

## **The complaint**

Mrs B has said that she asked Santander UK Plc to reduce the credit limit on her joint flexible mortgage, but instead it allowed a further £40,000 to be drawn down.

## **What happened**

Mrs B had a mortgage with Santander with her then-husband, who I'll refer to as Mr B. Mr B isn't a party to this complaint.

In 2006 they switched to a flexible mortgage product. The mortgage at that time was around £74,000 and was held on a repayment basis with just under 19 years remaining on the term.

The new interest rate tracked at 0.49% above Bank of England base rate and came with a £599 product fee which was added to the mortgage debt, taking it to around £74,670. That amount was set as the credit limit on the account.

There were additional features which allowed underpayments, payment holidays and a borrow back facility if there was sufficient available credit.

In August 2008 Mrs B and Mr B increased the credit limit on the mortgage to £84,670.

Regular drawdowns were made over the life of the mortgage; over the 15 years from 2009 to 2022 (inclusive) at least 5 drawdowns were made each year in 11 of those years.

On 2 August 2022 Mrs B called Santander. She said she was separating from Mr B and he'd thrown her out of the house on 25 July and changed the locks. She said there had been a recent £28,000 drawdown, and she didn't think he was going to make the mortgage payments. Santander said there had been a £28,500 draw down on the mortgage on 25 July<sup>1</sup> and asked if that was made by Mr B. Mrs B replied that Mr B had got it, she said the funds had gone to the joint account and she'd tried to get them, but Mr B had moved the money to his sole named account before she could. Mrs B was asking about the repossession process as she said she wanted the property sold, but she didn't have the money to take it to court herself to force a sale.

A marital dispute marker was put on the account so no further drawdowns could be undertaken without both parties agreeing.

On 5 November 2022 Mrs B raised a complaint with Santander about the drawdowns as she thought checks should have been done.

Santander didn't uphold the complaint, saying it was unaware there were any issues until Mrs B notified it on 2 August 2022 and, since then, no further drawdowns had been undertaken.

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<sup>1</sup> The transaction records show the £28,500 drawdown request was made by Mrs B online on 24 July.

The complaint was referred to our service and was looked at by one of our Investigators. She said there was no record of Mrs B notifying Santander of any issues – or requesting the credit limit be reduced – before 2 August 2022. And because all the drawdowns were undertaken before then she didn't think Santander had done anything wrong. She said Santander's policy allowed for the drawdowns to be made by just one party, and it didn't have to carry out more checks each time to ensure the drawdowns were affordable.

Mrs B didn't agree and so the case was passed to me to decide. I understand the property was sold in April 2023 and the mortgage was repaid.

### **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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I've a great deal of sympathy for the position Mrs B is in. It's clear she's gone through some very difficult times, and it can't have been easy to mentally revisit those times when bringing this complaint. I've not gone into any detail about that in this decision to protect Mrs B's privacy once the decision is published. But I'd seek to reassure her that I've read and taken into account everything she's said.

I can see from what we've been told that Mrs B has been very distressed about what's happened. Mr B hasn't participated in this complaint (and given the nature of the complaint, this is understandable). This means that I don't know what he might have to say about the matter, so it's not appropriate for me to comment on where all the withdrawals were spent or who did, or did not, benefit from the money.

If the way the money was used is in dispute, that's something Mrs B and Mr B will need to resolve between themselves, perhaps as part of their divorce settlement using 'Form E' (the Financial Statement for a financial order under the Matrimonial Causes Act 1973). But it's not something I can get involved with. My role is to look at what Santander has done.

Our Investigator asked Mrs B *"I just want to clarify with you whether you made any drawdowns on the account throughout the full duration of the mortgage? If you did make any drawdowns, please can you let me know when you made these transactions."* To which Mrs B replied *"No I wasn't responsible for any of the drawdowns on the mortgage..."*

After further questions, Mrs B confirmed she had made all the drawdown requests, but said it was under duress.

