

## **The complaint**

Mr and Mrs J complain about the validity of their mortgage and other issues they have with Santander UK Plc

## **What happened**

Mr and Mrs J have an interest-only mortgage with Santander. They took the mortgage out in 2003 for 15 years with the term ending in September 2018. As the account wasn't paid off at the end of term, Santander eventually issued legal proceedings and got a Court Order for repossession in August 2021. However, after discussions with Santander, it agreed a further 12-month extension until September 2022 and repossession action was halted.

Mr and Mrs J say that they had a conversation with Santander then in September 2022 that gave them hope that they would get a further year's extension. They say that this was important to them as by September 2023 they would have had investments available to them to put towards paying off the mortgage. But they were then told that no formal extension was set in place and Santander required monthly updates regarding their situation and how they planned to repay the balance of the account. An adviser was to get back to them but didn't. Santander says that the adviser tried but was not able to reach Mr and Mrs J. Mr and Mrs J say this is not true. Santander proceeded with further legal action and an eviction date was proposed for 21 February 2023. However, this was cancelled as Mr and Mrs J were working with Santander solicitors about a proposal of repayment. The case was brought to our service in February 2023.

Mr and Mrs J complain about the validity of the mortgage, the sale of the mortgage debt, and the lack of forbearance by Santander. Our investigator didn't recommend that this complaint should be upheld as she didn't feel that Santander had done anything wrong. Mr and Mrs J disagreed saying in summary that they want Santander to produce the signed mortgage agreement/application and the mortgage deed.

## **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.

Mr and Mrs J are concerned about their mortgage with Santander and that this company may not be the owner and claimant and say they want two documents, namely the mortgage deed and the mortgage agreement as Mr J believes that without them, Santander will be unable to mount a claim against them. Mr and Mrs J also say that Santander will be unable to bring a claim against them as it was not the original lender and they question whether Santander has the legal capacity to bring a claim.

Mr J says that if Santander don't produce the two original documents he wants that “*without them, this stops, they don't have a claim*”. But Santander has already made a successful claim in court against Mr and Mrs J. I've seen a Court Order dated 19 August 2021 recording a hearing on 18 August 2021, whereby the court, after it says it heard from Mr and Mrs J in person, ordered that Mr and Mrs J give up possession of the mortgaged property and

entered judgement for Santander for £219,148.41. Mr and Mrs J want me to consider the validity of the Santander mortgage and consider the mortgage documentation for the purpose of declaring it unenforceable. Our role is not to decide on the legal validity or enforceability of agreements or to act as a discovery vehicle in a litigation process. These are matters and procedures for the courts to decide. And a court has decided that this mortgage agreement is enforceable by Santander and entered a judgement against Mr and Mrs J. We cannot overturn the Order of a court. So, we cannot assist Mr and Mrs J in their quest to declare the mortgage between themselves and Santander invalid.

The other issue is whether in 2022 there should have been a further extension of the mortgage term to allow Mr and Mrs J more time to address the issue of paying off the mortgage balance. By that time four years had passed since the mortgage term matured and Santander had got a court order. Mr and Mrs J understood they had got a year's extension but Santander said that it would allow further time without a formal extension but working with Mr and Mrs J on a month to month basis. That seems entirely reasonable given the time that has passed since the mortgage matured. By that stage Mr and Mrs J had had four years since the mortgage matured to come up with a plan and it seems reasonable that they work with Santander to see if there is a realistic way to achieve both parties objectives. Mr and Mrs J thought that a further year would assist them. I don't see that that time period was ruled out by Santander if the parties worked together and indeed Mr and Mrs J were able to achieve their objective of a further year whilst, I understand, they remained in the mortgage property. So, for the above reasons, I can't fairly uphold this complaint,

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 12 January 2024.

Gerard McManus  
**Ombudsman**