

## **The complaint**

F and L complain that Santander UK Plc didn't respond to questions they raised about the validity of their mortgage.

## **What happened**

F and L originally took a mortgage with Santander in 2011. They say that in April 2023 they handed a document into a branch of Santander, which contended the mortgage was null and void, but that also said if Santander could prove the basis for this was incorrect, they would be happy to continue to make mortgage repayments.

F and L didn't receive a response to this.

Santander's records show that no mortgage repayments were received from May 2023 onwards and arrears on the account quickly grew. By August 2023, the arrears stood at just under £10,000, equating to just over four months' worth of repayments.

Santander made a number of attempts to contact F and L about the arrears but received no response. In August 2023, Santander informed F and L that if the situation wasn't remedied, it may take legal action on the account, which was then initiated.

An order for possession was granted in November 2023. F and L wrote to Santander in December 2023 to say they'd only just found about this as they'd been abroad. In January 2024 they complained to Santander about the lack of response to the document they'd handed into branch in April 2023. They said Santander had wilfully and intentionally misled the court by not including the April 2023 correspondence in the court proceedings.

Santander didn't uphold the complaint. It accepted the letter had been received in branch but hadn't been forwarded to the correct internal department - for which it apologised. It didn't though think it had treated F and L unfairly in terms of the actions it subsequently took and didn't uphold their complaint.

F and L remained unhappy and referred their concerns to the Financial Ombudsman Service. An Investigator here issued an assessment not upholding the complaint because they didn't think Santander had acted unfairly.

F and L asked for the case to be escalated to an Ombudsman. They emphasised that their complaint wasn't about whether the mortgage was valid or not. Rather, it was that Santander had ignored their correspondence of April 2023 challenging the validity of the mortgage, proceeded with legal action regardless, and this had caused lots of issues.

## **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 do not uphold this complaint. Before I explain why, I want to set out the purpose of my role. It isn't to address every single point that's been made to date. Instead,

it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having considered all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint.

F and L have clarified that their complaint is not about whether the mortgage is valid or not. Rather it is about the lack of response from Santander to the correspondence handed into branch in April 2023. I have focused my investigation and findings on this issue.

In its Final Response Letter of January 2024, Santander accepted the document from April 2023 had been received in branch and apologised that it hadn't been routed to the right place. Santander has since indicated it isn't sure it was received.

It isn't necessary for me to make a firm finding on this, because I don't think it's material to the overall outcome of the complaint. I'll explain why.

After F and L say they handed the document into branch, I can't see that they attempted to follow up when they hadn't received any response from Santander. F and L's next contact wasn't until December 2023 – some eight or so months later - upon finding out about the court proceedings that had taken place.

Notwithstanding the contents of the April 2023 document, F and L had a contractual obligation to pay and they did not do so. Their belief that the mortgage may be null and void didn't negate this responsibility and would not do so unless a court were to find in their favour on this point. It was F and L's choice to breach their mortgage agreement by ceasing payment.

In terms of the mortgage account, Santander's records show that no payments were being made from May 2023 and that as a consequence arrears on the account grew quickly. At the point Santander wrote to F and L to inform them it was considering taking legal action, the arrears were already significant. Given this, I consider it was reasonable for Santander to have initiated legal action when it did.

I can see F and L have said they didn't know about this because they were abroad. However, I can't see that Santander was made aware of this. It was F and L's responsibility to ensure Santander had up to date contact information, including any temporary changes. I can see that Santander was frequently trying to get in contact with F and L to discuss the account. I consider that when Santander didn't receive any payment or contact, it was reasonable for it to initiate legal action when it did.

I note F and L have said that Santander ought to have referenced the April 2023 correspondence in the court proceedings that took place in November 2023. I am not persuaded on this point.

Santander has shown that it didn't have a record of the April 2023 document within its systems. In any case, any such submission or reference to the April 2023 document would arguably have been for F and L or an agent acting on their behalf to raise in defence of the possession hearing. While I appreciate they say they were unaware such a hearing was taking place, that does not mean the responsibility for a defence to the hearing fell to Santander.

Thinking about all of this, I don't find that Santander has treated F and L unfairly or caused them any loss. So, I don't uphold this complaint.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F and L to accept or reject my decision before 19 December 2024.

Ben Brewer  
**Ombudsman**