

The complaint

Mrs G complains about the service Santander UK Plc provided when she applied to transfer the mortgage she held jointly with her husband into her sole name.

What happened

Mrs G and her ex-husband jointly own a property that is subject to a mortgage with Santander. Mrs G had lived in the property with her son for several years, paying the mortgage and other property related expenses. Mrs G and her ex-husband were divorcing.

As part of the agreement between them, the property was to be transferred into Mrs G's sole name. Mrs G made a change of borrower application to put the mortgage into her sole name as well.

Mrs G discussed her application with Santander in June 2022. In July they issued a mortgage offer. Mrs G appointed solicitors to act for her in relation to the conveyancing.

Since Mrs G's son was 17 and wouldn't be party to the mortgage, Santander required him to sign a Deed of Consent (the Deed). Mrs G told Santander he lacked capacity to sign when she discussed her application with them in June. They said, in summary, they'd note their file, and she might ask her solicitors for guidance about who would be able to sign on his behalf.

When Mrs G's solicitors asked Santander for guidance in August, they said the Deed would need to be signed by a court appointed Deputy, Guardian or Controller (a representative) on behalf of Mrs G's son. Applications to the court to appoint a representative were taking many months at the time and wouldn't have happened before the mortgage offer expired. Mrs G was unhappy Santander wouldn't agree to deal with things in another way and complained.

Santander didn't uphold her complaint. They said they had let Mrs G know in June her son would be required to sign the Deed; the July mortgage offer had set out the requirement; and their mortgage team had confirmed the position to Mrs G's solicitors in August. They said they couldn't go ahead with the application without the signature; the offer was valid until November; and they were currently allowing extensions of a month.

Mrs G was unhappy with Santander's response. A month's extension wouldn't allow enough time for the court application to go through. She brought her complaint to the Financial Ombudsman Service.

Our investigator came to the view that Santander hadn't been wrong to require her son to sign the Deed. She noted the mortgage offer had set out the Deed would be required. But our investigator felt Santander could have explained things to Mrs G more clearly. She thought that if Santander had told Mrs G she needed to have a representative to sign on her son's behalf she would have saved time and money by not seeking advice from her solicitor in relation to that issue. She said Santander should pay Mrs G's legal costs associated with that. Our investigator thought that since Mrs G would always have incurred conveyancing costs relating to the mortgage application, and there was no reason why that couldn't go

ahead once she'd resolved the court issues, Santander didn't need to meet that part of her legal fees. In addition, our investigator felt the way in which Santander had communicated about the Deed was unfair and they should pay Mrs G £200 compensation to reflect that.

Mrs G didn't agree. She said, broadly, if she'd known at the outset she'd need to apply to the court, she wouldn't have gone ahead with the mortgage application since it wasn't viable, and she wouldn't have incurred any fees. She thinks Santander should pay her the full amount of the fees she paid, compensation for the inconvenience she's suffered and the additional costs of borrowing she'll have to pay once her application goes ahead since interest rates have gone up.

Santander asked for clarification about the legal fees our investigator was suggesting should be reimbursed as there was no breakdown.

Since the complaint hadn't been resolved, it was passed to me to decide. I recently issued a provisional decision an extract of which follows:

"What I've provisionally 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 appreciate Mrs G's strength of feeling about what happened. And I'm sorry to hear of the stress she was under at the time of making the application given her personal circumstances. However, whilst I understand she will be disappointed, I've come to a similar outcome as our investigator for broadly the same reasons. I have a different view about how Santander should put things right. So, I'm issuing a provisional decision to give the parties the chance to comment further before I come to a final decision.

I'm grateful for the detailed information and points the parties have made. I may not mention everything they've said here. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I consider key in coming to my decision.

It was reasonable for Santander to require Mrs G's son to sign the Deed. Without it, they might find it difficult to repossess the property to recover their lending, if they needed to in the future, because of legal rights he might have over the property. And Santander made it sufficiently clear the Deed would have to be signed. They told Mrs G in June her son would need to sign a form to say he had no financial interest in the property and the reasons why. And the mortgage offer set out clearly the requirement for the Deed. In all the circumstances, I don't think it was unfair for them to insist on it.

However, Santander didn't explain soon enough what they required where an individual lacked capacity to sign the Deed. When Mrs G told Santander in June that her son couldn't sign, neither they nor Mrs G knew how to overcome that difficulty. It was left on the basis it was something Mrs G might be able to discuss with her solicitors. The mortgage offer didn't explain things either. It wasn't until Mrs G's solicitors asked for clarification and Santander provided it in late August that the need for a court application was made clear to Mrs G.

Santander's policy set out that where the person required to sign the Deed lacked mental capacity, the Deed would need to be signed by their court appointed representative. Santander were able to tell Mrs G's solicitors this when they sought guidance in August. It's reasonable to think Santander could have told Mrs G the position when she discussed the application in June. The adviser ought reasonably to have checked Santander's policy and let Mrs G know at the time.

Mrs G has said that if Santander had let her know she'd need to make an application to the court in the first place and it would take up to a year, she would never have gone ahead with the application and incurred the solicitors' fees.

