Fairness First

Press pack: the banking case

Five and a half years over an arrears claim of £21,553.58. The road the rules build for the customer closed four ways, in the firm's and the ombudsman's own words.

The firm withdrew the complaint because it felt it had already answered. One answer it named was a letter that denied receiving an offer the firm had.

The story in eleven lines

- 9 July 2019. The Financial Ombudsman: "the Financial Ombudsman Service has no power under its rules to consider this complaint". Had the complaint been in time, "not only would we be able to consider that, we'd also be able to consider how the complaint was dealt with".
- 16 October 2019. The firm's solicitors first wrote to the customer about possession, 113 days before the firm closed his mis-selling complaint.
- 29 January 2020. The firm's own complaint file: the loans "appear to have been sold on an advice basis and therefore please would you agree ownership of this?", referred to the firm's Advice team, with "Complaint to stay open until confirmation from advice has been received". On an advised sale it is the firm, not the customer, that has to show the sale was suitable.
- 31 January 2020. The firm's complaint handler, on a call the firm recorded: "She's referred this to policy at the moment which is where it stands ... I understand there's a few legal points in the letters that you've sent in. So at the moment we're with policy with that, and that's why you haven't heard back from that." Her file note the same minute: the team "are reviewing this with policy as there was also some legal bits included in letters received".
- 3 February 2020. The same handler, recorded: "half of your complaint is still ongoing ... That part is still ongoing", and "once I have an update, rest assured I will be in contact with you". Three days before it was closed. No update came.
- 6 February 2020. The firm closed a second complaint, reference 9539259, as its solicitors' letter of 3 April 2020 and its own letter of 8 April 2020 record. On a recorded call the same day a second handler said the mis-selling claim was declined because it "pointed us towards a complaint that was raised with the financial ombudsman last year in which no further action

was taken by ourselves nor the ombudsman", that pursuing it "needs to be done through court. It is not something we'll look at separately", and, in the same five minutes, that "if you fail to maintain mortgage payments ... your house may be repossessed as a result". The ombudsman decision relied on is the decision of 9 July 2019, in which the ombudsman decided it had no power under its rules to consider the complaint.

- 11 March 2020. The possession claim was issued, claim number G1PP9250, as the solicitors' letter of 3 April 2020 records.
- 3 April 2020. The customer complained again, reference 9680681. The firm wrote that the further concerns were "under review" and that "someone will be in touch with you next week with a response". The same day its solicitors wrote that "our client has not received any offer to settle from you dated 28 January 2020".
- 7 April 2020. The firm: "We are in the process liaising with our Legal team and Shoosmiths in order to provide you a response to the issues you have raised."
- 8 April 2020. The firm: "I am writing to confirm we have withdrawn your complaint reference 9680681, because we feel we provided you with a response to the issues you raised", naming four earlier answers, among them the ombudsman's decision of 9 July 2019 and the solicitors' letter of 3 April 2020, and directing the customer to the solicitors for anything further about his mortgage.
- 9 April 2020. The solicitors: "our client does have your correspondence dated 28 January 2020 and we apologise for this oversight in our previous correspondence. We write to confirm that your offer is rejected."

Every free route the rules build for a customer closed, in the institutions' own words, and the case went on to a court that runs under rule 1.1 of the Civil Procedure Rules, which tells it to deal with cases justly and at proportionate cost. Cost is in that sentence. Fairly is not. Fairness First asks the Civil Procedure Rule Committee to add that one word.

What is in this pack

- The Financial Ombudsman Service's covering letter and decision of 9 July 2019, complaint reference 2154-3391.
- The firm's letter of 7 April 2020 and its emails of 3 and 6 April 2020, reference 9680681.
- The firm's solicitors' letters of 3 April and 9 April 2020, reference M-00137182.

