

The complaint

Mrs L complains that Santander UK Plc didn't reimburse all of her legal costs related to obtaining a new grant of probate and new executors for her late husband's estate.

What happened

Mrs L had a joint mortgage with her husband. Her husband died in 2015. His executors were a firm of solicitors that stopped practising.

Mrs L says Santander told her it needed a new grant of probate and new executors to be appointed to deal with the mortgage. Mrs L says this involved considerable time and costs, and was unnecessary as Santander allowed her to repay the mortgage in late 2020 before she obtained a new grant of probate.

In 2019 Santander had agreed to pay Mrs L's reasonable legal costs in obtaining a new grant of probate. It paid about £5,300 by late 2020. Mrs L asks that it pays her remaining legal costs (of about £1,500), which she says were incurred due to delays caused by the pandemic, lockdowns and amendments to the application to the court.

We told Mrs L and Santander that we can only look into part of this complaint. We can't look into Mrs L's complaint that Santander required a grant of probate/new executors and closed the mortgage before this happened, as this was brought to us outside our time limits.

We told Mrs L and Santander that we can look into Mrs L's complaint that Santander didn't agree to re-imburse her additional legal costs of about £1,500.

I sent a provisional decision to the parties explaining why I didn't think it was fair and reasonable to require Santander to reimburse Mrs L's remaining costs. My reasons were substantially as set out below.

Santander didn't respond. Mrs L didn't agree.

Mrs L raised issues about whether it was right that Santander said she needed a grant of probate to deal with or redeem the mortgage account. As we've explained, we can't look into that part of her complaint.

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.

When it wrote to Mrs L in January 2019, Santander said it would "look to reimburse any reasonable costs to you in obtaining a new grant of probate...". I note the reference to "reasonable costs". Santander didn't agree to pay all of Mrs L's costs.

In November 2019 Santander told Mrs L this offer was an error. It said it wouldn't usually pay costs related to estate handling. It said having made the offer it would cover costs related to the grant of probate and accrued court fees, but not estate handling. It said it would only pay

costs incurred and not estimates.

Santander wrote to Mrs L's solicitors in late 2019 saying it would pay the costs set out by the solicitors on 5 November 2019 and nothing more. It wrote to Mrs L confirming this and saying it was "willing to cover the additional cost mentioned, however only up to the amount that has been advised". This was about £5,300.

Santander made the agreed payments (totalling about £5,300) to Mrs L's solicitors in late 2019 and in late 2020.

The mortgage was repaid in late 2020. Santander wrote to Mrs L confirming the mortgage account was closed in January 2021.

Mrs L contacted Santander in 2022, asking it to re-imburse further legal costs. Mrs L says her legal costs increased due to the pandemic, and she doesn't think it's fair that she should bear the cost of this. I appreciate that Mrs L is upset that her costs increased for reasons outside her control. But I don't think it's fair and reasonable to require Santander to reimburse Mrs L's additional legal costs. I've taken the following into account when reaching this decision.

It seems the legal work related to the new grant of probate and appointment of new executors continued after the mortgage was redeemed. So this work was required for reasons not related to the mortgage. And I think it's likely Mrs L would have had to incur these legal costs regardless of Santander's requirements regarding the mortgage.

In response to my provisional decision Mrs L said the legal work that continued after the mortgage was redeemed involved the court hearing to authorise new executors and lodging the probate with probate records. She said she didn't understand why I said it was likely she'd have had to incur the legal costs regardless of Santander's requirements regarding the mortgage. That's simply because Mrs L continued to incur these costs after the mortgage account was closed. Mrs L should speak to her solicitors if she needs information about why this work was needed after the mortgage account was closed.

Mrs L also said that when she sent the money outstanding at the end of the mortgage term her assumption was that the payment would be held in a holding account until the new executors had been appointed and had authorised the removal of her husband's name. I can't see that Santander was responsible for this misunderstanding on Mrs L's part.

I can see from the email Mrs L's solicitors sent to her in late 2021 that at least some of the legal work related to changes to or restrictions on the property title that were not related to the mortgage or the grant of probate.

When the solicitors wrote to Mrs L in late 2021 they said: "Santander agreed to pay [£5,300] including VAT, towards your legal fees for removal of the executors" and "we have advised you there would be additional costs that were not covered by the Santander contribution." So I think Mrs L was aware that there would be legal costs that she'd have to pay herself.

Mrs L said her understanding is that Santander would pay reasonable costs to obtain a new grant of probate. But I think Mrs L is actually asking that Santander pays all of her costs – even those incurred after the mortgage account was closed and not obviously related to the mortgage or the grant of probate. I don't think that's reasonable.

Santander was clear about the contribution it would make towards Mrs L's legal costs. It didn't agree to pay all of her costs, and I don't think it's fair and reasonable to require it to do so.

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 Mrs L to accept or reject my decision before 19 January 2024.

Ruth Stevenson
Ombudsman