

The complaint

This complaint is about a mortgage that Mr E and Mrs S took out, eventually jointly, with Santander UK Plc. The mortgage was originally applied for, an offered, in Mr E's sole name, but then withdrawn due to Mrs S holding a charge over the mortgaged property. They're unhappy that the process took so long, resulting in significant trouble and upset, plus the loss of income opportunities.

What happened

The broad circumstances of this complaint are known to Mr E and Mrs S and Santander; they've been set out in correspondence between both parties. I'm also aware that the investigator issued a 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 rounding the figures, 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.

The purpose of the mortgage was to raise money on a property owned by Mr E to fund the acquisition of a buy-to-let property. The application was initially in Mr E's sole name, and in the original offer, issued in June 2021, Mrs S was noted as being an over-17 occupant who was not party to the mortgage. Accordingly, a condition of the offer required her to sign a Deed of Consent.

Subsequently, it was established that Mrs S held a charge over the property as protection for a financial contribution she had made when Mr E bought it. Initially, Santander proposed to deal with this by Mrs S executing a Deed of Postponement, but later still it changed its mind and withdrew the offer altogether. The issue was eventually resolved by Mr E and Mrs S re-applying jointly, and the mortgage eventually completed in May 2022.

Mr E and Mrs S complained; taking into account lost opportunities, they estimated the loss arising from the delays and errors to be in the region of £66-80,000. Santander offered £300 compensation for their time, trouble and upset, but didn't accept responsibility for the financial impact of withdrawing the offer.

Our investigator considered the settlement offer should be increased to £500. Given the original mortgage offer specified there should be no other charge on the property without Santander's consent, he didn't think it should pay the loss claim. Mr E and Mrs S have asked for the complaint 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.

Having done so, I've reached a similar conclusion to the investigator, and for much the same reasons. Clearly Santander should have realised much sooner than it did that the existence of Mrs S' charge, once it had come to light, meant a mortgage in Mr E's sole name was outside its lending policy. Proposing a Deed of Postponement was a dead end that only wasted more time.

Here, the only solution was to withdraw the offer in Mr E's name and start again with a joint application. Santander could have saved Mr E and Mrs S a great deal of time and trouble if it had pointed them in that direction immediately. That's where the compensation of £300 comes into play, and in all the circumstances, I think it's a fair sum.

But I agree with our investigator that it would not be fair to hold Santander liable for Mr E and Mrs S' consequential loss claim. Santander might have been slow to respond appropriately to the existence of the charge, but Mr E and Mrs S were always aware the charge existed. They also knew or at least should have known – because it was set out in the original offer – that no other charge was permissible without Santander's express consent.

I appreciate Mr E and Mrs S may be lay people and not experts in the field of mortgage finance. But they had the benefit of a mortgage advisor and a solicitor to ensure they were aware of and understood the content of the mortgage offer issued in Mr E's name. I imply no criticism of the advisor or solicitor in making that observation, and none should be inferred.

What it does mean, however, is that I can't fairly hold Santander liable for the claim for losses Mr E and Mrs S have made in their complaint. Santander caused further delays after it became aware of the charge. Nonetheless, I don't think that supersedes Mr E and Mrs S' prior knowledge of the charge, at least not to the extent that I can fairly award them redress beyond the increased award for distress and inconvenience already proposed.

My final decision

My final decision is that Santander UK Plc should settle this complaint fully and finally by paying Mr E and Mrs S £500. I make no other order or award. 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 Mr E and Mrs S to accept or reject my decision before 18 September 2023.

Jeff Parrington

Ombudsman