

complaint

Mr A and Miss B have a number of complaints about their mortgage account held with Santander UK Plc (Santander). They have raised a number of issues concerning the existence, validity or enforceability of the mortgage, along with some specific questions, as follows:

- Who has responsibility for the administration of this account?
- Has Santander allocated a specific manager or team?
- Why is Santander ignoring reasonable questions and regulatory complaints, yet continuing to make unreasonable threats?
- Why is Santander ignoring the regulatory complaints procedures?

Mr A and Miss B also complain that Santander has harassed and threatened them and that its conduct has been obstructive and intimidating.

background

In 2005 Mr A and Miss B took out an interest-only mortgage with Santander. They switched to a new product in 2007. The mortgage is seriously in arrears and the payments made in recent years have been negligible. Mr A and Miss B have questioned over several years whether or not Santander has a legal, valid or binding mortgage on their property. Their current complaint was rejected by Santander, so it was brought to our service, where it was considered by one of our adjudicators.

The adjudicator wasn't persuaded that Santander had failed to address Mr A and Miss B's complaint. But she obtained the answers to the questions Mr A and Miss B had put, which were as follows:

1 – “Who has responsibility for the administration of this account?”

A – Santander's mortgage centre based in Teesside deals with the administration of mortgage accounts and will deal with telephone enquiries, although their office staff will respond to more complex queries in writing. Administration of arrears on a mortgage account is dealt with by its Collections & Recoveries team.

2 – “Has Santander allocated a specific manager or team?”

A – Apart from those listed in the previous question, Santander does not allocate specific managers or teams to mortgage accounts.

3 – “Why is Santander ignoring reasonable questions and regulatory complaints, yet continuing to make unreasonable threats?”

A – Santander has said it has no evidence that it has ignored reasonable questions or regulatory complaints or made threats.

4 – “Why is Santander ignoring the regulatory complaints procedures?”

A – Santander cannot see that it has ignored regulatory complaints procedures.

The adjudicator considered Santander had provided answers to the questions and didn't require it do to anything further. Unhappy with the adjudicator's findings, Mr A and Miss B have made a number of further points. These are detailed, so I will only refer to them in summary:

- Santander would not be guilty of harassment if one person would verify that they are prepared to step forward in open court and under oath or affirmation verify first-hand material knowledge of any loan.

- If there is nobody with first-hand material knowledge of a loan, then there is no loan.
- Alternatively Santander can produce its books and show the accounting entries to prove a loan was made. They believe no such accounting records exist.
- Santander loaned nothing. There is no verifiable proof to show that Santander loaned them anything and they believe none exists.
- There are seven Santander staff involved, and possibly some Financial Ombudsman Service staff.
- Questions regarding the truth have been blocked.
- Telephone call recordings have been destroyed.
- CCTV of an assault has been destroyed.
- No meaningful, verifiable answer has been provided in relation to the questions they have raised in previous complaints to Santander and to us about the Power of Attorney, Mortgage Indemnity Guarantee Policy, Proof of Loan, location of the Mortgage Deed or verification that Santander is not simply acting as a collection agent to create the illusion of a loan, which is an accounting-based confidence trick, reaping millions in fraudulent profits.
- Santander has ignored these and many other complaints they have made.
- The pieces of paper they have supplied should carry the same evidential weight as the pieces of paper supplied by Santander's anonymous staff members.
- If there is no proof of a loan, then there is no loan. They are aware that bank staff create fake accounts and this is, they believe, one of those fake accounts.
- Santander is guilty of harassment. They now consider any further letters sent by Santander to be acts of harassment, intimidation and blackmail.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also reviewed the three previous final decisions issued in relation to complaints brought to the Financial Ombudsman Service about this mortgage account.

It is interesting to note that Mr A and Miss B argue that there is no loan or mortgage between them and Santander. The implications of this, applying our rules, are that, if I was to accept what they say, Mr A and Miss B would be ineligible to bring a complaint to the Financial Ombudsman Service. This is because, under our rules, we can only consider a complaint if it's brought by an 'eligible complainant'. A person who has not taken out a loan or mortgage with a regulated mortgage lender is not an eligible complainant within the definitions of 'eligible complainant' contained in our rules – because he is not a customer or potential customer of the lender.

But I'm satisfied, from the information provided, that Mr A and Miss B are mortgage customers of Santander, notwithstanding their belief that there is no valid loan or mortgage.

The questions Mr A and Miss B wanted Santander to answer – as listed on their complaint form – have been addressed by Santander. That Mr A and Miss B are unhappy with Santander's replies does not mean the questions have not been answered. So I'm satisfied Santander has provided the information requested.

With regard to the other matters raised in response to the adjudicator's findings, I will make the following points.

The question of whether or not Mr A and Miss B have a binding, valid and legally-enforceable mortgage with Santander – or indeed if Santander has even loaned them any money – are not issues the Financial Ombudsman Service is able to decide. They are matters for the court. In my decision on a previous complaint brought by Mr A and Miss B issued in January 2014 this was explained to them.

I'm also satisfied that the further points Mr A and Miss B made in response to the adjudicator's findings – as summarised above – have all been the subject of previous final decisions when they were either time-barred, dismissed or not upheld. So it's not appropriate for me to comment any further on those points.

I have no doubt that Mr A and Miss B are sincere in their belief that they do not have a mortgage with Santander. Their arguments seem to me to have no basis in law, logic or common sense. But as I said above, it's for a court to decide if there's a valid contract. Given the level of arrears on the account and the absence of payment proposals, it is likely Mr A and Miss B will have an opportunity to put their arguments before the court in the foreseeable future.

my final decision

My final decision is that I do not uphold this complaint.

Jan O'Leary
ombudsman