

## **The complaint**

Mr and Mrs A complain about their residential mortgage lender Santander UK Plc. Mr and Mrs A complain that Santander:

- mistakenly took a charge over another property that they own in 2006;
- treated them unfairly when issues arose as a result of this in 2019,
- accused Mr and Mrs A of being dishonest,
- took away access to flexible features within their mortgage, and
- didn't handle the complaint efficiently with delays in responding to them and poor communication throughout.

Mr and Mrs A believe that Santander has breached mortgage regulation and the terms and conditions of the mortgage. They consider that Santander's actions have made the mortgage void. Mr and Mrs A say Mrs A has suffered ill health and lost her job due to this complaint, and they've lost rental income and been unable to sell their properties because of Santander's actions.

Mr and Mrs A want Santander to extend their mortgage term by ten years and agree to take a charge over their residential property. They'd like Santander to cover all the compensation for the upset this matter has caused them.

## **What happened**

In 2002 Mr and Mrs A bought a property to live in, which I shall refer to as Property A. In 2004 they purchased the adjoining property, Property B. They planned to develop Property B in the future.

In 2006 Mr and Mrs A remortgaged their residential property, Property A, with Santander. Mr and Mrs A borrowed £195,699 on an interest only basis on a flexible offset mortgage to be repaid after 18 years.

As a condition of the mortgage offer, Santander sought to take a charge over Mr and Mrs A's home (Property A) as security for the loan. A legal firm (Legal Firm A) carried out the conveyancing work on behalf of Mr and Mrs A and Santander relating to the remortgage. During the remortgage process, Santander accidentally took a legal charge over Property B rather than Property A.

In 2010 Mr and Mrs A converted Property B to two separate rental properties (Properties C and D). As they understood Property B was unencumbered (owned outright with no mortgage) Mr and Mrs A didn't split the title.

In early 2019 a Deed of Substituted Security was sent to Santander by solicitors who had acted for Mr and Mrs A in the past (predating the mortgage with Santander). I shall

refer to this firm of solicitors as Legal Firm B. In this letter from Legal Firm B, it asked that Santander accept Property A as security rather than Property B. The letter said 'Hopefully this can then be registered by you and the matter put to bed'. Legal Firm B said the letter was not an admission of liability. Evidence shared with us, and mentioned in call recordings with Santander, shows that Mr and Mrs A raised a formal complaint about Legal Firm B.

In 2019 Mr and Mrs A wanted to sell Property A and Properties C and D. However, when they explored bridging financing over the rental properties it came to light that there was a charge over Property B held by Santander.

Mr and Mrs A highlighted this error to Santander. They wanted Santander to remove its charge over Property B and transfer it to Property A. Mr and Mrs A said they needed this to happen so they could split the title of Property B. This would enable them to raise bridging finance on properties C & D.

In March 2019 Santander wrote to Mr and Mrs A saying it wouldn't agree to release its charge on Property B without either redemption of the mortgage, or agreement of Mr and Mrs A that a valuation could be completed on Property A. Santander said *if* the valuation was acceptable, it would look to initiate a Deed of Substitution to transfer its charge.

Following the valuation, Santander highlighted it had been made aware of potential issues with taking a charge over Property A (in relation to shared access and services). Santander's credit department wouldn't agree to changing the charge to Property A, and instead asked that the loan be redeemed.

On 12 April 2019 Mr and Mrs A complained to Santander. They complained that they couldn't sell or rent their properties because of what they considered to be Santander's mistake, and they faced significant financial loss as a consequence. They also complained that Santander had accused them of lying and being complicit in a charge being taken over the wrong property. Mr and Mrs A asked that Santander compensate them for lost rental revenue on Properties C and D, additional costs incurred by them in resolving the dispute, the distress caused by Santander's treatment of them, and the disappointment and upset of them losing the small holding they wanted to buy.

On 7 May 2019 Santander wrote to Mr and Mrs A saying that it had been looking into issues with its charge. It had realised as part of its investigation, that its charge over Property B had actually been removed 'as a result of human error'. Santander no longer held *any* security against the mortgage and said Mr and Mrs A were in breach of their mortgage agreement. It also said that it had instructed a firm of solicitors to prepare a report to understand what had happened and how to rectify the situation. By June 2019, Santander told Mr and Mrs A that it had now passed the matter to a third party solicitor.

