

The complaint

A company which I'll refer to as "D" complains that Santander UK Plc treated it unfairly by changing the mortgage terms on an agreement in principle for a property it intended to purchase.

The complaint is brought on D's behalf by two of its directors, Mr and Mrs W – but for ease I'll refer to Mr W throughout the decision.

What happened

D was a customer of Santander, holding a loan with the bank which was secured on a property which I'll call DH and a debenture over D itself as a business.

In June 2019, Mr W had a business review with D's bank relationship manager. As part of this review, D's future plans were discussed - which included looking at the purchase of a new property and the potential early exit from a leasehold property which I'll call G. However, this would be dependent on the agreement of the leaseholder and payment of any dilapidation costs related to G.

In October 2019, D decided to purchase another property which I'll call H and made an offer of around £512,000. Unfortunately, D's offer was declined, and H was put up for auction in December.

Around the same time as making the offer, Mr W contacted Santander to see if D could borrow a further £900,000 on a mortgage. This was to be used to purchase H and also refinance some of D's existing borrowing. D wanted to keep the terms for the new loan the same as its existing one. This would mean using the current security held by the bank - which consisted of a charge over DH and a debenture over D as a business. However, the expected valuation value for DH didn't come back for as much as expected. Discussions between Santander and D continued ahead of the auction which was to be held on 17 December.

On 13 December, D's relationship manager emailed Mr W to say that the £900,000 mortgage had been agreed and the borrowing conditions seemed ok.

On the morning of the auction, Santander's risk department finalised the conditions required for D's new mortgage and sent them to D's relationship manager. The conditions included the existing security it held for D and additionally, a suitable valuation for H and the agreed early exit of the leasehold property and confirmation of D's outstanding liability for any dilapidation costs for G – both of which would need to be confirmed by G's leaseholder ('the leaseholder').

The relationship manager attempted to call Mr W before the auction to communicate this information but was unsuccessful. He also sent an email with the conditions to Mr W. Mr W read the email from the relationship manager and tried to contact the bank as he believed there had been an error. When he didn't hear back, he went ahead with the auction, making the successful bid for H and paying the 10% required deposit, with the balance due within 28

days.

The following day Mr W spoke to Santander who confirmed that the new conditions were indeed correct and would need to be met before it could provide funding for the new loan. Mr W was unhappy that the conditions hadn't been communicated sooner, as he didn't know if it was possible for D to exit G and provide the information required by the bank within the 28 days.

D paid for the property valuations as requested and contacted the leaseholder about the early release and dilapidation costs. However, the leaseholder had been impacted by the Coronavirus pandemic and wasn't able to provide the information Santander required within the timescale required for the bank to provide the funding needed to complete H's purchase.

As Santander wouldn't provide the additional funding at the end of 28 days, D had no option but to use its available cash - or risk losing the deposit it had already paid. This meant D's cashflow was severely impacted and it wasn't able to use the money as planned. D approached the bank for help with its cashflow issues and the bank initially agreed an overdraft of £50,000 which increased over a period of eight months to £150,000 – as it still hadn't been able to get the required information from the leaseholder to satisfy the new loan conditions. This also meant Santander asked D to pay for further valuations on its properties as the original ones had expired due to the time it was taking to get the information from the leaseholder.

Frustrated by the delay and financial impact, D complained to Santander. It believed the bank had acted unfairly by changing the loan conditions so late in the purchase process and not instructing the valuations quick enough. D didn't think it was reasonable that it should have to pay further valuation costs due to the time that passed and asked for the lease condition to be removed as it was confident there wouldn't be any dilapidation costs.

Santander partially upheld the complaint. The bank agreed that it should have communicated the conditions in better time before D had gone to the auction. It said that the valuations had been completed within the arranged timescales, but it agreed they should have been instructed quicker. However, Santander said it couldn't change the loan conditions as they were required by the risk team and that it was unfortunate the leaseholder had been impacted by the pandemic – and therefore delays had been caused – but this hadn't been foreseeable at the time.

The bank acknowledged its service could have been better and paid £700 compensation for the delay in providing the conditions and instructing the valuations. It also recognised D had incurred overdraft charges when the limits were in the process of being increased, so it arranged a refund of around £700 of charges. Mr W didn't think this was enough for the inconvenience caused and asked this service to look into D's complaint.

Our investigator didn't recommend the complaint be upheld. She said in summary:

- She agreed that Santander hadn't given D enough time to look at the borrowing conditions, but it was able to alter the terms before the agreement had been formally agreed.
- Mr W had read the new terms before proceeding with the purchase of H – albeit he thought there was a mistake.
- It was fair for the bank to ask D to undertake an updated valuation and pay the associated costs, and it couldn't be held responsible for the third-party's delay.

