

The complaint

This complaint's about a mortgage Ms F used to hold with Santander UK Plc. The essence of the complaint is that Santander instructed solicitors to begin legal action for possession of the mortgaged property whilst Ms F was trying to sell it. The possession proceedings were halted when Santander was notified that a sale, and redemption of the mortgage, were imminent, but Ms F is unhappy that Santander added its solicitors' costs to the mortgage. She thinks the legal action, and the resulting costs, were unnecessary.

What happened

The broad circumstances of this complaint are known to Ms F and Santander; they've been set out in correspondence between both parties. I'm also aware that the investigator issued a comprehensive response to the complaint which has been shared with all parties, and so I don't need to repeat all of the details here.

Instead, I'll provide a brief summary of the key points, in my own words and then focus on the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Ms F's mortgage had been in arrears since 2018. In early 2021, she agreed a sale and Santander was informed. By the autumn of 2021, the sale hadn't completed, and Santander was becoming concerned at the worsening position on the mortgage account. It asked for evidence a sale was continuing, but this wasn't received. That concerns was made worse when it was contacted by Ms F's freeholder with a request for payment of overdue charges under the lease.

Santander instructed its solicitors, a Firm I'll call E, to pursue court action, which it did. The case was due to go to court, but was put on hold when solicitors for Ms F confirmed a sale was imminent. The sale went ahead, and the mortgage was redeemed, but Santander added the costs incurred by E to Ms F's balance.

Our investigator didn't think Santander had acted unfairly in adding the costs to the mortgage account; however, she identified a slight over charge, seeming the result of two digits being transposed. She recommended the case be settled by Santander refunding the overcharge (£3.60) to Ms F, with interest.

Santander agreed to do this; Ms F asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference

from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point here is that the terms of the mortgage agreement gave Santander the right to debit the mortgage account with litigation charges incurred in connection with action to enforce its security. So I'm satisfied Santander had the right, contractually, to add legal costs to the mortgage. The next question for me to decide is whether it was fair of Santander to do so in the specific sets of circumstances that applied in Ms F's case.

That's the crux of the case before me, and having thought hard about, I think it was fair for Santander to add the costs, with the caveat that the amount charged was slightly wrong. I'll explain why.

I agree Santander was informed that Ms F was selling her home; but that was at the beginning of 2021. By the time it had instructed E to begin the action that generated the disputed legal costs, more than six months had passed, and despite several requests, it hadn't received the evidence it had asked for that the sale was still ongoing. The arrears were substantial and getting worse, and Santander was then put on notice of the freeholder dispute.

To be clear, this case doesn't turn on the merits of the freeholder's claim and whether Ms F was justified in withholding payments requested by the freeholder. Merely the existence of a claim like that from a freeholder to a lender will be of concern to a lender, because it has the potential to threaten a lender's security for the debt as a whole.

Nor is it about the communication that passed between Ms F and her solicitors. It's about what was or was not relayed on to Santander (or E on its behalf). Despite our investigator giving her several opportunities to do so, Ms F has not been able to show that Santander (or E on its behalf) received the information that might have avoided it taking the action that I'm satisfied it was justified in taking.

In summary, Santander didn't treat Ms F unfairly when it instructed E to take the action that generated the legal costs; nor did it treat her unfairly when it added the costs to her mortgage account. However, it did slightly overcharge her, so it is entirely right that it should refund her the over charge.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, I order Santander UK Plc to:

- pay Ms F £3.60;
- calculate and pay Ms F interest on £3.60, at 8% simple per annum* from the date the mortgage was redeemed up the eventual date of settlement.

*In the event Santander decides it should deduct basic rate income tax from the interest element of this award, it must then provide Ms F with the relevant tax certificate, so that she can, if appropriate, seek a refund the tax from His Majesty's Revenue and Customs.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 18 December 2023.

Jeff Parrington

Ombudsman