

## **complaint**

Ms G has complained that there has been maladministration by Santander UK Plc in relation to her mortgage. In particular Ms G says that the mortgage agreement is not in accordance with natural justice and that the bank's contractual relationship with her is extinguished.

## **background**

In 2004 Ms G applied for a loan of £60,000 from Santander. The application was approved and a mortgage offer issued. Completion took place in November 2004 when, in return for the loan of £60,000, Ms G granted Santander a mortgage over her property as security for the debt. Ms G also agreed to make monthly repayments to Santander to repay the loan.

In 2013 Ms G asked Santander to provide her with evidence of a legally-binding contract between herself and Santander.

In 2014 Ms G challenged the validity of the repayments she had made by direct debit through her bank (a different business). That bank made a claim under the Direct Debit Indemnity, and so in February 2014 Santander refunded a total of £25,799 to Ms G's bank because Ms G had told her bank that the payments had been taken without her authority. This meant Ms G's mortgage account was now in arrears by the same amount. But Ms G has continued to challenge the validity of the mortgage.

Ms G brought her complaint to us where it was considered by one of our adjudicators. He was satisfied there was a valid mortgage and so didn't recommend the complaint should be upheld.

Ms G disagreed with the adjudicator's findings. She has made some additional points, which I summarise below:

- There has been bias in the handling of her complaint.
- Ms G has submitted an affidavit to the head of the Crown Office for a writ of habeas corpus. The court is bound to grant this, there is no discretion to refuse.
- She will not be attending court, because of abuse of court process which would bring the administration of justice into disrepute.
- Redress of grievances is damages, financial compensation and the basic common law remedy for breach of contract.

## **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 understand Ms G believes that there isn't a binding or legally-enforceable contract between herself and Santander. In support of her argument, Ms G has provided detailed statements (which appear to be identical to documents that are to be found on the internet) in which she has set out what appear to be legal or quasi-legal arguments in support of her complaint.

I've read what Ms G has said in response to the adjudicator's findings. Having reviewed the file, I've found no evidence that the adjudicator was biased in his handling of this complaint. Ms G has explained that she has applied for a writ of habeas corpus. This is of no relevance to the issues in this complaint – a writ of habeas corpus is a court order to a person or

agency holding someone in custody to deliver the imprisoned individual to the court which issued the order.

I'm familiar with the arguments put forward by Ms G in support of her contention that there is no valid mortgage contract. But I have no power to decide whether a contract is valid, binding, enforceable or void. Only a court is able to determine this. I do appreciate Ms G has strongly-held beliefs about Santander's entitlement to claim a debt from her. Santander is equally firm that Ms G has an obligation to repay the substantial sum of money she borrowed.

But what isn't in dispute is that Ms G received £60,000 from Santander and that she'd asked it to grant her a mortgage in 2004. In the circumstances, it seems to me to be fair and reasonable for Santander to expect Ms G to repay it, in accordance with the terms of the mortgage offer. Ms G's actions in getting her bank to recall the payments made since 2004 under the Direct Debit Indemnity are, in my view, likely to have serious implications for Ms G, because the mortgage account is now seriously in arrears.

Given that there are substantial arrears on this mortgage account with no payment proposals, I think it is likely that this matter will come before the courts in the foreseeable future, because Santander is entitled to seek possession of the property. Ms G will have the opportunity in any possession action to ask the judge to decide if there is a valid mortgage between her and Santander. I would urge Ms G to seek legal advice from a qualified solicitor before deciding to put this argument before the court.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms G to accept or reject my decision before 16 February 2015.

Jan O'Leary  
**ombudsman**