- The firm's letter of 8 April 2020 withdrawing the complaint.
- The firm's own complaint file notes of 29 and 31 January 2020, and its recordings of the calls of 31 January, 3 February and 6 February 2020, all obtained by the customer by subject access request. The recordings are available to a journalist on request. The extracts are set out in the evidence annex.
- In every document and every extract the names of the firm's, the solicitors' and the ombudsman service's staff, and the customer's address, date of birth, telephone number, email address and account number, are removed. Every date, reference and role is kept.
- The pages: uk.globalsafetywatch.org/campaign-fairness-first/the-case/ and uk.globalsafetywatch.org/campaign-fairness-first/how-the-system-closes/

What is not in it, and why

Nothing disclosed by the firm in the court proceedings is in this pack, because the proceedings are continuing and documents disclosed in them may not be used for any other purpose. Everything here is either a letter an institution wrote to the customer or the firm's own complaint file and call recordings, which the customer obtained by subject access request and which are his own material and not disclosure. The customer's own letters are not included; the pack carries the institutions' words. The approved judgment is a public document and is not reproduced here. No judge is named anywhere, because the argument is about a rule and not a courtroom, and nothing here is intended to influence the outcome of the proceedings.

Right of reply

The firm is Santander UK plc and its solicitors are Shoosmiths LLP. Neither is prevented from replying to anything in this pack or on the pages, and any reply will be published with the page. No individual is named.

Contact

change@uk.globalsafetywatch.org. This campaign is not connected to any political party and does not support or oppose any party or candidate. It is not connected with the Civil Procedure Rule Committee. Nothing in this pack is legal advice.

Fairness First press pack, the banking case. 12 September 2026. Prepared by Fairness First.

our ref **2154-3391/MD/MO93**
your ref

please write to **Financial Ombudsman Service**
Exchange Tower
London
E14 9SR

dx 141280 Isle of Dogs 3
website www.financial-ombudsman.org.uk

Mr S Thompson
[redacted]
Kent
[redacted]

9 July 2019

Dear Mr Thompson

your complaint about Santander UK Plc – decision

The ombudsman has now reviewed your complaint. I've enclosed their decision – and I've also sent a copy to Santander.

As you'll see, the ombudsman has decided that your complaint isn't one we can look into. Because an ombudsman's decision is our final stage, we can't take things any further.

If you have any questions once you've read the decision, you might find our website helpful. There's more information about why we might not look into a complaint at www.financial-ombudsman.org.uk/faq/index.htm.

Yours sincerely

PP
[redacted]
adjudicator
direct line
direct fax
email
[redacted]

decision	
complaint by:	Mr S Thompson
complaint about:	Santander UK Plc
complaint reference:	2154-3391/MD/MO93
date of decision:	9 July 2019

The rules about complaining to the ombudsman set out when we can – and can't – look into complaints. In my decision, I've explained what this means for Mr Thompson's complaint.

summary of complaint

Mr Thompson says three further advances he arranged on his Santander UK Plc mortgage between 2000 and 2004 were mis-sold. Mr Thompson says he was told to lie on the applications to say he was working when he hadn't worked for 20 years, and the loans were unaffordable. The loans were also noted to be for home improvements but Mr Thompson says they were taken out to set up a business.

background to complaint

Mr Thompson took out three further advances between 2000 and 2004. He complained to Santander about them in 2018. Santander apologised for not handling Mr Thompson's complaint as well as it should, but didn't uphold the main thrust about the further advances. It said he'd signed the application forms to declare all the information was true.

Santander didn't consent to us looking at the complaint, saying that Mr Thompson had waited too long to make it. Our adjudicator agreed, but Mr Thompson thinks we can, and should, investigate his complaint. It's come to me to decide if we can or not.

my findings

I trust Mr Thompson won't take it as a discourtesy that I've condensed his complaint in the [redacted] that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at. That means I won't be following Mr Thompson's instructions he set out in the three points listed under his heading *'Actions needed'* from his response to the adjudicator's assessment. However for completeness I'll make some comments about those three points here.

Mr Thompson has questioned why Santander told him to refer his complaint to us if we can't deal with it. He says *"… we can legally prove the only reason for this is because Santander are excepting* [sic] *that they "could" have mis-sold these loans to me."*

We operate under a set of rules laid down by Parliament under the Financial Services and Markets Act 2000. The rules are published by the Financial Conduct Authority and are known as DISP. These set out the scope of our powers, and they also set out how businesses must deal with complaints. DISP 1 is the section that sets out how businesses must deal with complaints and that says that if a business can't resolve a complaint to the consumer's satisfaction it *must* provide referral rights to our service. It's then for us to decide if our rules allow us to deal with the complaint; businesses shouldn't second guess us in that respect.