- She hadn't seen any evidence the bank had agreed to an interest free overdraft, but it supported D through increased overdraft facilities and a £50,000 Bounce Back Loan (BBL).
- The bank had paid £700 compensation for its delays in providing the mortgage conditions and instructing the property valuation, and refunded charges of around £700 when it was increasing the overdraft limit. She thought the bank had done enough to put things right.

Mr W didn't agree. He said D had been expecting to pay the valuation costs and for the new loan to be secured against H in addition to the existing security. However, it hadn't expected to have to exit G early and for confirmation of any dilapidation costs before the loan funds could be released. He also said the plan was always to purchase a new property as D couldn't maintain G due to the increased costs. And if Santander couldn't meet the timescale for the purchase, it should have said so earlier so D could source finance elsewhere.

Mr W also didn't think the compensation was enough for the impact on D from the bank's actions. He said D had been charged interest on the overdraft and declined a Coronavirus Business Interruption Loan (CBIL) which would have been interest free for a year and it hadn't been given a BBL. So D had been financially disadvantaged and treated unfairly by the bank.

The investigator said she couldn't look at Santander's actions in not providing D with a CBIL or the BBL. She said this needed to be raised with the bank before this service could consider these complaints and therefore the interest D believed it had been overcharged from not receiving them. As this would be a new complaint, her opinion remained unchanged that for this complaint the bank had done enough to put things right. This complaint has now been raised under a separate reference.

D didn't agree with investigators outcome and asked for an ombudsman to look into its complaint. So the case has been passed to me to decide.

D has also raised a complaint about the CBIL and associated overdraft charges which is being dealt with under a separate reference number as Santander hasn't yet had the opportunity to review this part of the 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.

Mr W says Santander treated D unfairly as the bank was aware of its intention to purchase H before the auction, so it was unfair for the terms discussed with the bank to be changed on that day.

I've looked at the evidence from both parties, and I can see that D did discuss the purchase of H as early as June 2019. However there wasn't anything formal agreed with Santander at that point and that it was more of an enquiry as to the process. It wasn't until October 2019, that D approached the bank again with a formal request for lending as D wanted an agreement in principle for £900,000. This was to purchase H and to refinance some existing borrowing.

At this point I can see that Santander told D that it didn't provide an agreement in principle for commercial loans, only a 'heads of terms' which would then be used to agree the final loan agreement conditions. So whilst I agree with D that a discussion did take place, I

haven't seen any evidence that formal terms were agreed. And based on what I've seen, I don't think Santander had sufficient information at this stage to provide the more formal agreement that D wanted.

From mid-October through to December, I can see that D updated Santander about the progress of the purchase, and that H was now being taken to auction on 17 December.

On 13 December, D's relationship manager emailed to say that the bank had approved the loan, and that he was waiting for the formal conditions to be provided by the underwriters - but everything seemed ok. So I think it would have been reasonable for Mr W to believe at this point that the loan was agreed on broadly the same terms that D already had on its current loan with the bank.

I have some sympathy here for Mr W, that on the day of the auction, Santander finally provided D with the conditions it required to fulfil the borrowing. I acknowledge that both the timing of the information, and relationship manager being unavailable meant D was left in a difficult position, but I don't think it would have done things differently if it had received the conditions before the day of the auction.

I say this because:

- D had already put a higher offer in for H before it went to auction, so I think it was always intending to buy the property - and actually paid significantly less at auction than its original offer.
- D had also told Santander that it needed a new property, as the lease was coming to an end on G, so it needed to purchase H instead.
- Whilst Mr W said he believed the additional conditions were a mistake, he did still have sight of the conditions before D bid on the property at the auction.

I acknowledge Mr W says this was more due to luck from the timing of the auction, and that Santander wouldn't have known this. But I do have to consider all the circumstances here, and I can't hold the bank responsible for D's decision to proceed with the purchase at this point.

Mr W says it was never agreed that D would exit G early and that there was sufficient income to cover its rent along with the new loan. However, I've seen the email correspondence between D and the relationship manager from June 2019 onwards, which says this would need to be considered as part of the new loan. So although it wasn't formally requested at this point, I think the bank made it clear that there was a possibility this may be a condition in some way.

Mr W also says that had D been told on 13 December before going to the auction that this was likely to be a condition of the new loan, they would have looked elsewhere for finance. However, I'm not persuaded it would have been possible to arrange the required finance in four days or that the terms would have been different with another lender. So I think the way D purchased H initially was likely to be the same, but with the expectation that the loan was received in a reasonable timescale to repay the interim borrowing.

