

## **The complaint**

This complaint was brought to us by Ms C. As the Official Receiver told us it has an interest in any compensation we award to Ms C, the trustee in bankruptcy (who I'll refer to as "T") is a joint complainant.

Ms C complains about costs and delays after Santander UK Plc took possession of her property. She says it didn't account for the proceeds after her property was sold. A representative, who I'll refer to as Mr K, has helped Ms C with this complaint.

## **What happened**

Ms C was made subject to a bankruptcy order in September 2017. Santander took her property into possession in April 2018 and it was sold by auction in March 2019. Santander says the surplus funds (after redeeming the mortgage and paying costs) were paid to the Official Receiver.

Ms C says the Official Receiver had told her it didn't have an interest in the property, and wants to know the basis on which Santander paid the funds to it. She wants Santander to provide a breakdown of the sums deducted from the sales proceeds. Ms C also says Santander took too long to sell the property, which increased her costs. And she says it wasn't entitled to add interest or charges after a money judgement in 2018.

Our investigator said Santander hadn't made an error or acted unfairly. He arranged for a breakdown of costs to be sent to Ms C.

Ms C didn't agree and asked that an ombudsman reconsider the matter.

## **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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Broadly, debts secured with a fixed charge (such as a mortgage) are outside a bankruptcy. The lender can decide whether to enforce their security. If they do, they're entitled to recover the secured debt in preference to the trustee in bankruptcy. If there's a surplus after the secured debt has been repaid from the sale proceeds, this forms part of the bankrupt's estate available for distribution to creditors. If there's a shortfall this becomes an unsecured debt in the bankruptcy.

Ms C was made subject to a bankruptcy order in September 2017. Santander took her property into possession in April 2018. The property was sold March 2019. Santander paid the surplus funds (after redeeming the mortgage and paying costs) to the Official Receiver.

### *The interest of the Official Receiver*

While Ms C says the Official Receiver told her it didn't have an interest in the property, she didn't provide evidence of this. In fact, Ms C provided an email sent by the insolvency service in August 2022 which said at the point of bankruptcy the Official Receiver gained an interest in her property as an asset in the bankruptcy.

Ms C says her bankruptcy was discharged before the property was sold. However, just because a bankruptcy has been discharged doesn't mean the Official Receiver doesn't still have an interest in and a claim on any proceeds.

Based on the available evidence, I don't think it was incorrect or unfair for Santander to pay the surplus sales proceeds to the Official Receiver.

### *Delays in selling the property*

After taking the property into possession, Santander had to obtain the best price reasonable available. It also had to take into account that mortgage interest and other costs related to the property would be applied until it was sold.

There were issues with the property's boundary, including that a neighbour had extended their property over the boundary. The property was unmortgageable due to its condition. These matters affected the value of the property. Santander had an auction appraisal in May 2018, which said the value of the property was £50,000. This was significantly less than the outstanding mortgage balance (about £130,000 at that time).

The neighbour offered to buy the property. The offer seemed credible and was for more than the auction valuation.

While Mr K says Santander should have sold the property at auction immediately after taking possession, I don't think in the circumstances that would have been reasonable. I think it was reasonable for Santander to proceed with the offer from the neighbour. Santander couldn't have known the sale wouldn't complete.

When the sale to the neighbour fell through, Santander had to decide whether to take steps to rectify the boundary issues – which its solicitors said would be time consuming and costly – or sell the property as it was. Santander decided to sell the property at auction.

All this meant the property was sold almost a year after Santander took possession. But Santander wasn't responsible for the poor condition of the property and the boundary issues that affected its value. And, as I said, it couldn't have known that the sale to the neighbour would fall through.

### *Interest, costs and charges after March 2018*

Mr K says when the court granted possession in March 2018 it didn't make an order for Ms C to pay Santander's costs. He says at most it could add the maximum allowed by court rules on costs. Ms C says the amount she owed was "crystallised" by the court order.

I don't think that's the correct interpretation of the possession order issued by the court. The court said the outstanding mortgage debt was £130,000. I can't consider whether any of the interest, costs or charges included in that amount were applied correctly or fairly as a court has already decided that this was the amount owed by Ms C in March 2018. But I can consider whether interest, costs and charges (totalling about £13,000) were applied correctly and fairly after this.

The mortgage terms and conditions say that Santander is entitled to apply interest, costs

and charges to the mortgage account. This continues after taking possession of the security property until the debt is repaid.

The larger cost items applied to the mortgage account after March 2018 included interest on the mortgage and arrears balance, sales commission and repairs/maintenance of the property and legal costs.

I don't think it was wrong or unfair for Santander to apply interest to the outstanding debt, or to instruct solicitors to act on the sale of the property. Additional legal work was needed due to the boundary issues and the failed sale. I don't think it was unfair for Santander to apply the legal costs to the mortgage account. Although Ms C didn't specifically complain about other costs, having reviewed the closing statements, I think Santander was entitled to apply the costs to the mortgage account and it wasn't unfair or unreasonable in doing so.

Ms C says Santander didn't send a breakdown of how the sales proceeds were applied. I don't think matters would have been different if Santander had sent this information to Ms C sooner. If this was something Ms C was worried about, I'd have expected her to have contacted Santander sooner after the sale of the property in March 2019, rather than waiting until mid-2022. While Ms C said she'd asked numerous times for a final statement there's no evidence of this in Santander's records.

### **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 T and Ms C to accept or reject my decision before 22 December 2023.

Ruth Stevenson  
**Ombudsman**