So Santander had no choice but to tell Mr Thompson about his right to refer his complaint to this service, as to not do so would have meant Santander would be in breach of its regulatory requirements.

Mr Thompson feels our adjudicator didn't understand his complaint, and for that reason he says it needs to be passed to another adjudicator rather than to an ombudsman. That's not how our service works. We have a two stage process and if either party doesn't accept our adjudicator's opinion at the first stage, it then passes to the second stage which is to an ombudsman. The ombudsman will review the entire case afresh and if they don't agree with the adjudicator's opinion they can issue provisional findings setting out why they think the outcome was wrong and giving both sides a chance to make any further submissions in response to that. There's no need for a case to go to a second adjudicator as the ombudsman can order that a complaint be fully re-investigated if they think it's been misconstrued.

Having reviewed the case file, I consider that all of the material issues are clearly and comprehensively covered. So I'm satisfied that I can fairly decide the case without any further information or re-investigation being required.

Mr Thompson has said that Santander charged him an extra £100 for sending account information, and asked us to find out why. As this is a new issue that has come up after Santander issued its final response letter in November 2018 Mr Thompson will have to raise it as a new query and/or complaint with Santander directly if he wants. We can't get involved in matters other than those dealt with in the final response letter.

I've carefully considered the legal arguments Mr Thompson has made, but the Financial Ombudsman Service is an informal alternative to the courts, and the rules I need to apply are *our* rules (which, as I've said, are known as DISP and are published by the Financial Conduct Authority). It may be the courts would be willing to look at this matter, but we're not bound by what a court may - or may not - do. If the legal advice Mr Thompson says he's received is that he would likely be successful in court then he's free to take legal action. However I would urge him to take good, independent, professional legal advice before doing so.

I've considered what both sides have said. I've also looked at our rules. The rules say that where a business doesn't consent to us looking at a complaint, we can't consider it if it's been brought;

- more than six years after the event complained of; or, if later
- more than three years after the consumer ought reasonably to have become aware they had cause to complain.

If the complaint's been brought within those time limits a written acknowledgement of it needs to have been received. The rules allow me to disregard the time limits if I think exceptional circumstances prevented a consumer complaining within the time limits.

If those time limits weren't met, and there were no exceptional circumstances as to why the complaint wasn't brought in time, then we can't consider it.

The *events complained of* happened in 2000, 2003 and 2004 when the further advances were taken out – so they are the points the six-year time limits are taken from. This means the last six-year time limit ran out in 2010. So the question remains of when - if ever - the three-year time limits started.

Having considered everything there's no reason for the three-year time limits to start any later than the six-year time limits. I say this because Mr Thompson has told us he knew his income and reason for borrowing were misrepresented on the applications, and he would have been aware he had no income - and therefore no means to make the monthly payments - at the time. That means he was, or should reasonably have been, aware he had cause to complain in 2004 at the latest, so the three-year time limits give no extra time.

I've not been provided with evidence of any exceptional circumstances that would allow me to disregard the time limits in this case, which means we won't be able to consider the complaint.

Mr Thompson has said he's unhappy with how Santander dealt with his complaint as he only read the start of the final response letter so thought his complaint had been upheld. He says he never called to chase a response or noticed any delays, which the final response letter said happened. Our rules also set out the matters that we can look at as being; regulated activities, payment services, lending money, paying money by plastic card, and ancillary banking services. In addition, we can consider complaints about ancillary activities carried on in connection with the above.

The handling of complaints is not itself a regulated activity. It's something that the regulator - the Financial Conduct Authority - requires financial businesses to do. But that isn't enough to make it a regulated activity within the meaning of the rule; that is, one from the list of activities set out in the legislation from which we derive our powers.

I'm able to consider concerns about complaint handling in some limited circumstances, for example, if the complaint handling was ancillary to something I have the power to consider.