The main issue here appears to be the new condition regarding the dilapidation costs relating to G. Neither party agree on who raised the issue of the early exit of G's lease, but I don't think that's a key point as Santander had concerns about the level of D's liability, which was uncertain at this point. And ultimately, the outstanding liability would have had an impact on D's affordability or cashflow at some point.

I acknowledge Mr W's comments that G wouldn't have suffered any dilapidation costs as it was in a better condition than when it took over. However, this isn't D's judgement to make and therefore I think it's reasonable that the bank wasn't able to simply accept Mr W's word for this and required confirmation from the G's leaseholder before it could proceed with the additional borrowing.

I've seen evidence from Santander which shows the bank was aware of the tight time frame of the auction and wanted to support D wherever possible. I've also seen the bank's case notes and the discussions that took place with the underwriters, which explained the reasons behind the dilapidation condition request. As a service, we're governed by rules set by the industry regulator, the Financial Conduct Authority (FCA). They're called the DISP rules and can be found in the FCA's handbook. These rules set out how we approach complaints, in this case DISP rule 3.5.9(R) allows me to accept commercially sensitive evidence in confidence. I've agreed and accepted this with Santander, and therefore I won't be commenting further on the specific evidence it has provided regarding this point. However, I'd like to reassure D that I'm persuaded by the bank's rationale behind this decision.

I understand that it wasn't ideal for the conditions to be finalised on the day of the auction, and that this caused inconvenience to D. But I've seen evidence that there were ongoing discussions within the bank from the date the formal request was submitted by the relationship manager, until the morning of the auction. So I think the bank was doing as much as possible to ensure D could make an informed decision about the purchase of H. However, Santander has acknowledged the timing didn't leave D much opportunity to discuss the conditions with the bank and paid £500 compensation for the inconvenience caused. I think this was reasonable.

Mr W says he was surprised that Santander required a charge over H, and that it was unfair for the bank to expect D to cover the valuation costs, but I don't agree. I can see that when DH was valued in December 2019, it was expected to be worth £1,500,000, but the updated valuation was £1,150,000 - significantly lower than expected. Therefore for the bank to provide the £900,000 loan that D had requested, it needed additional security to be able to meet its risk requirements. I think this was reasonable as the alternative would have been to decline D's request for the lending.

I also think it was fair for Santander to request D to pay the valuation costs, as these types of fees are standard for borrowers to obtain commercial lending. But I can see that D did have to chase the bank for an update on when the valuations would be completed, which caused it inconvenience, given it needed to get the loan urgently from Santander which meant completing the bank's conditions as soon as possible. Santander has acknowledged it should have communicated better with D and paid £200 compensation. As the timing of the valuations didn't delay D getting the loan, I think this is reasonable.

I can see that the main delay in Santander in providing the loan relates to the dilapidation costs for G and agreement for D to be released from its contract early. I can see that this has caused stress for Mr W and inconvenience for D, but this appears to stem from the delays of the leaseholder – rather than the bank. I can see that the leaseholder was affected by the Coronavirus pandemic, which delayed its own assessment of G, and therefore confirmation that the bank's terms could be met. But I can't reasonably hold Santander responsible for the actions of the leaseholder, or the impact of the pandemic.

Mr W says that because Santander made the mistake with the loan conditions, that it agreed to provide an interest free overdraft to D. He also says that D was unable to undertake the renovations to H as required, which meant it couldn't take on as many students as expected and therefore lost a significant amount of income. I acknowledge Mr W's frustration that the call recording for this isn't available where the overdraft was discussed. However, I've seen

the bank's records which don't show the increase was agreed on an interest free basis. I'm also not persuaded that Santander would have offered an interest-free facility, because even if the new loan had been agreed on the original mortgage terms, D would have still been paying interest on it - albeit at a lower rate.

I think the bank did try to assist D where possible to assist with its cashflow shortfall, albeit not in the way that D wanted. I say this because I've seen evidence that Santander extended D's overdraft from £50,000 to £150,000 for around eight months as a temporary measure as it had used its available funds to buy H at the auction. And I can see that Santander has already refunded D the overdraft interest and charges of around £700. I think this was reasonable. The overdraft charges which D has raised as part of its CBIL complaint will be dealt with under a separate reference.

Mr W has told us that this has been a really distressing time, and that D has been heavily impacted by Santander's actions. I understand why he feels the bank is responsible for this and that the compensation paid isn't enough. But after considering all the information from both parties, I think Santander has done enough to put things right by paying £700 compensation and around £700 in overdraft charges. So I won't be asking it to do anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 15 September 2022.

Jenny Lomax
Ombudsman