going up. It is however usual practice for interest to continue to be applied to a mortgage after the borrower has died. A mortgage is an interest-bearing debt until it is repaid. I don't consider that I can fairly require Santander to refund all the interest it has charged, or to stop charging interest until an agreement for repayment is reached or until it takes the property into possession. Santander was also entitled to charge fees for legal work that was carried

out on its behalf and for field agent visits, and that's not unreasonable.

Overall, I find that Santander has given the estate considerable time to make arrangements for repayment of the mortgage – and it wouldn't be reasonable for me to tell it to leave matters as they are indefinitely in the circumstances. I don't find that its handling of the mortgage or the way it communicated with Mr H2 and Ms H as representatives of the estate created an unfair relationship between it and the estate. Whether or not Santander mistakenly described the mortgage as on a repayment basis in a recent phone call doesn't change my conclusion about that. Payments to the mortgage weren't being made, so this call didn't change anything – and I must consider all of the evidence and surrounding circumstances, of which the call in question is just one small part.

Santander has identified some delays in its process and duplication of legal fees, and it has offered to refund interest for the period of delay and refund duplicated fees. It has also said it will re-work the mortgage on the basis of the fixed interest rate it had available for vulnerable customers between 2020 and 2023. I think that's fair, bearing in mind that lenders couldn't generally take possession action during the early stages of the coronavirus pandemic and so some delay was unavoidable, as well as that Mr H2 and Ms H told Santander a number of times that they were making arrangements for repayment.

I also think however that Santander should apply the variable interest rate it had available set lower than its standard variable rate, from 3 November 2023 onwards – if doing so would result in less interest being charged to the mortgage. I see no reason why that rate should not have been applied in the circumstances and given that it has no product fee or charge for early repayment.

Santander has offered the estate an additional £500 compensation, and I don't propose to require it to increase that. Mr H2 and Ms H and their siblings aren't eligible complainants in their own right; the estate is the complainant in this case. This means that while I've noted everything Miss E has said about the impact of this mortgage on the family, I can't award compensation to them or to Mr H2 and/or Ms H as individuals. In all the circumstances, I find that Santander's offer is a fair one to reflect the impact on the estate of the delays it has identified.

Finally, Santander has said that it intends to recommence the process of taking possession of the property if the mortgage can't be repaid. It should ensure that it's clear with Mr H2 and Ms H about what it is doing and when and that it treats the estate fairly, and I encourage Mr H2 and Ms H to contact it with any proposals they might now have to repay the mortgage.

Putting things right

For the reasons I've explained, I provisionally consider that Santander UK plc should:

- refund mortgage interest applied between 6 January 2022 and 14 May 2023, and between 27 October 2023 and 9 November 2023;
- re-work the mortgage based on a lower fixed interest rate which it introduced for vulnerable customers in late 2019, with effect from 7 January 2020 until 2 November 2023 (except that no interest should be charged between the dates identified above);
- from 10 November 2023 (following the refund of interest between 27 October and 9 November 2023 as set out above) onwards, re-work the mortgage based on its fee-free interest rate product which is set at 1% below its standard variable rate at the point the rate is applied (if doing so would result in a lower interest rate on the mortgage);

- refund £440.80 legal fees; and
- pay the estate £500.”

I invited Miss E on behalf of Mr H2 and Ms H and Santander to let me have any further evidence and arguments they wanted me to consider before I make my final decision.

### **Responses to my provisional decision**

Santander didn't say whether or not it accepted my provisional decision, but it had nothing more to add.

Miss E said she had discussed my provisional decision with Mr H2 and Ms H and they understood the conclusions I had reached. She said a family friend had promised many times to repay the mortgage and then rent the property out to the family, but unfortunately this had never happened and the family had been badly let down. She also said that Mr H2 and Ms H hadn't opened many of the letters from Santander because they hadn't understood the situation, and the solicitor who dealt with probate hadn't given them any advice.

Miss E said that Mr H2 and Ms H had no further facts to provide, but she felt Santander should have treated them more compassionately. She accepted that the property would need to be sold, but she first wanted the mortgage balance to be re-worked based on my provisional findings about how the complaint should fairly be settled and she would then liaise with Santander directly.

### **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've come to the same conclusions I reached in my provisional decision, for the same reasons. I know that Miss E and Mr H2 and Ms H and their family feel very strongly about the way Santander has treated them. I can't however make an award to them as individuals because they're not the complainants in this case; the estate is the complainant.

If Mr H2 and Ms H accept this final decision on behalf of the late Mr H1's estate, Santander should comply with my direction promptly. Miss E will then be able to liaise with it about the sale of the property and repayment of the mortgage.

### **Putting things right**

Santander UK plc should:

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- refund £440.80 legal fees; and
- pay the estate £500.

### **My final decision**

My final decision is that I uphold this complaint and Santander UK plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H2 and Ms H on behalf of the estate of Mr H1 to accept or reject my decision before 25 October 2024.

Janet Millington  
**Ombudsman**