I wouldn't expect Santander to have known Mrs G would need to make a court application or, if they did, how long an application might take. They are mortgage lenders, not lawyers. But if Santander had let Mrs G know in June what they required, I think it's likely she would have let her solicitors know. They could then have checked how long a court application would take. And once the offer had been issued in July, and the time for acceptance was known, it would have been clear Mrs G wouldn't be able to accept the offer before it expired. I don't think things would have progressed beyond that stage.

In the circumstances, but for Santander's mistake, I think it's likely Mrs G's legal costs would have been limited to the work the solicitors carried out in checking the court procedure and timescales for the court application and advising on the implications of that given the terms of the mortgage offer. There would have been no need for them to contact Santander or carry out any further work relating to the conveyancing. It follows that any costs Mrs G paid over and above the costs of that work should be reimbursed by Santander.

Mrs G's said there was no rush for the mortgage application to go ahead since she'd agreed with her ex-husband to stay in the property. But she's also mentioned her concerns that her application might be more difficult in the future if her income reduced when her son got older. So, I can understand it was distressing to find out her application couldn't proceed. It's fair she is compensated for that. I think the sum of £200 our investigator recommended is reasonable.

It wouldn't be fair to ask Santander to meet Mrs G's additional costs of borrowing in the future due to higher interest rates. I've said it was reasonable for them to insist on the Deed being signed. They aren't responsible for the fact the necessary court application would take a long time or that interest rates have increased since Mrs G first applied.

I note Mrs G raised concerns about her solicitors' knowledge about the court application. It's not reasonable to hold Santander responsible for any impact that had on Mrs G. Although the solicitors were on a panel of firms Santander had approved to carry out conveyancing work associated with mortgage applications, they were acting for Mrs G. If she's unhappy with the work the solicitors carried out, she'd need to raise a complaint with them.

To put things right I think it's fair for Santander to pay all Mrs G's legal costs except for the costs her solicitors would have charged her for checking the process and timescales for the court application and advising on the implications of that given the terms of the mortgage offer; interest on those costs; and compensation of £200.

Mrs G will need to ask her solicitors to provide a breakdown of their costs so the amount Santander needs to reimburse her is clear unless the parties can reach agreement about the amount Santander will pay. And she will also need to provide proof of payment.

My provisional decision

I intend to uphold Mrs G's complaint and direct Santander UK Plc to pay

1. subject to Mrs G providing a breakdown of costs from her solicitors and proof of payment, all her legal costs except for the costs her solicitors would have charged her for checking the court procedure and timescales for the court application and advising on the implications of that given the terms of the mortgage offer;
2. simple interest on those costs at the rate of 8 per cent a year from the date Mrs G paid them until Santander reimburse them; and
3. £200 compensation for distress and inconvenience.

If Mrs G incurs any fees in obtaining the breakdown, Santander should pay those fees as well.

If Santander considers it is necessary to deduct income tax from the interest, they should let Mrs G know how much they have taken off. They should also provide a tax deduction certificate if Mrs G asks for one to allow her to reclaim the tax from His Majesty's Revenue and Customs, if appropriate."

Developments

Mrs G agreed with my provisional decision.

Santander commented that without further information about what work the solicitors did when, and what Mrs G had paid when, they weren't able to comment. They noted that some customers instruct their solicitors before applying for a mortgage and make payments then. They said some fees, such as search fees, are refundable or transferable to a new purchase. And they said a mortgage offer can be withdrawn at any point.

I've taken Santander's comments into account in coming to my final decision below.

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 note Santander's concerns about working out the solicitors' fees they should pay, and the possibility Mrs G might benefit in the future from fees she's already paid.

I explained the fees I thought Santander should reimburse Mrs G for in my provisional decision. It's reasonable to think the solicitors would have repaid any refundable fees by now given the time that's passed. It wouldn't be fair to deduct fees that haven't been refunded since there's no certainty they would be transferable or that Mrs G will go ahead with a further application.

I'm satisfied that it's fair for Santander to pay the costs on the basis I've set out, subject to Mrs G providing the evidence I've mentioned.

I note Santander's point that a mortgage can be withdrawn. I'm not aware that happened here, so I don't think it affects things.

Bearing everything in mind, I see no reason to change the outcome set out in my provisional

decision for the reasons I set out there.

Putting things right

Santander should put things right as set out below.

My final decision

I uphold Mrs G's complaint and direct Santander UK Plc to pay

1. subject to Mrs G providing a breakdown of costs from her solicitors and proof of payment, all her legal costs except for the costs her solicitors would have charged her for checking the court procedure and timescales for the court application and advising on the implications of that given the terms of the mortgage offer;
2. simple interest on those costs at the rate of 8 per cent a year from the date Mrs G paid them until Santander reimburse them; and
3. £200 compensation for distress and inconvenience.

If Mrs G incurs any fees in obtaining the breakdown, Santander should pay those fees as well.

If Santander considers it is necessary to deduct income tax from the interest, they should let Mrs G know how much they have taken off. They should also provide a tax deduction certificate if Mrs G asks for one to allow her to reclaim the tax from His Majesty's Revenue and Customs, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 27 December 2023.

Julia Wilkinson
Ombudsman