

## **The complaint**

Mr A and Mrs C have complained that, due to an error made by Santander UK Plc, completion of their mortgage and house purchase didn't take place on the date that had been set for completion.

To settle the complaint, Mr A and Mrs C would like Santander to compensate them, not only for their own expenses, but for an additional £1,000 they paid their vendor due to the delay.

## **What happened**

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. In addition, Santander has accepted that compensation is payable, so I don't need to analyse the events in detail to decide whether the bank is at fault; all I need to determine is what compensation should be paid. Finally, our decisions are published, so it's important I don't include any information that might lead to Mr A and Mrs C being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision.

On 22 August 2023 I issued a provisional decision, as follows:

Moving house is a stressful experience, even when everything goes smoothly – and especially when there is a chain of buyers and sellers. Santander has acknowledged that the mortgage funds weren't sent to Mr A and Mrs C's solicitors in time for completion of their purchase. This meant completion didn't take place until the following day. I have no doubt this was a very stressful and upsetting 24 hours for Mr A and Mrs C.

Mr A and Mrs C incurred expenses in relation to additional storage and moving costs, and overnight accommodation. They also paid their seller £1,000 for the trouble and inconvenience to which they had been put.

Following our investigator's recommendation, Santander has agreed to reimburse Mr A and Mrs C with their additional moving costs of £816, as well as the cost of the overnight accommodation (£105.99). Santander also accepted that its actions had caused distress and inconvenience, and agreed to pay £300 for this.

The only sticking point is that Mr A and Mrs C said they'd paid their seller £1,000 to compensate them for the upset caused, and they believe Santander should also reimburse this. Our investigator didn't think this was something for which Santander should be responsible – and neither did the bank.

I've looked at what Mr A and Mrs C have said about this. They've said they were in contract with their seller, who also incurred additional costs as a result of Mr A and Mrs C being in breach of contract. They therefore consider Santander

should be responsible for these damages. Mr A and Mrs C said they didn't pay their seller's partner's costs, as they didn't have a contract with him.

Mr A and Mrs C were bound by the contract they'd entered into to purchase the property. The completion date was fixed for 10 August 2022. Because the mortgage funds weren't received in time, that then put Mr A and Mrs C in breach of contract, through no fault of their own.

The Law Society's Standard Conditions of Sale, which governed this sale and purchase, deals with late completion at clause 7.2. Standard Condition 7.2.2 states that compensation for late completion is to be calculated at the 'contract rate' and is payable on an amount equal to the purchase price, less the deposit paid for the period of default. Standard Condition 1.1.1(e) defines the "contract rate" as being "the Law Society's interest rate from time to time in force", although the parties may substitute a different rate by special condition. The Law Society's interest rate is 4% above Bank of England Base Rate.

Although the Standard Conditions of Sale do not *require* the buyer to pay compensation in relation to the seller's out of pocket expenses or the knock-on effects on any related transactions, the parties can include an additional condition providing for this. Otherwise, if there is no additional condition, an action for damages for breach of contract could be brought, albeit subject to Standard Condition 7.2.3 that provides that any claim for loss resulting from delayed completion is to be reduced by any compensation paid under the contract.

The purchase price was £535,000 and on 10 August 2022 (the date completion should have taken place), the Law Society's interest rate was 5.75%. Assuming the standard 10% deposit had been paid, this would mean interest would be calculated on £481,500. This would give a daily rate of interest of £75.85 ( $£481,500 \times 5.75\% \div 365$ ).

Because £75.85 would not, I find, have adequately compensated Mr A and Mrs C's vendor for their additional expenses, Mr A and Mrs C were at risk of a claim for damages for breach of contract. I do not know if their contract provided specifically for them to reimburse the seller's expenses if completion was delayed, but it matters not; there is no doubt Mr A and Mrs C were in breach of contract by not completing on the day, and so were at risk of a claim for damages, whether or not it was specifically detailed in the contract. Given this, I find it was reasonable for Mr A and Mrs C to have mitigated their position and paid their seller £1,000 compensation in order to avoid such a claim.

If I am to find Santander liable for the additional costs incurred by Mr A and Mrs C, I have to be satisfied that they were reasonably foreseeable. I'm satisfied that, where the purchase of a property using a Santander mortgage didn't take place on the day of completion as a result of an error by Santander, it is reasonably foreseeable that the sellers, as well as the buyers, would incur expenses – as they were unable to complete on their own purchase on the due date.

The breach of contract by Mr A and Mrs C only occurred because of Santander's error. But for that error, Mr A and Mrs C would not have incurred any of these expenses – which includes the payment they made to their seller in order to stave off a claim for breach of contract.

In the circumstances, I'm satisfied that additional expense of the £1,000 payment incurred by Mr A and Mrs C in compensating their seller in order to avoid a claim for damages for breach of contract is an expense that I think Santander should

reimburse. It flows directly from Santander's error and is a reasonably foreseeable consequence of that error.

I thought Santander should pay the following:

- additional moving expenses of £816; (A)
- overnight accommodation costs of £105.99; (B)
- upon production of evidence of the payment of £1,000 by Mr A and Mrs C to their sellers, reimburse this amount to Mr A and Mrs C; (C)
- pay interest at 8% per annum simple on A+B+C from the date of payment of each of A, B and C to the date of reimbursement (D);
- pay compensation for distress and inconvenience of £300.

### **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 reviewed the file from the outset and revisited my provisional decision. Because the parties have accepted my provisional decision, I see no reason to depart from the conclusions I have already reached.

### **Putting things right**

To settle this complaint, Santander UK Plc must do the following:

- pay Mr A and Mrs C's additional moving expenses of £816; (A)
- pay Mr A and Mrs C's overnight accommodation costs of £105.99; (B)
- upon production of evidence of the payment of £1,000 by Mr A and Mrs C to their sellers, reimburse this amount to Mr A and Mrs C; (C)
- pay interest at 8% per annum simple on A+B+C from the date of payment of each of A, B and C to the date of reimbursement (D);\*
- pay compensation for distress and inconvenience of £300.

\* If Santander considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr A and Mrs C how much it has taken off. Santander should also give Mr A and Mrs C a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint. I direct Santander UK Plc to settle the complaint as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs C to accept or reject my decision before 27 September 2023.

Jan O'Leary  
**Ombudsman**