

The complaint

The complaint is about a charge applied to a property which was owned by X with Santander UK Plc (known at the time as National & Provincial Building Society). X died in February 2019; her estate is represented here by Mr E, one of the executors of the estate. Mrs P and Mrs J are the other executors.

The complaint is that Santander failed to remove a charge applied to the property for a loan taken out in May 1989 and redeemed in February 1992. Mr E says this has caused stress, distress and inconvenience and would like to be compensated for the delay in removing the charge.

What happened

The facts of this complaint are well known to all parties, so I won't repeat them in detail here. Instead I'll give a brief summary, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It will be because I don't think it was material to the outcome of the complaint.

X previously jointly owned the property with her partner (whom I'll call "R"). R died in 1998 and X died in February 2019: Mr E, Mrs P and Mrs J were named as executors of X's estate. I'll mainly refer to Mr E throughout the decision because he has been the party corresponding with our service, but I do note Mrs P and Mrs J are also joint parties on the complaint.

As part of the administration of the estate, X's property was transferred to the executors in 2020. During the process of first registration Mr E says the Land Registry informed them of a charge on the property, which they say had been repaid in 1992. Mr E says following various and prolonged correspondence with Santander, it finally agreed to remove the charge in August 2021.

Mr E complained on behalf of the estate. Santander acknowledged the poor service provided and offered £200 in compensation. Mr E didn't agree and referred the complaint to our service because he felt the charge should have been removed some 29 years prior to when it was and says the whole episode was very stressful.

Our investigator didn't recommend the complaint be upheld. Mr E asked for it to be reviewed by an ombudsman.

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.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

Under our rules, we can consider a complaint from a consumer. X was a consumer, and so met the definition of an “eligible complainant” set out in our rules. Following X’s death, eligibility to complain vested in her estate.

The rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, Mr E as executor can complain on the estate’s behalf.

But I must explain that, although Mr E is representing X’s estate, it is X who was Santander’s customer at the time of her death. Mr E’s role is to bring the complaint on the estate’s behalf, in the same way that other consumers might instruct a solicitor to represent them in a complaint. But this does not entitle Mr E to air his own grievances about Santander, because he and the other executors are not its customers.

Mr E’s role is limited to putting forward the estate’s complaint, and any redress that might be claimed can only be for loss to the estate. Mr E cannot claim compensation for any time, trouble or upset he (or the other executors) might have suffered whilst dealing with the estate’s affairs. As to the merits of the case itself, I’ve reached the same conclusion as the investigator, for the following reasons:

- It’s clear that the charge should have been removed once X and R had repaid the loan. Santander didn’t do this, so I’ve considered the impact of this on X. Having done so I think the impact was minimal, I say this because I can’t see X has suffered any financial loss because of this error and it seems X was unaware that the charge was still on the property. The issue with the charge only came to light following X’s passing. I appreciate Mr E has said there is the potential that this could have derailed a potential sale, but this didn’t happen, and I can’t make an award for something that didn’t materialise.
- There is no doubt that Santander didn’t provide the expected level of service when contacted about the charge by Mr E on behalf of the estate of X. I’ve already mentioned why I can’t make an award for any stress, distress or inconvenience caused to the executors. And it’s not possible for an estate to be caused distress.
- Furthermore, it’s unusual for this service to instruct the payment of compensation for inconvenience to an estate, and this is because an estate is a legal entity rather than a person – and generally speaking, it’s usually only people, and not legal entities, that can be considered as being inconvenienced. However, there can be cases where this service will consider that the actions or non-actions of a business have caused an estate to have been inconvenienced such that some compensation to an estate is warranted.
- I do feel that there were occasions where Santander didn’t provide the service expected and so the estate through the executors had to do more work than I would have anticipated in relation to the charge on the property. Santander accepted the service provided wasn’t to the level it would have expected and has offered compensation of £200. I think this is fair in the circumstances considering the overall impact on the estate of X.
- I note Mr E mentioned compensation Santander paid on a different complaint, but my role is to consider the facts of this case and base my decision on the evidence and circumstances involved here, I cannot comment or base my decision on any compensation Santander may have offered in different circumstances.

I realise that this won’t be the outcome that the estate of X was wanting here, but I trust its

executors will understand, given what I've explained above, why I've made the final decision that I have.

My final decision

For the reasons mentioned above, I don't uphold this complaint.

I understand that the offer of £200 compensation is still open and if Mr E would like to accept it on behalf of the estate, he should contact Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of X to accept or reject my decision before 25 November 2022.

Jag Dhuphar
Ombudsman