But Mr Thompson's complaint about the further advances was made too late so we don't have the power to consider it, which means we also don't have the power to consider his concerns about the ancillary issue; that is the [redacted] his complaint was dealt with. If the underlying complaint about the further advances had been brought in time then, not only would we be able to consider that, we'd also be able to consider how the complaint was dealt with.

my decision

For the reasons set out above, my decision is that the Financial Ombudsman Service has no power under its rules to consider this complaint.

[redacted]
ombudsman

Alliance
Leicester

Mr S Thompson
[redacted]

Santander Complaints Resolution Team
PO Box 1125
Bradford BD1 9PG

Call us on: 0800 085 1731
Monday to Friday 9am to 5pm

Calls may be recorded or monitored

Text Relay: 18001 0800 085 1731

Our ref: 9680681

Date: 07 April 2020

Dear Mr Thompson

Thank you for your email dated 06 April 2020.

As requested, I can confirm we received an email from you dated 01 April 2020, chasing a response to an earlier email sent 16 March 2020. We have reviewed the email trail you provided and can see the email sent 16 March 2020 was sent to 'Santander Complaints Teesside' and the email sent 01 April 2020 was sent to [redacted]

We are in the process liaising with our Legal team and Shoosmiths in order to provide you a response to the issues you have raised.

Yours sincerely

[redacted] p.p.

[redacted]m Manager

Stuart Thompson Viseum President

From: Santander Complaints Teesside [redacted]
Sent: 06 April 2020 12:42
To: [redacted]
Subject: RE: RE: Your Complaint - ref: 9680681

Confidential

Hi Mr Thompson

Unfortunately [redacted] out of the office this week. I have added your request below to the complaint record and will arrange for the letter to be issued today. I did find a copy of your email trail dated 1st April on your complaint record, which appears to show the earlier email trail sent 16th March was not sent to our full email address (see below).

From: Stuart Thompson Viseum President [redacted]
Sent: 16 March 2020 17:47
To: 'Santander Complaints Teesside'
Subject: RE: ref 9539259 [redacted] - Mortgage account: [redacted]

From: Stuart Thompson Viseum President [redacted]
Sent: 01 April 2020 15:18
To: 'Stuart Thompson Viseum President' [redacted]
Cc: Santander Complaints Teesside [redacted]
Subject: #External Sender# RE: ref 9539259 [redacted] Mortgage account: [redacted]

I have also flagged up your complaint [redacted] manager to be reallocated urgently. I can see that [redacted] been liaising with our Legal department, who are supporting providing a response to your complaint. We will be back in touch shortly once the response is finalised.

Regards

Santander | Mortgage and Loans Complaints
Customer Interactions
Tel: 0800 085 1731

From: Stuart Thompson Viseum President [redacted]
Sent: 06 April 2020 09:29
To: Santander Complaints Teesside [redacted]
Subject: #External Sender# RE: Your Complaint - ref: 9680681

Dear [redacted]

Thank you greatly as you are providing very good support for my case against Santander.

Can you please post a formal letter to me explaining that Santander did not receive my claim, when I sent it to email [redacted] Mon 16/03/2020 17:47.

Kind regards,

Stuart Thompson
www.viseum.co.uk
Mobile/WhatsApp/IMO/BOTIM: **+44 (0)7960**[redacted]

Viseum: CCTV and surveillance industry-standard remote site deterrent for automated security and situational awareness.

From: Santander Complaints Teesside [redacted]
Sent: 03 April 2020 16:12
To: [redacted]
Subject: Your Complaint

Date: 03 April 2020

Our ref: 9680681

Dear Mr Thompson,

Thank you for letting us know about your complaint and for giving me the chance to investigate.

The further concerns you have raised have been logged under the above reference number and are under review. I am on annual leave after today and as such, someone will be in touch with you next week with a response.

If you would like to discuss further, please call me on 0800 085 1731, quoting the reference 9680681. Our opening hours are Monday to Friday 9am to 5pm.

Yours sincerely

Santander

[redacted]
Complaints Investigator
Mortgage and Loans Complaints
Customer Interactions
Clearwater House, Columbia Drive, Thornaby, Stockton on Tees, TS17 6BJ.

