

The complaint

Mr and Mrs D have complained about a mortgage they held with Santander UK Plc. Their complaint can be broken down into four broad areas:

- Their title deeds.
- The lack of correspondence when they repaid the mortgage.
- The delay in receiving back the overpayment they made.
- How they were treated when the mortgage term came to an end in 2017.

Any reference to Santander in this decision should be taken to mean the previous name the lender used where appropriate.

What happened

Mr and Mrs D took out this mortgage in 2007 on an interest-only basis. They applied for the mortgage through an independent mortgage broker and appointed an independent solicitor (rather than using one appointed by the lender) to carry out the legal work.

In 2017 the term came to an end and Mr and Mrs D had no way of repaying it other than selling one of the investment properties they owned. The sale of the investment property went through and Mr and Mrs D repaid their Santander mortgage on 11 October 2019.

As the redemption went through at a similar time to a normal monthly mortgage payment being made, the mortgage account was left in credit by just under £200. That amount was refunded to Mr and Mrs D on 21 October 2019. Mr and Mrs D asked for their deeds back and complained when they were told Santander had never had them.

Our investigator didn't uphold the complaint. Mr and Mrs D didn't agree and so it has been passed to me to decide.

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 trust Mr and Mrs D won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. 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.

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. Any reference to Santander in this decision should be taken to mean the previous lender name where appropriate.

Title Deeds

For almost 80 years after the passing into law of the Law of Property Act 1925 and the Land Registration Act 1925, conveyancing was done 'on paper' with processes and practices that were the same for decades. Property titles were registered in documents which were held by the owners or mortgagees. But since 2003 scanning and subsequent destruction (known as 'dematerialisation') of documents became the required practice, as a result of the Land Registration Act 2002, which came into force on 13 October 2003.

Rule 203(6), Land Registration Rules 2003, makes provision for the destruction of original documents; an electronic image is deemed a sufficient copy and is used to produce official copies. This means that paper documents are obsolete and are no longer evidence of title.

This mortgage was taken out in 2007 and by that time lenders, including Santander, didn't take the original deeds when they granted a mortgage over a property. Any solicitor that dealt with conveyancing work would be aware of that and had the deeds been sent to Santander by Mr and Mrs D's appointed solicitor – and there is no evidence they were – they would have been immediately returned. I can't hold Santander liable for not having the deeds and not being able to tell Mr and Mrs D where they are.

Mr and Mrs D's evidence has changed about what happened in 2007. Throughout the whole time this complaint has been running – which has been since October 2019 - Mr and Mrs D said in 2007 Mrs D delivered a letter to a branch requesting the deeds be returned at the end of the mortgage, without reply. They said had they received a reply telling them Santander didn't have the deeds then they could have looked into where they were at the time:

- *"Shortly after the start of the mortgage in October 2007 a letter had been taken into Branch by [Mrs D] requesting that they be returned at the end of the mortgage."*
- *"Had we been notified, as Santander said we should have been, we could have traced our Title Deeds"*
- *"We feel that had Santander informed us that they did not hold our Title Deeds we could have been able to locate them at the time"*
- *"Obviously had we had this information at the time of my letter requesting the Title Deeds be returned to us on redemption of the mortgage I may have had more luck in tracing them."*
- *"I also advised Santander that we would require the Title Deeds to our property returned to us once the mortgage had been paid in full by letter to the Branch for forwarding to Head Office. Why then was we not informed that Santander did not have them at the time?"*

It was only recently, after our investigator rejected the complaint, that Mr and Mrs D changed their submissions to:

"Santander confirmed shortly after taking out the mortgage with them in September 2007 that they had our Title Deeds"

We generally find in cases like this that the first recollections are the more reliable, and the first recollections were also repeated quite a few times by Mr and Mrs D. I would have thought if Mr and Mrs D had been told by Santander in 2007 that it held the deeds then this would have been the focus of Mr and Mrs D's complaint, not a letter they say Mrs D dropped

into a branch that Santander has no trace of. For that reason, I'm not persuaded – on balance – that Santander told Mr and Mrs D in 2007 that it held their deeds.

