

The complaint

Mr D complains about underwriting problems, poor service, and delays which he encountered when making a mortgage application to Santander UK Plc.

What happened

Mr D applied for a mortgage on a property through a broker starting in November 2021. An issue arose about the Estate Rentcharge which Santander were unhappy about, and this resulted in a decline of the application in October 2022. Mr D then made an application directly and this was approved in November, although Mr D didn't then accept an offer of a mortgage with Santander. Mr D says it's unreasonable for the first application to have taken the time it did, given the time it took with the second application. As a result, he lost out on a favourable rate of interest that would have been available with the first application.

Our investigator's view

Our investigator didn't recommend that this complaint should be upheld as Santander had considered the application fairly. She thought that the second application proceeded quicker because much of the ground had been covered in the first application and the responses to some of the issues raised were different which meant that the second application was successful whereas the first one wasn't. Mr D disagreed and asked for a review.

My Provisional Findings

I considered the complaint and I agreed with our investigator that the complaint shouldn't be upheld but for different reasons. So, I issued a Provisional Decision in which I said the following :

"I can understand Mr D's frustration. He's in the process of buying a property but his mortgage application is held up for a very long time and isn't approved. In the meantime, interest rates go up and when he tries again to get a mortgage on this property it takes a very short period of time to process, is accepted, but interest rates have increased in the meantime.

When asked about the delay Santander said that "The timeline suggests on the first application, there was a very long gap in us receiving information from solicitors about the ER each time we asked for further info. We received vague information on how this was going to change or increase each year. In the Second application we received very clear and information on the ER and this was discussed by head office plus the indemnity insurance that was in place. Ultimately the second case has gone through much quicker and was agreed as we had been given all the information in a timely and concise manner ".

Mr D makes two main points. Firstly, that there was unreasonable delay on the part of Santander in processing the application and secondly that there was inconsistent underwriting as Santander was presented with the same set of circumstances but came to a different conclusion on both applications.

In respect of the first application, from the lender's point of view it had to be content with the security and from the file I can see there were concerns about the Estate Rentcharge and its effect on affordability, what happens in the case of non-payment and the saleability of the property in the future. Those are reasonable issues for a lender to be concerned about. From looking at the timeline it seems that the biggest delays in the process were waiting for replies from the solicitors in relation to queries raised about the Estate Rentcharge. The timeline notes that questions were raised on 27 December 2021, a reminder issued on 15 February 2022 and answered on 1 May 2022. The lender was still concerned about the possible level of increase in the Rentcharge, raised other queries and the solicitors in June, told Santander they didn't know to what level the Rentcharge would increase to but could get a deed of Variation restricting the level of increase for 25 years. This remained an issue with Santander as at some stage the Rentcharge would be uncapped and that would affect the saleability of the property.

Clearly the first application took a lot longer than would normally be the case. But the lender is justified in asking the questions it did and we cannot reasonably require it to proceed unless it feels that those queries have been satisfactorily answered. We would also be concerned if there were unreasonable delays by the lender in processing information and Mr D says that Santander processed information inefficiently asking different questions about the same document at different times and prolonging the process. But in the overall picture it's not Santander's internal processes that delays the decision on the application but Mr D or his representative's inability to satisfy Santander's underwriters and the time they took responding to the questions raised. So, I don't hold Santander at fault for that.

The second issue relates to whether there was inconsistent underwriting as Mr D believes and whether that was unfair to Mr D. In both applications Santander raised a number of questions of Mr D's representatives about the rentcharge. These questions were answered slowly the first time round and quickly the second time. Our investigator pointed to differences in the replies which meant that Santander felt they could proceed the second time and not the first. I don't think it was only that.

If I look at the reason the first application fails it's that Santander was unhappy that the rentcharge may increase in the future and there was no guarantee about the extent of that increase and that would affect the future saleability of the property. Mr D got a commitment from the management company agreeing to consider capping the rentcharge at a certain figure over the next 25 years but that didn't satisfy Santander as presumably that could be a disincentive to a future buyer facing the clock ticking down on a 25-year cap. So, Santander's express concerns were about the saleability of the property in the future and that of course is a valid concern which wasn't satisfied by Mr D and it was unwilling to proceed.