SHOOSMITHS

SHOOSMITHS LLP
Solicitors
5-7 The Lakes
Northampton
NN4 7SH
DX 712280 Northampton [redacted]

Please contact [redacted]
F 03700 863046
Calls made to us on the 03700 number are charged at a national rate. It is not a premium rate number.
Calls may be monitored or recorded for regulatory or training purposes.
When calling we will ask questions to confirm your identity

Office opening hours:
Monday - Friday: 8:30am to 5:30pm
(except Bank Holidays)

Private & Confidential
Mr Stuart Thompson
[redacted]

Your Ref
Our Ref M-00137182/NMB/JVC/RLS
Date 3 April 2020

Dear Sir

PARTIES: SANTANDER UK PLC -V- MR STUART THOMPSON
CLAIM NUMBER: G1PP9250

We write further to your email dated 16 March 2020 and write to address the points you raised in your email as follows:

1. Santander have failed to close your compliant from April 2018.

Please see attached copy correspondence from our client to you dated 6 February 2020. Within that correspondence you will note that a response to your complaint was sent to you in November 2019 albeit our client accepted the letter did not expressly state the matter was closed. We note you subsequently referred the matter to the Financial Ombudsman following their response in November 2019 thereby acknowledging you did receive the November correspondence.

Our client did not and does not uphold your complaint concerning your allegation that you were mis-sold the mortgage. For the avoidance of doubt, your complaint from April 2018 is closed.

2. Santander has ignored your offer to settle from 28 January 2020

We can confirm our client has not received any offer to settle from you dated 28 January 2020.

3. Santander and Shoosmiths breach Mortgage Pre Action Protocol (MPAP)

This allegation is strongly denied and evidence of our client's conduct in respect of MPAP will be presented to the Court.

You state that Shoosmiths ignored your email of 23 October 2019. When you sent your email, you would have received an automated response that informed you that we are unable to respond to any emails directly due to our client's policy regarding email correspondence. However, in this instance we noted your email asked for us to contact you by telephone. We did this on 17 January 2020 and a voicemail was left for you asking you to return our call. We have never received a response to this message. Following advice, our client subsequently instructed us to issue proceedings against you.

You will be aware that proceedings were issued against you on 11 March 2020 and a hearing date was scheduled on 14 April 2020. In light of the ongoing Covid 19 issues, our client has requested that all litigation be placed on hold. We have therefore written to the Court confirming this position and requested that this case be adjourned generally with liberty to restore. You should therefore receive correspondence from the Court in the near future confirming this position. We shall write to you once the current moratorium has been lifted in order to inform you of our client's instructions there forward.

Yours faithfully

Shoosmiths

SHOOSMITHS LLP
Solicitors

For advice in this matter, please contact:

National Debtline www.nationaldebtline.org Freephone 0808 808 4000
StepChange Debt Charity www.stepchange.org Freephone 0800 138 1111
Payplan www.payplan.com Freephone 0800 280 2816
Citizens Advice online www.citizensadvice.org.uk/
Community Legal Advice www.ukecc-services.net/Communitylegaladvice.cfm
Tel 0845 345 4 345 Calls from 4p/min - or request a call back

Tax and Benefits Help online www.gov.uk
Government Advice https://www.gov.uk/repossession/get-advice
Financial Conduct Authority [redacted]
Shelter www.shelter.org.uk [redacted] 800 4444
Local Authority for re-housing help online www.gov.uk
Turn2us www.turn2us.org.uk Freephone 0808 802 2000

Should you wish to comment on any aspect of the service you have received from us please complete the survey at https://www.surveymonkey.com/r/WF7ZMB2 or contact us on the telephone number at the top of this letter.

Data protection regulations have changed. We'll always treat your personal data with respect. For more information about how we use your personal data, please visit our updated Privacy Notice which can be found on our website at www.shoosmiths.co.uk/privacy-notice-14100.aspx, or should you prefer we will send you a printed copy in the post.

If you contact us by email you agree to us replying to the email address that you give us. You need to be aware that our reply may not be completely confidential if you share an email address at home or at work. Please be advised that we cannot guarantee the security of the information transmitted by email and therefore, if you do not wish to correspond by email, please write or telephone us instead.