As it seems to no longer be in dispute that Mrs B made all the drawdown requests, I don't need to make a finding on that point.

Mrs B said that she phoned Santander around March 2021 or June 2021 to request the credit limit be reduced and was told that couldn't be done. Santander has searched its phone call records for Mrs B's number (which she says she is sure she used) for all of 2021 and hasn't been able to find a call. When asked by our Investigator, Mrs B didn't provide any alternative numbers for Santander to search under. Having reviewed the contact notes, I can't see any contact was recorded from Mrs B at all in 2021, other than one online drawdown request in the November.

Mrs B has said that Santander should have carried out checks during the term to ensure the credit limit remained affordable. She's pointed to the mortgage offer which says:

*"The terms of your credit limit are detailed in your Flexible Mortgage Terms and Conditions. We want to make sure your mortgage product remains appropriate to your financial circumstances and to enable us to do this we monitor your account on an ongoing basis. We therefore want to remind you that under your product terms and conditions we may reduce your credit limit if we reasonably think that because of a change in your financial position, you could not afford to repay present or future drawdowns and this could include repeated use of the credit facility to make your monthly payments to us. Our right to review your credit position, including checking information held about you at credit reference agencies, applies throughout the duration of your mortgage term and for joint mortgages applies to all account holders."*

But there's nothing in there that says Santander would do anything other than monitor the mortgage account for things like arrears or to see if the monthly payments were repeatedly being made by using drawdowns, and that it would check information held at the credit reference agencies.

Those actions wouldn't have flagged up any concerns here as Mrs B and Mr B were maintaining their monthly payments, weren't obviously repeatedly using drawdowns to make their monthly payments and, as far as I'm aware, they didn't have any CCJs that would have shown up on their credit files.

Instead, Mrs B is saying the problem was that Mr B was compulsively spending the money and that he was making her request the drawdowns. But the only way Santander would have known any of that was if Mrs B told them, which she's accepted she didn't do until 2 August 2022. And when she did tell Santander it immediately put a block on the account to prevent any further drawdowns.

The mortgage product Mrs B and Mr B had was designed to be flexible, and as part of that drawdowns could be made up to a set credit limit without needing an affordability assessment to be carried out (other than when the credit limit was originally agreed). That forms part of the terms and conditions of the mortgage that Mrs B and Mr B signed up to.

In May 2022 Mrs B phoned Santander. She said they had additional funds they could drawdown but only had three years left to run on the mortgage. She asked if they could extend the mortgage term by five years. As part of that call she said she wanted to drawdown an additional £10,000 saying *"I've got to get my porch and bathroom done and some windows."* Santander said that term extensions couldn't be granted on the type of mortgage that Mrs B held.

Later that day a £5,000 drawdown request was made by Mrs B online, and the funds were sent to her joint account the following day.

Mrs B has said *"when I asked for the term extension it wasn't for any home improvements [Mr B] needed a new work van"* and *"the £5,000 was to pay the mortgage and bills"*. But Santander couldn't have known that because Mrs B clearly said on the phone that she wanted to do some home improvements.

When Mrs B was asked by our Investigator about the drawdowns, Mrs B said *"I requested the remainder of the equity available £28,000 so he couldn't spend another penny it went into our joint account and then he got to it first and transferred it his account and bought his van etc"*

So there's no allegation there that the largest drawdown was made under duress, instead Mrs B has said she chose to draw the money down herself so she could take it before Mr B did. Again, that's not something I can hold Santander liable for as it did nothing wrong in releasing those funds at Mrs B's request.

I've a great deal of sympathy for Mrs B's position. I understand her point that when you are living this way it isn't something you're in a position to talk about openly. But I can only uphold a complaint where a business has done something wrong, and there was simply nothing before 2 August 2022 that should have alerted Santander to the situation as Mrs B explains it now.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 November 2023.

Julia Meadows

**Ombudsman**