

The complaint

This complaint's about a mortgage Ms K holds with Santander UK Plc. There are several elements to Ms K's complaint – I'll detail them below – which relate primarily to how Santander has treated her during an extended period of arrears.

What happened

By way of a jurisdiction decision dated 22 May 2023, I set out the individual strands of Ms K's complaint, and our remit to consider them. These were:

- We can consider if Santander has wrongly reported to credit references agencies that a payment arrangement ordered by a court in 2014 had been broken, but only since 24 August 2020.
- We can consider interest charged on arrears not being detailed separately in statements and quarterly arrears letters, but only since 18 February 2021.
- We can consider Santander sending a letter in December 2021 containing an incorrect phone number and referring to a "recent" conversation, where no conversation had taken place.
- We can consider Santander's refusal to capitalise the arrears on Ms K's mortgage because the mortgaged property isn't Ms K's primary residence, but only since 6 April 2020.
- We can consider how Santander has reported Ms K's adherence to a court-determined payment arrangement to credit reference agencies, but only since 1 April 2016.
- We can consider if the interest amount for the beginning of 2022 was unclear.
- We can consider if overpayments weren't taken off the capital balance when they should have been, but only since 1 April 2016.
- We can consider if there have been further occurrences since 20 January 2022 of incorrect data being reported with credit reference agencies.
- We can consider if it is fair that Ms K is unable to view her mortgage online, due to it being a "legacy" mortgage Santander acquired when it took over another lender, but only since 18 August 2016.

Since then, one of our investigator's has given his view of the case on its merits. In addition to those issues listed above, he also made a finding about a letter Santander sent Ms K in January 2022 saying she'd missed that month's payment. Overall, he wasn't persuaded Santander had treated Ms K unfairly or unreasonably. Ms K asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

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, these are my conclusions, and the reasons for them.

Santander has wrongly reported to credit references agencies that a payment arrangement ordered by a court in 2014 had been broken since 24 August 2020.

During the period I am able to consider, Ms K has kept to her payment arrangement, and according to the copy of her credit file Ms K has provided, this is what Santander has reported. Accordingly, I don't find that Santander has done anything wrong.

Interest charged on arrears has not been detailed separately in statements and quarterly arrears letters, since 18 February 2021.

Santander did this for Ms K on one occasion in 2020, prior to the period I am able to consider. But it's not something the regulator requires lenders to do generally, and Santander isn't treating Ms K unfairly – or differently from other borrowers in broadly similar circumstances – by not doing so routinely.

Santander sent a letter in December 2021 containing an incorrect phone number and referring to a "recent" conversation, where no conversation had taken place.

This was a mistake and whilst it caused Ms K some irritation, there's nothing in the available evidence to suggest it caused her any detriment. The apology that Santander offered is sufficient remedy.

Since 6 April 2020, Santander has refused to capitalise the arrears on Ms K's mortgage because the mortgaged property isn't Ms K's primary residence.

The starting point here is that the mortgage that is the subject of this complaint is a residential mortgage secured on what, at the outset, Santander understood would be Ms K's home. However, for some time, going back well before the period I'm able to consider, Ms K was living elsewhere and letting out the mortgaged property.

During the period, I am able to consider, she was doing so without Santander's consent. That meant she was in breach of the mortgage contract. I note that Ms K told us on 2 August 2023 that she'd provide proof she'd always paid the fee for consent to let, but on reviewing the case file I can't see that she has done so, despite a further seven weeks having elapsed. On the basis of the evidence I have in front of me, I find it more likely than not Santander's position that Ms K did not have consent to let during the period under consideration is correct.

I don't find it to have been unfair or unreasonable of Santander to have declined to consider capitalising the arrears whilst Ms K was in breach of contract and not responding to Santander's requests that she pay the fee for consent to let. Ms K knew that consent to let was outstanding, and whilst she might not have realised that was a barrier to capitalisation, she shouldn't have needed to.

Knowing she was in breach of contract should have been sufficient incentive for her to pay the consent to let fee. Ms K did eventually pay the fee, and consent was granted. Soon after that, the arrears were cleared, so the point became moot.

Santander has reported Ms K's adherence to a court-determined payment arrangement to credit reference agencies since 1 April 2016.

The account statements show that Ms K met all her payment obligations in full during 2019, 2020, 2021 and 2022. According to the copy of her credit file Ms K has provided, that is what Santander has reported. On six occasions between 2016 and 2019 where the payment was either made late or didn't meet the court's requirements. I can't make a finding on whether these were accurately reported, as the credit file we have doesn't show payment data before 2019. Overall, I don't find Santander has done anything wrong here.

The interest amount for the beginning of 2022 was unclear.

This links to the head of complaint above, about interest on arrears not being listed separately from arrears on the core debt. The total interest on the total balance was shown in arrears letters and the annual statements issued in 2022. That's consistent with Santander legal and regulatory requirements. Accordingly, I don't find that Santander has done anything wrong.

Overpayments made since 1 April 2016 haven't been taken off the capital balance when they should have been.

The mortgage terms and conditions distinguish how overpayments will be treated depending on whether they are for up to or more than £500. Only those of £500 or above are removed immediately from the *calculating capital*; that is, the balance that forms the basis of the monthly payment calculation.

There were occasions in the period I can look at where the total amount Ms K made in a month exceeded the contractual amount due by more than £500, but in some cases, that was the cumulative result of several payments in the month rather than just one. That aside, where a recalculation of the monthly instalment takes place, the new figure doesn't just reflect the overpayment that triggered it. It has to take account of other events since the last recalculation, such as late payment interest, fees and in some cases interest rate changes. The outcome from all of that might not be what a borrower is expecting from just an overpayment.

It's not our role to audit mortgage account forensically. If Ms K believes Santander hasn't reset her monthly instalment correctly each time she's overpaid by enough to trigger a recalculation, she could commission a suitably-qualified third party to audit her mortgage account. She'd have to meet the cost of an audit initially, but if it revealed errors to her detriment, Ms K could then present the result to Santander in support of a new complaint, and claim the cost of the audit as part of the redress. But there isn't enough evidence here for me to find that Santander has wrongly calculated the monthly instalments on Ms K's mortgage.

There have been further occurrences since 20 January 2022 of incorrect data being reported with a credit reference agencies.

During the period I am able to consider, and according to the copy of her credit file Ms K has provided, Santander appears to have reported Ms K's payments accurately. Accordingly, I don't find that Santander has done anything wrong.

Whether it is fair that since 18 August 2016, Ms K is unable to view her mortgage online, due to it being a “legacy” mortgage Santander acquired when it took over another lender.

Having no regulatory function means it’s not within my remit to tell Santander what services it should provide, or how it should deliver them. As I understand it, Santander is gradually migrating legacy mortgages onto a platform that will allow online access. That seems fair and reasonable to me.

Santander’s letter of 9 January 2022 wrongly stated that month’s payment hadn’t been made in full.

Ms K paid January 2022’s instalment in two stages, four days apart. Santander sent the letter during the interval between the two. That was unfortunate, but not something that I consider justifies an award of compensation, especially as the credit file reporting for that month was that the payment had been made in full.

My final decision

My final decision is that I don’t uphold this complaint or make any order or award against Santander UK Plc.

My final decision concludes this service’s consideration of this complaint, which means I’ll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms K to accept or reject my decision before 25 October 2023.

Jeff Parrington

Ombudsman