

The complaint

Mr and Mrs S have questioned the validity of their mortgage with Santander UK Plc (Santander) and complain that it has failed to fully respond to their Data Subject Access Request (DSAR) in this regard.

What happened

In February 2020, Mr and Mrs S made a DSAR to Santander in relation to their claim that the mortgage was invalid. They claim that Santander has sold their mortgage to a third party through securitisation and they are therefore not indebted to Santander in respect of the mortgage. They say that as Santander has extinguished its rights and title to the mortgage contract, the marker on their credit file saying the debt is outstanding is fraudulent. Mr and Mrs S complain that Santander has failed to provide the information they have requested and to adequately respond to their DSAR.

Santander says that a legal mortgage was created over Mr and Mrs S's property and evidence of the charge is available on the Land Registry. It says that the matters raised by Mr and Mrs S had no legitimate legal basis and that they remained indebted to Santander in respect of the mortgage. Santander says that it responded to Mr and Mrs S's DSAR in full and provided all of the information they are entitled to.

Since Santander's response, the property was taken into possession in September 2023 as the debt had not been repaid. It has subsequently been sold and Santander has advised that Mr and Mrs S will need to contact its solicitors to make arrangements to receive the surplus funds, as they have provided no forwarding address.

Our Investigator looked into Mr and Mrs S's complaint. She explained that this Service did not have the power to decide whether a mortgage is void, invalid or unenforceable as only a court would be able to do this. However, she was satisfied that fair and reasonable for Santander to request that the loan be repaid in line with the terms of the mortgage offer once the term had ended. In respect of the DSAR, the Investigator was satisfied that Santander responded to this in March 2020 and that it was reasonable for Santander not to provide certain information requested.

Mr and Mrs S disagreed with this, so the case has come to me to make a decision. They maintain that there are doubts regarding the validity of the mortgage as there is insufficient evidence to prove Santander's status as the lender. They say that the missing documents including the mortgage deed of trust, promissory note and signed declaration affect the enforceability of the mortgage and render it invalid if not provided.

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 looked at the evidence, I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

Mr and Mrs S's complaint is about Santander's failure to provide certain documents as part of their DSAR. I can see that Mr and Mrs S have requested answers from Santander to numerous questions regarding the mortgage account and surrounding issues. Mr and Mrs S

say that these documents and responses will prove whether or not the mortgage agreement between themselves and Santander is valid.

In relation to the DSAR, Santander says that it has provided all of the information Mr and Mrs S are entitled to receive. It says that the additional items sought either do not exist in the format Mr and Mrs S seek or relate to its internal accounting to which they are not entitled. I do not think Santander has acted unreasonably in this regard.

It is not the role of this Service to determine whether a mortgage contract is valid or enforceable; this can only be decided by a court. Likewise, it is not the role of this Service to demand that a business answers any questions it is asked by a consumer. This is an informal service set up to investigate disputes between customers and financial businesses and decide whether a business has acted fairly and reasonably.

Whilst I understand Mr and Mrs S feel strongly about the matter, I don't consider that the issues they have raised affect the validity of the mortgage or their obligation to repay the money lent to them by Santander. The fact that Santander hasn't provided everything requested by Mr and Mrs S does not mean the mortgage is not valid.

I have seen a copy of Mr and Mrs S's mortgage application from February 2008 and a copy of the mortgage offer dated 14 March 2008, which shows that they were borrowing £148,499 over a term of 12 years. The mortgage was interest only and the offer made it clear that the monthly payments would only cover the interest on the mortgage and would not repay the capital borrowed, which would be repayable at the end of the mortgage term.

I have seen a copy of a letter from Santander to Mr and Mrs S dated 20 March 2008 confirming that the mortgage had completed.

I have also seen a copy of the Title Register from the Land Registry which shows that Santander has a registered charge over the property dated 20 March 2008.

So I am satisfied that Santander lent Mr and Mrs S money to purchase their property and that they agreed with the terms of the mortgage contract. Indeed, I am aware that Mr and Mrs S made the monthly repayments required by the mortgage terms, but then contested the validity of the mortgage around the time the term ended, and when the capital balance became due.

Mr and Mrs S claim that the fact that the debt has been securitised means that they are no longer indebted to Santander. This is incorrect. Santander continues to hold the legal charge over the property and it is entitled to collect the payments due under the mortgage agreement regardless of whether or not the debt has been securitised to a third party. I am satisfied that this would not invalidate the mortgage or remove Mr and Mrs S's obligation to repay the money they borrowed.

Overall, Mr and Mrs S have benefitted from the mortgage agreement as they have had use of the money borrowed in order to purchase their property. Therefore, I think it is fair and reasonable for Santander to have requested that the loan was repaid in line with the mortgage agreement once the term had ended.

I know my decision will come as a disappointment to Mr and Mrs S, but I can't say that Santander has acted unreasonably in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I do not uphold this complaint and I don't require Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 10 January 2025.

Rachel Ellis
Ombudsman