Mr and Mrs D have said a letter was dropped into a branch requesting the deeds be returned at the end of the term. It was obviously something that was important to them if they went to the effort of writing and delivering a letter about it, so it is unfortunate they then didn't follow things up with Santander when they didn't receive a reply. Santander has no record of receiving that letter and I can't hold it liable for not replying to a letter it has no record of receiving.

For the reasons given I can't uphold this part of Mr and Mrs D's complaint.

Lack of correspondence

Mr and Mrs D have said they didn't receive a redemption statement or a closure letter, confirming their mortgage had been repaid.

A redemption statement wasn't posted to Mr and Mrs D as the notes indicate Mr D phoned Santander on the afternoon of 9 October 2019 to request a redemption figure for just two days later. There would have been no time for a redemption statement to be generated, printed and posted so that it would reach Mr and Mrs D in time for them to make that payment, so the figure was just given over the phone.

Santander doesn't automatically send a letter to its customers when their mortgages are repaid. We're not the regulator and it's not our role to comment on how businesses choose to do business generally. There's no regulatory requirement for Santander to send a letter to Mr and Mrs D to confirm the mortgage had been repaid.

Santander did nothing wrong in not sending the redemption statement to Mr and Mrs D in the post or in not automatically sending them a letter confirming the mortgage was repaid. For that reason, I can't uphold this part of their complaint.

The overpayment

Mr D requested a redemption figure on 9 October for a redemption date of 11 October. Redemption figures can't take into account transactions that haven't yet happened, so the figure given didn't take into account that Mr and Mrs D went on to make their normal monthly payment on 10 October. The reason redemption statements don't take that into account is that there is a risk the payment either won't be made, or if it is a direct debit that the amount will be recalled, and that would then leave a shortfall upon redemption. Instead lenders generally assume no further transactions will occur and then they refund any overpayments after redemption; that's completely normal.

Santander told Mr D that it would take up to 13 working days for the closure to be processed and the refund be made, and in fact the overpayment was refunded six working days after redemption on 21 October. The reason the refund can't be made immediately is that the lender has to ensure the payment has cleared, and not been recalled, before the funds can be returned.

Having considered everything, Santander did nothing wrong here so I can't uphold this part of Mr and Mrs D's complaint.

The mortgage term end

Mr and Mrs D have been very open with us about how this has affected them, and I thank them for their honesty.

Things can't have been easy for them, worrying about how they'd repay this mortgage without selling any of their investment properties or their home. In the end they had to sell one of the investment properties, and I can see this took over two years from when their mortgage term had ended with Santander.

Mr and Mrs D have said that Mr D had to phone Santander every month, sometimes every fortnight (they later changed their recollections to the calls being fortnightly, sometimes weekly, but that isn't right), during that two-year period. Whilst I understand how difficult that was for Mr D, I must also keep in mind that Santander was owed a significant sum of money that hadn't been repaid on time. It had the right to want to keep in touch with Mr and Mrs D to find out what was happening.

Whilst I'm sure it wouldn't have been the case here, we see it often where lenders don't keep in touch on such a regular basis and then things are drawn out for an even longer period, potentially leading to litigation with the extra costs that brings, and thereafter the possibility of repossession. By keeping in touch so regularly Santander could know what was happening and adapt accordingly.

I understand Mr and Mrs D found it intrusive, but I can't hold Santander liable for that as it had the right to want to be kept informed and having considered the contact notes from the time I don't think the level of contact Santander wanted was excessive. It didn't have to liaise with Mr and Mrs D's solicitor or their estate agent as Mr and Mrs D offered instead as Mr and Mrs D were its customers.

Mr and Mrs D have said that Mr D was told the house could be repossessed, but that was correct. Santander had a duty to remind Mr and Mrs D of the consequences of the mortgage debt being overdue, and that was that the property could be repossessed. In fact, Santander could have taken matters to court to seek possession in 2017 on the grounds the mortgage contract had been breached the moment Mr and Mrs D didn't repay the debt at the end of the term. It didn't have to allow Mr and Mrs D a further two years and I can't blame it for wanting to keep in regular contact to ensure things were kept moving in that time.

Having considered everything, I can't uphold this part of Mr and Mrs D's complaint however much they may want me to as Santander didn't act inappropriately in wanting to keep in regular contact with Mr and Mrs D in the two-year period their mortgage debt was overdue.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 20 April 2021.

Julia Meadows

Ombudsman