If at any time you have a complaint relating to [redacted] which we are dealing with this account, please let us know quoting our reference detailed in this letter. We will acknowledge your compl[redacted] provide you with a copy of our complaints procedure.

Whilst not a member of the Lending Standards Board, where relevant, we follow the principles of the SCBR a copy of which can be found at https://www.lendingstandardsboard.org.uk/the-standards-for-personal-customers/#statement_of_commitment_and_borrower_responsibilities

Shoosmiths LLP is authorised and regulated by the Financial Conduct Authority (FCA).

Santander

Mr S Thompson
[redacted]

Santander Complaints Resolution Team
PO Box 1125
Bradford BD1 9PG

Call us on: 0800 085 1731
Monday to Friday 9am to 5pm

Calls may be recorded or monitored

Text Relay: 18001 0800 085 1731

Our ref: 9680681

Date: 08 April 2020

Dear Mr Thompson

Further to your our recent correspondence regarding the issues you raised relating to your mortgage account, I have been liaising with our Legal department and Shoosmiths. I now understand that 03 April 2020, Shoosmiths provided a response to the issues on behalf of both Shoosmiths and Santander.

I am writing to confirm we have withdrawn your complaint reference 9680681, because we feel we provided you with a response to the issues you raised, please see complaint ref 8476353 on [redacted] November 2018, ref 9539259 on 06 February 2020, via the Ombudsman on 09 July 2019 and via Shoosmiths on 03 April 2020.

If you wish to discuss this matter or any other issues relating to your mortgage account, please contact Shoosmiths on 03700 8663203.

Yours sincerely

pp.

[redacted]
Complaints Team Manager

SHOOSMITHS LLP
Solicitors
5-7 The Lakes
Northampton
NN4 7SH
DX 712280 Northampton [redacted]

Please contact [redacted]
T 03700 863203
F 03700 863046
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(except Bank Holidays)

Private & Confidential
Mr Stuart Thompson
[redacted]
Kent
[redacted]

Your Ref
Our Ref M-00137182/NMB/JVC/RLS
Date 9 April 2020

Dear Sir

PARTIES: SANTANDER UK PLC -V- MR STUART THOMPSON
CLAIM NUMBER: G1PP9250

We write further our letter dated 3 April 2020.

We can confirm that our client does have your correspondence dated 28 January 2020 and we apologise for this oversight in our previous correspondence. We write to confirm that your offer is rejected.

We also write to inform you that we are instructed to accept service of any proceedings you issue against our client, should you proceed to do so.

Yours faithfully

Shoosmiths

SHOOSMITHS LLP
Solicitors

For advice in this matter, please contact:

National Debtline www.nationaldebtline.org Freephone 0808 808 4000
StepChange Debt Charity www.stepchange.org Freephone 0800 138 1111
Payplan www.payplan.com Freephone 0800 280 2816
Citizens Advice online www.citizensadvice.org.uk/
Community Legal Advice www.ukecc-services.net/Communitylegaladvice.cfm
Tel 0845 345 4 345 Calls from 4p/min - or request a call back

Tax and Benefits Help online www.gov.uk
Government Advice https://www.gov.uk/repossession/get-advice
Financial Conduct Authority www.fca.org.uk
Shelter www.shelter.org.uk Freephone 0808 800 4444
Local Authority for re-housing help online www.gov.uk
Turn2us www.turn2us.org.uk Freephone 0808 802 2000

Should you wish to comment on any aspect of the service you have received from us please complete the survey at https://www.surveymonkey.com/r/WF7ZMB2 or contact us on the telephone number at the top of this letter.

Data protection regulations have changed. We'll always treat your personal data with respect. For more information about how we use your personal data, please visit our updated Privacy Notice which can be found on our website at www.shoosmiths.co.uk/privacy-notice-14100.aspx, or should you prefer we will send you a printed copy in the post.

If you contact us by email you agree to us replying to the email address that you give us. You need to be aware that our reply may not be completely confidential if you share an email address at home or at work. Please be advised that we cannot guarantee the security of the information transmitted by email and therefore, if you do not wish to correspond by email, please write or telephone us instead.