

complaint

Mr G has complained that Santander UK Plc is refusing to accept a promissory note in settlement of his mortgage.

background

Mr G has a residential mortgage with Santander, taken out in 2005. Since 2007 the property has been rented out with Santander's consent.

In 2017 Mr G decided to change the way in which he paid his mortgage. He provided Santander with what he claimed to be a promissory note to settle his mortgage. Mr G said that Santander could collect payment by sending a member of staff to his home to collect payment each month.

The promissory note Mr G gave Santander provided that payment had to be collected in person from his home address on the 7th of the month. Mr G followed this up with another letter. This second letter explained that, because nobody had been round to his house to collect the money, this meant that the promissory note had been accepted by Santander in full payment of the account.

Santander didn't agree that this was a valid method of payment and explained to Mr G that he needed to maintain his payments by direct debit. He hasn't done so, and the mortgage has now fallen into arrears.

Mr G complained to us. He maintains that the promissory note is a valid form of payment. He is unhappy that Santander has destroyed it, as he considers it to have value.

An adjudicator looked at the complaint but didn't uphold it. He was satisfied that Santander hadn't acted incorrectly.

Mr G didn't accept the adjudicator's findings. He considered the adjudicator to be biased and inexperienced and with little or no understanding of complex matters of this nature. So the complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I will explain at the outset that I am experienced in dealing with this type of complaint, and have detailed knowledge and understanding of the issues that are of concern to Mr G.

Mr G says that a promissory note is full and valid legal tender. So, according to him, when Santander didn't send someone round to his house on the 7th of the month to collect payment, Santander accepted the promissory note in full payment, and should have discharged his mortgage.

I can see why Mr G might consider this to be an attractive proposition; he would still receive the rental income on the property, but wouldn't need to use any of it to pay the mortgage.

But a promissory note isn't legal tender. It isn't money at all. It's simply a promise to pay a sum at some future date. Santander already has a binding promise made by Mr G to pay the

mortgage in the form of the legal charge Mr G signed, so another promise doesn't add anything. The terms and conditions of the contract Mr G entered into in 2005 provide at clause 11 for payment to be made by direct debit.

Where a creditor agrees to accept a promissory note, the debtor is legally required to pay it. But a creditor isn't obliged to accept it instead of actual payment. And Mr G isn't able to change the terms of the existing contract unilaterally to suit himself. So Santander is under no obligation to agree to any terms Mr G may propose – including going round to his house to collect payment in person.

Santander has destroyed the promissory note Mr G sent in, having kept only a scanned copy. Mr G claims Santander has therefore destroyed a valuable asset. But because Santander didn't consider it to be legal tender or agree to accept it as a form of payment, the promissory note has no actual value. So I can't see that Mr G has suffered any detriment as a result of its destruction.

The issue of whether or not there is a valid mortgage contract between Mr G and Santander is ultimately something for the courts to determine. The existence of the legal charge signed by Mr G which granted Santander a mortgage over his property suggests the contract is binding on the terms agreed in 2005. Nothing I have seen persuades me that both parties have agreed to vary the contract in the way Mr G has proposed.

But what I have to look at is what's fair and reasonable. Santander lent Mr G the money. He agreed to repay it. It's fair and reasonable, in my view, for Santander to expect him to do so. He's already promised to repay the debt on the terms agreed in 2005. Making a further promise to pay isn't a substitute for actually doing so, and Santander isn't required to treat it as such or agree to any of the terms Mr G has asked it to. If Mr G disputes this, he's welcome to ask a court to determine the issue.

It's unfortunate, if there are tenants in the property paying rent each month to Mr G as their landlord, that he is jeopardising their home by refusing to pay his mortgage in accordance with the contract entered into in 2005. The terms and conditions give Santander the right to appoint a receiver to collect any income from the property, or to take possession of it and sell it. Consequently, I would urge Mr G to take steps to bring the account up to date, to avoid the possibility of losing either the rental income or even the property itself.

If Mr G is experiencing financial hardship and is unable to meet his mortgage repayments, he might find it helpful to have some advice from a free debt advisory service such as StepChange, Citizens Advice or Shelter. We can provide him with contact details for those organisations, if he'd like us to.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 February 2018.

Jan O'Leary
ombudsman