In the second application, the questions raised by Santander to the solicitor were answered quickly and Santander was satisfied that the annual cost would not affect the affordability of the mortgage, that there was a risk if there was non-payment of the estate rentcharge (allowing the rentcharge owner to re-enter and create a lease) but that risk could be managed by a suitable indemnity policy. So, a property considered unsuitable in May was considered suitable in November.

As I understand it, Mr D was testing the system in November and says the application then was to prove a point and whether he would get a different result applying direct than through a broker. My view of this is that the original underwriter had a concern that doesn't appear to have affected the second underwriter which was that the amount of the rentcharge and the possibility of it increasing without reference to some limiting factor e.g. an increase in line with RPI would affect the future saleability of the property. That seems to be the primary concern that led to the first decline.

It doesn't appear to me that in the second application that the second underwriter confronted that risk. That underwriter's concerns were with credit risk - would the annual payment affect affordability - and with the risk of default and re-entry which could be solved with an indemnity policy but the second underwriter doesn't appear to raise the same concerns that were expressed by the first underwriter about the future saleability of the property.

Given that different factors inform the decision of the underwriters and they reach different conclusions as result - does that mean that Mr D is treated unfairly? Mr D didn't get a mortgage because the first underwriter was concerned about the future saleability of the property with the rentcharge. I recognise that the future saleability of a property is a valid concern of a mortgage lender and it's a matter for the lender to assess its risk which task the first underwriter performed and was unhappy for the lender to accept that risk. It seems to me that that decision was reached fairly. The fact that the second underwriter came to a different conclusion doesn't render the decision of the first underwriter unfair. So, I won't be upholding this complaint. "

I issued my Provisional Decision and invited submissions from Mr D and Santander. Santander said it had nothing further to add. Mr D made a further submission which I consider 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.

In response to my Provisional Decision Mr D made the following points :

- There is a difference between a rentcharge and an estate rentcharge
- The second underwriter understood the distinction and the lack of risk as the six houses of the estate allowed a share in the management company and it would be against the interests of the shareholders to use the draconian powers under the legislation and was satisfied with indemnity insurance.
- Mr D never received consent to cap the estate rentcharge and it's an error to say that he did.
- The penultimate paragraph in the section above doesn't make sense. The two underwriters should follow the same process and come to the same conclusion. The first underwriter lacked the technical knowledge and could not differentiate between an estate rentcharge and a rent charge.

I believe that it was fairly clear from the narrative above that when I referred to a rentcharge it was to the Estate Rentcharge that was being charged on the property that Mr D intended to buy and not to any other rentcharge but to be clear any reference in this decision to a rentcharge is to the Estate Rentcharge on that property. It's clear that the first underwriter understood it as an Estate Rentcharge as in the Santander notes the underwriter refers to it as such and is unhappy with the lack of a guarantee as to how that rentcharge will increase in the future.

I recorded in my Provisional Decision "*Mr D got a commitment from the management company agreeing to consider capping the rentcharge at a certain figure over the next 25 years*". Mr D says he never received consent to cap the estate rentcharge. The file notes say that on 12 August 2022, his broker contacted Santander to say that "*I've managed to make contact with the director of the management company, he has agreed to consider capping*

the estate rent charge ,600 per year but not going over 6k for the next 25 years” I believe that the statement in my Provisional Decision is a fair summary of what is contained in the notes although the conversation was with Mr D’s broker rather than him personally.

Underwriters do not always come to the same conclusions based on similar facts. One may have a particular concern that another doesn’t have which appears to have been the case here. My role is to decide whether the underwriter who refused the application acted fairly. As I set out above the decision was based on what were relevant considerations and the underwriter decided that this property was unacceptable security for Santander and unfortunately for Mr D refused the application. But as I set out in my Provisional Decision in my view that was not unfair and I don’t uphold his complaint. My final decision

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 11 June 2024.

Gerard McManus
Ombudsman