In July 2019 a further valuation was carried out for mortgage purposes. Santander said it would be appointing solicitors to put a charge on Property A.

During 2019 Santander withdrew the flexible features of Mr and Mrs A's mortgage (such as the available funds facility and access to the savings pot). It said it did this to prevent the balance of the mortgage increasing while the issues with the charge on the property were resolved. Santander said that Mr and Mrs A could continue to make overpayments to reduce the mortgage balance, and that if they wanted to draw money from the savings pot then they may be able to do this but they would need to call customer services.

Santander has investigated this complaint and has issued more than one final response to Mr and Mrs A's concerns. Santander issued a final response in 20 April 2019, not upholding

Mr and Mrs A's complaint. Santander said it had been the previous lender and its agents who had given the incorrect title number to Santander's solicitors. Santander said the issue with the security wasn't its fault.

On 23 December 2019 Santander issued a second final response upholding part of Mr and Mrs A's complaint. It apologised for the time it had taken to look into that had happened and paid Mr and Mrs A £500 for delays in its response. But it didn't uphold the other parts of their complaint.

Mr and Mrs A were dissatisfied with Santander's response and rejected its offer of £500 for delays in looking into their complaint. This money has been left in an account while the complaint was referred to us. Mr and Mrs A have said they want much higher compensation to settle the matter.

Since Mr and Mrs A brought their complaint to us, Santander's solicitors have said that it will pay for the cost of perfecting its security. But it won't pay for the cost of what it considers to be non-essential work, such as splitting the title of Mr and Mrs A's development property - Property B so that Properties C and D can be sold separately.

It also considered that amending the boundaries may be non-essential work and it wouldn't agree to paying these costs. Santander said it would review this situation following a surveyor visiting the property to draw up plans of the physical boundaries. Santander said it would pay for the surveyor.

This complaint has been looked at by two of our investigators. Neither investigator thought the complaint should be upheld. Mr and Mrs A strongly disagreed with our investigator's findings, saying, in summary:

- they've had to fight Santander for three years over this dispute;
- Santander isn't interested in correcting the problem which is having a detrimental effect on Mrs A's health and Mr and Mrs A's finances;
- Santander has 'accused us of all sorts, lied' and believed their solicitor and an incompetent surveyor;
- Santander doesn't hold a charge over any of Mr and Mrs A's properties, and that's because it made a mistake taking a charge over the wrong property in the first instance;
- If Santander had accepted they had a charge over the wrong property in 2019, and had followed the Financial Conduct Authority (FCA) principles, it would have been resolved then if they'd taken a charge over the correct property at that point;
- They are in 'complete limbo', unable to sell any of their houses or apply for a buy to let mortgage and have been threatened with court action from Santander.

Mr and Mrs A asked that an ombudsman reach a final decision on the matter. I issued a jurisdiction decision dated 13 May 2022. This set out why I was unable to consider the part of this complaint about the conveyancing work completed by a firm of solicitors acting for Santander and Mr and Mrs A in 2006. However, it also explained why I could look at the remaining parts of Mr and Mrs A's complaint about how Santander had handled things since the issue with its security had come to light.

## **My second provisional decision**

I issued a second provisional decision on 25 May 2022 which explained why I was planning to uphold part of Mr and Mrs A's complaint. I also set out what I thought Santander should do now to put things right.

In summary, I considered that Santander had had a legitimate contractual need to try and resolve the situation it has found itself in. And I considered it fair that Santander had tried to find a remedy that was agreeable to it and Mr and Mrs A going forward. I also thought it was reasonable that Santander appointed a third party legal firm to try to remedy its position. And that Santander had covered the cost of any work required to perfect its security including the further valuations to explore the title of Properties A, B, C and D as potential security to support the existing mortgage loan.

However, I thought the way that Santander had handled this matter- including the withdrawal of the flexible mortgage features and online banking access- was handled poorly and led to unnecessary worry and upset for Mr and Mrs A.

I could also see why Mr and Mrs A had felt the need to commission the surveyor who had first visited their property years before to come back and verify which property he'd visited when this mortgage was taken out. Mr and Mrs A had felt the need to defend themselves as Santander had initially implied that Mr and Mrs A had misled the valuer and taken him to the wrong property deliberately.

Mr and Mrs A had shown us evidence that the original valuer returned to help them defend their position and that they paid £600 for this return visit. I thought it was appropriate that Santander reimbursed Mr and Mrs A for the cost of this visit and report as part of the resolution of this complaint.

