

The complaint

The estate of Ms D complains about the way Santander UK Plc have dealt with the request for information to allow them to look into transferring Ms D's property to the beneficiaries. The estate is being represented on this complaint and the representative said there has been no communication by Santander or any willingness to co-operate. They would like Santander to provide them with information about the mortgage so they can progress it.

What happened

The representative dealing with this complaint was instructed by the executor of the estate of Ms D to take steps to bring the administration to an end. The only outstanding matter that remains is Ms D's property which she owned as tenants in common with her partner Mr C.

Ms D left her share to her three children, two of which are living in the property and the representative would like Santander to co-operate with the process of the transfer.

The representative has explained that the mortgage fell into arrears when Ms D passed away and this was subject to extensive correspondence between the representative, Santander, Mr C and the three beneficiaries. The representative said that Mr C settled the arrears without any reference to their client – the executor of the estate – so they do not know what has been agreed or how it affects the estate. They are unclear whether they can now transfer Ms D's interest in the property to her children given that the mortgage is still in place.

The representative said that he has written to Santander asking for information so that they can take steps to wind up the estate but the departments he has written to have completely ignored three letters sent to each department asking for this information.

Santander eventually responded to the representative in September 2022 and apologised for not responding sooner to the letters that had been sent. They said they were unable to provide any specific information about the mortgage account as they were unable to locate any authority from the estate.

Santander confirmed that if the three beneficiaries wanted to be added to the mortgage, then Mr C would need to agree to this, and complete the necessary forms to enable this to happen.

The complaint was brought to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator asked the representative for Mr C's consent to be able to look at the complaint. The representative explained that Mr C is hostile and the estranged husband of Ms D and they would be unable to obtain his consent. He explained again that all that was needed was the information from Santander to be able to proceed with the transfer of Ms D's share of the property to her children.

Our investigator concluded that the complaint wasn't one that we would be able to look at because the estate of Ms D was unable to bring the complaint to our service, without the consent of Mr C – as he was the eligible complainant.

The representative disagreed with the investigator and said that Santander didn't put the mortgage account into the sole name of Mr C, and Santander pursued the executor to pay Ms D's share of the mortgage and arrears.

He said that the estate now owns half of the property and they do not want the estate to be added to the mortgage – they would like to transfer Ms D's share to the beneficiaries and wind up the estate. The representative said it will be between Mr C and the beneficiaries to deal with the mortgage thereafter.

As the representative on behalf of the estate disagreed with the investigator, they asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

My provisional decision

I issued a provisional decision on 14 February 2024. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered everything very carefully, I don't agree that this is a complaint that we shouldn't be looking into. I'll explain why.

Our jurisdiction

The executor of the estate is entitled to bring the complaint to the Financial Ombudsman Service, which they have done. The issue here is that Mr C still remains a joint party to the mortgage and the investigator didn't think that the estate alone, without the consent of Mr C – is an eligible complainant. But this isn't correct.

I have seen a copy of the will and the Grant of Probate which confirms who the executor is. The executor is being represented on this complaint. The representative has provided information and evidence which shows that the late Ms D and Mr C's property was set up as 'tenants in common'. This means that each party has a share in the property, so the mortgage is now held jointly with Mr C and the estate, so the estate is entitled to bring a complaint to the Financial Ombudsman Service so we are able to consider this complaint.

Merits of the complaint

Santander believe they cannot engage with the representative but the representative is acting on behalf of the executor and the estate. As explained above, Ms D's mortgage was held as tenants in common with Mr C so the estate is now the other joint party to this mortgage. So they are now Santander's customer and have as much right to the information on the mortgage account as Mr C does.

There are two separate matters here, one being what is held on the land registry and the other part is the mortgage itself. The representative is trying to gather information to proceed with the transfer of Ms D's share in the property to the beneficiaries as per Ms D's wishes.

The mortgage will need to be transferred from Ms D into the names of the beneficiaries. Santander has responded to the representative with details about what needs to happen in order to change the names over, but the representative is looking for further information. They are aware that the mortgage previously had arrears on it and they would like to know the current status of the mortgage which includes how much was paid off the arrears as they need to know what affect this has on the estate. This is something that they may be able to get clarity on from a mortgage statement but if this is not available, then Santander should be able to provide this information.

As the estate is the joint party to the mortgage now with Mr C, any information that has been requested in order to decide next steps – should be given. It would be no different to if Ms D was still alive and needed this information for herself. I understand that it won't be appropriate for Santander to provide specific information which purely affects Mr C – such as where the funds may have come from, but standard information about the mortgage is something they should be able to provide.

The representative has clearly pointed out that he is aware they may have some issues further down the line with trying to transfer Ms D's share of the property to the beneficiaries,

and they are aware of that – but they need the information they have asked for to understand what the process is, and what the current status is on the mortgage.

I am not commenting or saying that Santander should allow the transfer of the property to take place, this complaint is purely about providing the information to the representative to enable him to proceed with the matter.

Santander should engage with the representative in order to move this matter forward and ensure they respond within a reasonable amount of time and not cause any further delays to the estate. They must support the estate as they would do any of their other customers.

While there has been some inconvenience that has been caused here, I think for completeness I'd like to clarify that Ms D, as the deceased consumer would have been the eligible complainant who had the required relationship with Santander. The Financial Ombudsman Service can only make inconvenience awards to eligible complainants. We are unable to compensate the executor or the representative for any impact incurred by them personally, when representing Ms D or the estate.

Developments

The representative responded and was pleased with the provisional decision.

Santander responded and said they also agreed with the provisional decision. However they wanted to make us aware that since they provided their business file to us in July 2023, the situation has developed.

They said that the mortgage account was cleared in full and Santander no longer hold a charge over the property. They said a redemption statement was issued to Mr C in November 2023. Santander said that it's their understanding that the estate of Ms D will need to seek legal advice to ensure the interests on their share of the property are registered with the Land Registry.

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 understand from what Santander have now told us that they said the mortgage has been repaid in full and that they no longer hold a charge over the property.

It will now be up to the representative to deal with this matter on the best way forward with regard to the transfer of Ms D's share to her beneficiaries. However, it's evident that the estate requires information about the mortgage and may require more detail than has been provided to our service. So Santander should still provide information to the representative on behalf of the estate – if there is in fact any further info that is required, for them to progress the matter forward.

The representative may require confirmation that the mortgage has been fully paid off and Santander should ensure they engage with the representative on this matter. This should be the case even though Santander no longer holds a charge on the property – due to the reasons already given in my provisional decision.

My final decision

For the reasons given above and in my provisional decision. I direct Santander UK Plc to:

- Engage with the representative on the complaint and provide the information required

for them to decide next steps with regards to the transfer of part of the property to the beneficiaries

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms D to accept or reject my decision before 27 March 2024.

Maria Drury
Ombudsman