

The complaint

Mr W is unhappy that Banco Santander Totta SA is chasing him for a debt he says he doesn't owe – and that he understood to be settled.

What happened

In 2003, Mr W applied for a loan facility of EUR 375,000 with Banco Santander Totta SA (BST). It looks like the loan facility (which was granted) was secured on the share capital of a company with which Mr W was involved (which I'll call DL).

In September 2021, Mr W copied the Financial Ombudsman Service into an e-mail he sent to BST's representative. In the e-mail, Mr W said that DL had received information in 2018 that the loan had been repaid. Mr W said that his solicitor in Portugal had paid all liabilities from the sale of the property that had been owned by DL and that it wasn't reasonable for BST to be requesting the payment of something he wasn't aware of, some two years down the track.

An investigator here issued an opinion saying they thought the complaint wasn't one that fell within the remit of the Financial Ombudsman Service. This was on the grounds that the relevant activity (pursuing Mr W for a debt owed) was being carried out by a firm no longer regulated in the UK.

Mr W disagreed with this finding. He said that when he applied for the loan facility, BST was regulated by the then Financial Services Authority (FSA) and he'd never signed anything to move his account or give away his protections. He asked for the case to be referred to an Ombudsman.

The investigator still thought the complaint wasn't one we could consider, so it was passed to me for further review. I issued a Provisional Decision (PD) in July 2023. In it, I said:

"The first thing I've needed to think about is whether this case is one that I can consider. Whilst the investigator may have been right that at least some of the activity pursuing Mr W for a debt BST says is owed, has been carried out by a firm no longer authorised in the UK and without a UK office, it seems to me that Mr W's concerns revolve around what he (/DL) was told in 2018 about the loan having a zero balance. And this is an activity that is covered by our jurisdiction.

I've also thought about where this activity was carried out because we have rules that govern our territorial remit.

We can sometimes cover complaints about businesses based in the European Economic Area (EEA) if they have passported their authorisation into the UK from the EEA. This means that, although they aren't regulated from the UK, the Financial Conduct Authority (FCA) becomes their host regulator, and they appear on the FCA register.

The DISP rules say our compulsory jurisdiction covers complaints about the activities of a firm carried out from an establishment in the UK. BST is based in Lisbon, but it appears this

firm had a UK office in London.

The complaint is about a loan taken out in 2003 and the evidence suggests the management of the account took place from the London office up until the firm closed their London branch and all the loan agreements were transferred back to the Lisbon office.

It follows that I can consider BST's actions and communications with Mr W before the loan balance was transferred from the UK account in December 2018.

So, I've gone on to think about the merits of the complaint on this basis....I've thought about whether BST gave Mr W incorrect or misleading information in 2018, when it says his remaining loan facility balance was transferred from the UK to an equivalent account in Portugal.

BST has (through its representative) provided evidence of the following:

- It wrote to Mr W in May 2018 to let him know that its London Branch would be closing.*
- It wrote to Mr W in August 2018 to confirm this and to let him know that his remaining loan balance would be transferred to a Portuguese account. The letter gave Mr W a couple of options and invited him to make contact if he had any questions about what was happening.*
- Around the same time, it notified Mr W of arrears on the account. Mr W contacted BST in October 2018 asking for an outstanding balance, as he may be looking to pay it off sooner.*
- In December 2018, the loan balance was transferred from the existing UK account to an equivalent Portuguese account.*

I'm also mindful of:

- It wrote to Mr W in December 2018 saying it had been trying to contact him about the account arrears. It said it would very much like to engage with Mr W to see if it could resolve the situation in a way that wouldn't involve the full recovery process and asked him to make contact.*
- It wrote to Mr W in August 2019 noting the account was still in arrears and asking his plans to pay them.*
- It wrote to Mr W again in December 2019 about the arrears, asking Mr W to make contact.*

BST has also said that it would have sent Mr W statements covering October 2018 to December 2018, either in December 2018 or January 2019 (but it hasn't provided evidence of this).

None of the evidence provided so far (by either party) suggests that BST wrote to Mr W at any point to say that his account had been settled / had a zero balance. At the same time, the evidence I have seen from BST indicates that it has tried to contact Mr W since August 2018 about arrears on the account.

Taking all of this into account, I do not currently think there are any grounds to say that BST has acted unfairly towards Mr W, in terms of its communications with him in 2018, in relation to the status of the loan facility."

I asked for any further evidence and/or arguments to be provided by 7 August 2023. BST said it had nothing further to add. Mr W responded to say he was away on holiday, there would be items he'd want to add and that he required more time to access them.

On 6 August 2023 Mr W requested an extension of at least 14 days from the end of that week, to be able to respond. I agreed an extension to 25 August 2023.

Mr W provided a response to the PD. He said some fundamental issues had not been considered and that:

- There was clear confirmation from BST that the balance outstanding was zero at the end of 2018, in the form of a statement sent to the Portuguese solicitor who dealt with the property sale (and that if the solicitor had been advised differently, this could've been addressed at the time).
- The property and mortgage sat with DL. Mr W himself had no liability as an individual. He could show clearly that BST had agreed contractually that the liability was to DL from the outset in 2003.
- The property was sold in 2019. The Portuguese solicitor was bound to have checked upon the sale whether there were any liabilities and as none was showing, the sale proceeded and DL was duly closed.
- He could supply "any of these documents to show this is fact".

What I've decided about jurisdiction – and why

Neither party has provided any additional evidence and/or arguments in relation to the issue of what falls within my remit. As such, I see no reason to depart from my provisional findings.

I still find that I can consider BST's actions and communications with Mr W before the loan balance was transferred from the UK account in December 2018.

What I've decided about the merits of the complaint – 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. I'll explain why.

In response to my PD, Mr W says he can supply further documents to support his position that he isn't liable for any outstanding debt. However, Mr W has had the opportunity to provide any further evidence and/or arguments in relation to this complaint. He has not said why he has not provided documents he says that he can and that will support his case.

In any case, I'm satisfied Mr W has had fair opportunity to provide anything further and so I can and will determine the case based on the evidence and arguments made to this point.

Mr W says that the loan was taken out in DL's name and that he himself has never had any personal liability for the debt. As above, he says he can supply further documents to show that BST had agreed contractually that the liability was to DL from the outset in 2003. However, he hasn't provided any documents that show this.

What I have been provided with, is the loan facility letter dated 17 December 2003, a copy of

which was sent to Mr W by BST's representative in August 2021. The letter is addressed to Mr W (with no reference to DL in the address details) and says in the first paragraph "...you are *"the Borrower"...."* Under the heading of 'Purpose', it says "*The loan will be made to facilitate the purchase by the Borrower of the entire share capital of DL...."*".

This evidence suggests that Mr W is personally responsible for repayment of the loan facility and that liability did not rest with DL.

Bearing this in mind, I've thought again about whether BST gave Mr W incorrect or misleading information in 2018, when it says his remaining loan facility balance was transferred from the UK to an equivalent account in Portugal.

I still don't find that it did give incorrect or misleading information, for the reasons set out in the PD. I don't consider that anything Mr W has said in response to the PD materially changes anything in relation to BST's communications with him, up to the end of 2018.

Mr W has suggested the actions of the Portuguese solicitor are significant but he hasn't provided any documentation to support what he says. He may (separate to this dispute) wish to contact the Portuguese solicitor if he believes it has made some kind of error.

My final decision

My final decision is that I do not uphold Mr W's complaint about Banco Santander Totta SA

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 September 2023.

Ben Brewer
Ombudsman