I understood why this would have been deeply upsetting to Mr and Mrs A and made them feel they needed to take steps to protect their reputation. At times Santander has unfairly accused Mr and Mrs A of trying to withhold information and deliberately mislead it. And there have been considerable delays which Santander staff have acknowledged and apologised for multiple times in call recordings shared with us. In recognition of the significant impact Santander's handling of this matter has had on Mr and Mrs A, I think the trouble and upset payment of £500 already made should be increased by a further £1,000. This takes the total payment for trouble and upset caused to £1,500.

## **Responses to my second provisional decision**

Mr and Mrs A responded to my provisional decision. In summary, they were disappointed that my provisional findings didn't:

- make an award for loss of earnings of around £24,000 as Mrs A was so upset by this dispute that she was unable to work;
- give Santander a time limit to resolve this issue; and
- tell Santander to extend the term of this interest only mortgage.

Mr and Mrs A say they feel Santander isn't accountable to anyone. They are concerned that Santander hasn't complied with FCA principles and that there should be some enforcement action in that regard. Mr and Mrs A also said that they understand the HM Land Registry carried out corrections concerning the addresses around 2008.

Santander replied to say it would agree to the compensation set out in my provisional findings. Santander said it would need evidence of the date that Mr and Mrs A paid £600 to the surveyor who revisited their property in 2019 so it could calculate the redress to settle this complaint as set out in my second provisional decision.

### **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've also thought carefully about the further comments made by Mr and Mrs A before reaching my final decision. Having done so, I have decided not to depart from the findings in my second provisional decision.

I appreciate that Mr and Mrs A feel the compensation awarded should be higher. I can understand that this whole matter has been incredibly stressful for them both and has continued since early 2019. However, there are wider issues at play here, involving errors that fall outside of my determination of this complaint brought against Santander.

I'm only able to consider and make an award for the financial loss and upset caused to Mr and Mrs A since this issue came to light in 2019 which is attributable to the actions of Santander.

Mrs A has explained that due to the problems with their properties she became unwell and was unable to keep working. I can see why Mrs A would like Santander to make up for this loss in her earnings in recent years. However, I don't think it is clear that Mrs A's inability to work came about solely as a result of Santander's actions at the start of 2019, or that it has directly led to her not being able to work since that time. It may be a contributory factor, but I don't consider Santander can be held solely responsible. And, as it isn't clear that this loss has come about due to Santander's actions, I don't think I can reasonably ask Santander to make this payment to Mr and Mrs A to settle this dispute.

I also don't think it would be appropriate for me to extend the term of this interest only mortgage when there isn't currently any security supporting the transaction and there remains a dispute about the existing mortgage contract.

I have upheld Mr and Mrs A's complaint about Santander's handling of the matter. And the award I have directed takes into account both Mr and Mrs A's financial loss and the upset caused by Santander's handling of this issue since early 2019, when the conveyancing problem came to light.

As I've also explained, I believe Santander has a legitimate contractual entitlement to seek security to support this mortgage contract and it is taking steps to that end. I don't consider that the FCA principles prevent Santander from seeking to remedy its contractual position or its entitlement to security to support this mortgage loan. And I don't consider Santander has acted unfairly or unreasonably by working to remedy its security to support the mortgage contract.

### **Putting things right**

I think it's reasonable that Santander should reimburse Mr and Mrs A for the cost of the valuer's report that they commissioned, plus 8% simple interest. This should be calculated from the date Mr and Mrs A paid the sum to the surveyor to the date of settlement of this complaint. Mr and Mrs A will need to provide evidence to us or Santander of the date that the surveyor was paid for the purposes of calculating this part of the award.

If Santander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs A how much it's taken off. It should also give Mr and Mrs A a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

I also consider it fair that Santander pays an additional amount of £1,000 for the trouble and upset its handling of this matter has caused Mr and Mrs A.

### **My final decision**

My final decision is that this complaint against Santander UK Plc should be upheld.

Santander UK Plc should do the following to put things right:

- pay the cost of the valuer's report that Mr and Mrs A commissioned, plus 8% simple interest from the date Mr and Mrs A paid a sum to the surveyor to the date of settlement of this complaint, and

- pay an additional amount of £1,000 for the trouble and upset its handling of this matter has caused Mr and Mrs A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 11 July 2022.

Emma Peters  
**Ombudsman**