

## **The complaint**

Mr B complains that Santander UK Plc paid a charge to a property management company and applied the cost to his mortgage account. This was despite him telling it he'd already made the payment.

## **What happened**

Mr B was in dispute with a management company about charges related to the security property. In late 2022 solicitors acting for the management company contacted Santander and asked it to settle the outstanding charges.

Mr B says he paid the charges and provided evidence to Santander of the payment. He then discovered that Santander had also paid the charges and applied the costs to Mr B's mortgage account.

Santander said it didn't know Mr B had paid the charge. It had been told by the solicitor acting for the management company it hadn't been paid. Santander said it made the payment because its security was at risk.

Our investigator said Santander acted on the information provided to it.

Mr B didn't agree. He said the solicitors acting for the management company agreed to refund the overpayment. But Mr B says it should be refunded to where it came from (by which I think he means the mortgage account). Mr B also says he shouldn't have to pay the management company's legal fees.

## **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.

I must be clear that I am only looking into Santander's actions here. I have no power to look into or make findings about the management company or the solicitors instructed by the management company. I can't look into Mr B's concerns as to whether he has to pay the solicitors fees.

I should also explain that 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.

The mortgage terms and conditions give Santander the right, in certain circumstances, to make payments and apply the cost to the mortgage account.

Santander received a letter in November 2022 from solicitors acting for the management company. It received an invoice in December 2022 and further letters in 2023. These letters were about outstanding service charges and fees (of about £1,600) related to the security property.

In early February 2023 Santander wrote to Mr B asking him to sort the matter out with the management company. It wrote to Mr B on 18 March 2023 responding to his complaint and confirming what it had told him on a call the previous day: that if the amount claimed by the management company wasn't settled by 21 March 2023 it would make the payment and add it to his mortgage balance.

Mr B paid about £1,100 to the management company on 19 March 2023. He sent an email to Santander saying he'd made the payment. His emails to Santander attached a copy of the invoice, an email he'd sent to the management company and confirmation of the payment to Santander.

Santander received a letter dated 22 March 2023 from the solicitor. This said they had not received payment in the sum of £1,600 from Mr B. Santander called the solicitor on 24 March 2023 and was told the balance was still outstanding. Santander made the payment.

Mr B says he's found out that it can take up to seven working days for the solicitors acting for the management company to update an account after receiving payment. This could be why the solicitor told Santander it hadn't received the payment. Or it could be that this was because Mr B paid about £1,100 and the amount the solicitor said was owed was about £1,600.

*Did Santander make an error when it made the payment?*

Santander considers it a threat to its security if it receives a section 121 notice and transfer deed expressing a right of re-entry. This was substantially what happened here – although the solicitors were relying on a statutory right to re-possess the property.

Santander made Mr B aware that if he didn't sort out the matter or make the payment by 21 March 2023, it would make the payment and add it to his account.

Mr B says he sent evidence to Santander that he'd made the payment. Santander says it only received the invoice, so it does seem that it failed to record receiving the other items Mr B attached to his email.

However, Santander called the solicitor to check if the payment had been received immediately before making the payment. It wouldn't have known if the information it was given was out of date. Taking all of the circumstances into account, I don't think it was wrong or unfair for Santander to make the payment.

It follows that I don't think it's fair to require Santander to refund the mortgage account for the payment it made to the management company, or the £70 administration charge.

Mr B said the management company had said it would refund the money, but he says it should be refunded to where it came from – his mortgage account. He feels he's stuck between Santander and the management company.

I appreciate Mr B's frustration, but it's the management company that has the money, not Santander. He'll need to discuss how the refund is paid with the management company. Mr B could accept the refund from the management company and pay it into the mortgage account himself, if that's what he wants to do. Mr B should speak to Santander about arranging the payment and check that no early repayment charge would be applied to the payment.

Whether the management company is entitled to require Mr B to pay its legal fees is also a matter he'll need to take up with the management company.

**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 Mr B to accept or reject my decision before 16 January 2024.

Ruth Stevenson  
**Ombudsman**