DRN-4458746

The complaint

Ms C's complaint is about a mortgage she used to hold with Alliance & Leicester (A&L), which was later taken over by Santander UK PLC. Ms C paid off her mortgage in 2003 but it wasn't until 2023 that she discovered that the standard security had not been discharged from the Land Register.

To settle the complaint Ms C would like Santander to discharge the standard security, refund the Deed Plus scheme fee (£20) she paid in 2003 and compensate her for the considerable stress, worry and upset she's been caused.

For clarity, I will use A&L when referring to matters that took place before October 2008, and Santander for matters occurring after that date.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Ms C being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Ms C took out a mortgage with A&L in 1996 and paid it off in March 2003. On 16 October 2003 A&L wrote to Ms C to confirm that the title deeds to her property were retained in A&L's Deeds Plus scheme. A&L was taken over by Santander in October 2008.

In November 2022 Santander wrote to Ms C to inform her that the Deeds Plus scheme was closing. Santander aid that it would be returning Ms C's deeds to her, and suggested that she contacted her legal adviser or solicitor to arrange for the standard security to be removed from the Register of Scotland.

Ms C complained to Santander, saying that she was *"distraught"* to find out that her mortgage account remained open and that she'd need a solicitor to remove the standard security. In its final response letter, Santander explained that the deeds had been retained at Ms C's request. Because the property was in Scotland, Ms C would need to arrange to remove the charge from the property herself, and that this could be done by Ms C herself or by Ms C instructing a solicitor. Santander said that this has always been the process with Scottish properties, and would have been the same if Ms C had received the deeds in 2003.

Ms C wasn't happy with Santander's response and referred it to our service. Ms C also raised other issues relating to her mortgage account. Santander didn't consent to us looking at those other issues, saying they were out of time.

An Investigator looked at what had happened. He explained to both parties that the only issue he could consider was that the standard security had not been discharged. He was

satisfied that the other issues Ms C had raised had been brought out of time. Ms C acknowledged this to be the case, and so I will make no further reference to those matters.

The investigator explained that, under Scottish law, it was the borrower who needed to have the standard security removed once the mortgage had been discharged. Ms C would always have needed to do this, whether it was in 2003 or 2023, and her solicitor should have explained this when she first took out the mortgage in 1996. The Investigator also clarified that reference to the account being open in Santander's letter sent in November 2022 related only to the Deeds Plus scheme, and not the mortgage account itself, which had been repaid in 2003.

Ms C didn't accept the Investigator's findings. She said (and I summarise):

- when she paid off the mortgage in 2003 A&L never told her the standard security would remain open;
- the unexpected cost of this 20 years later is unreasonable;
- Santander's letters have confused her as they refer to the mortgage account being both open and closed;
- she was never told about the process by her solicitor;
- the Land Register of Scotland has told her this is a common problem that owners are not made aware of the need to remove the standard security;
- if A&L had given her the correct advice in 2003, she would have arranged for the standard security to be removed at that time;

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 can understand that it came as a shock to Ms C to learn that the standard security she'd given for her mortgage loan remained on the Land Register. It is a feature of Scottish law that the removal of the standard security is done at the instigation of the borrower after the mortgage has been paid off.

Once the mortgage has been repaid, the lender has no interest in the property and the standard security can be discharged by the borrower. This need not be done straight away, but until it is, the property owner will not be able to sell or re-mortgage the property. If it isn't done by the borrower, it will have no impact on the lender whatsoever.

Ms C would not necessarily need a solicitor to do this for her, but the Registers of Scotland website explains that it is only *"for some transactions"* that a borrower can submit the deed of discharge, and it is the borrower's responsibility to ensure that the property transaction and deed meet the appropriate legal requirements. So whilst it is not an absolute requirement that the deed must be drawn up by a solicitor, it is usual practice, as the average lay person would not have the legal knowledge to do this. The requirement to discharge the standard security by way of a deed is one imposed by Scottish law, not A&L or Santander; this would apply regardless of who Ms C's lender was.

I appreciate Ms C found Santander's letters confusing, but I hope I can provide the clarification and reassurance she requires that her mortgage account was closed on redemption in 2003. Where a lender retains deeds in its storage facility, the account number will usually remain 'live' on its system, so that if there is any query from the borrower about the deeds, they can easily be traced. But this is different from the actual mortgage account

still being open. I am satisfied that Ms C's mortgage was fully repaid and closed when she paid it off in March 2003.

Ms C says that she wasn't told, either by her solicitor when she took out the mortgage in 1996, or by A&L when she repaid it in 2003, that she would need to take steps to remove the standard security. I can't comment on what Ms C's solicitor told her, or omitted to tell her, in 1996. That's something Ms C will need to take up with her solicitor.

Furthermore, any legal fees Ms C would have to pay a solicitor to discharge the standard security are not fees incurred as part of the mortgage contract – and so this is not something that A&L was required to advise Ms C about either.

I do sympathise with Ms C who finds herself with an unexpected and unwelcome expense of the legal fees she will incur in removing the standard security. But for the reasons given above, I'm not persuaded Santander is responsible for this. This means that I'm not upholding the complaint, nor ordering Santander to pay any compensation to Ms C.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 1 May 2024.

Jan O'Leary
Ombudsman