

## **The complaint**

Mr J and Ms L have complained about poor service from Santander UK Plc during their application to port (transfer) their mortgage interest rate product onto a new mortgage on a new property.

They say there were delays by Santander which almost caused them to lose the house they were buying, and are unhappy that Santander used faxes to communicate with parties involved in the transaction. In addition, Mr J and Ms L are unhappy that Santander's errors resulted in them having to pay four sets of solicitors' fees.

To settle the complaint, Mr J and Ms L want Santander to compensate them for their financial losses, and for the distress and inconvenience caused.

## **What happened**

I don't 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, Santander has acknowledged it made an error, and has offered compensation, so I don't need to analyse the events in depth in order to decide whether Santander is at fault or not. All I need to determine is whether the compensation offered is sufficient, or if there is more Santander needs to do to put things right.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr J and Ms L 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.

Mr J and Ms L were moving house. They wanted to port (transfer) their existing Santander mortgage interest rate onto a new property, securing the interest rate on approximately £735,000 of new lending from Santander, with about £506,000 on an interest-only basis and the remainder on capital repayment. The balance of the purchase price, an additional £450,000 was coming from the sale of another property.

I will mention here that the application form completed by Mr J and Ms L's mortgage broker contains a number of inaccuracies. Santander was told that a firm I will call CW, which was on Santander's panel, would be acting for Mr J and Ms L on their purchase. In fact, Mr J and Ms L instructed a firm I will call P, which was not on Santander's panel to act for them. In addition, the application form stated that the property would be occupied wholly for residential purposes, whereas part of the property is in fact a holiday let business which Mr J and Ms L took over from the vendors.

On 11 April 2023 and 4 May 2023 Santander was told by CW that they were not instructed by Mr J and Ms L. The bank checked this with the broker. Santander said that if this was the case, additional legal fees would be incurred. However, on 11 April 2023 and 15 May 2023 the broker said that CW were acting for Mr J and Ms L. This was incorrect, as P was acting for Mr J and Ms L.

Santander has accepted that it confirmed on 16 June 2023 that it didn't require any further information, as a result of which contracts were exchanged, with completion fixed for a few days later on 22 June 2023. However, Santander actually needed additional information – the valuer needed to see the title plan, and confirmation there was no sub-sale was required from the solicitors acting for Mr J and Ms L.

Notwithstanding this, when it became apparent there were still outstanding enquiries, Santander was in contact with CW to see if completion could take place. CW confirmed again that it wasn't acting for Mr J and Ms L. The broker was contacted, who said that P was acting for Mr J and Ms L, and CW were acting for Santander. However, Santander said that CW couldn't act for it on the broker's instructions.

On 23 June 2023 the broker told Santander that CW would now be acting for Mr J and Ms L, and so could also act for Santander. However, CW told Santander that they would need to set up Mr J and Ms L as new clients and conduct due diligence before it could act for them. CW said that it wasn't happy to act for both the bank and Mr J and Ms L, given the timescale.

Because Mr J and Ms L weren't using a Santander panel solicitor on their purchase, and CW weren't on the bank's dual representation panel, the bank had to instruct its own solicitors. This meant that completion couldn't take place on the due date and resulted in Mr J and Ms L incurring additional costs, including having to cover some of the vendor's expenses. They also had to pay legal fees to CW, P, the vendor's solicitors and the new solicitors instructed by Santander, a firm I will call SF.

When SF took over the transaction for Santander, it noted that an annex which formed part of the property was used for commercial purposes as a holiday let, but there was no planning permission for this. The bank had to refer this back to underwriters, because the broker and previous solicitors *"had not brought [this] to our attention"*.

The broker was asked to confirm how the annex would be used and the broker said *"this is going to be used by the applicants and their family. It will not/never be rented out."* However, I understand this was incorrect, as Mr J and Ms L have set up a website for the rental of the annex as a holiday let, which confirms they have taken over the business from the previous owner of the property. In addition the holiday let is advertised on Airbnb. But based on the information provided by the broker, Santander was happy to proceed. Completion of the purchase and mortgage took place on 10 July 2023.

Mr J and Ms L complained about what had happened. They said that Santander sent a form by fax to an incorrect number, and that the bank incorrectly confirmed contracts could be exchanged. They were unhappy with Santander's sign-off process for the mortgage, and thought the bank should cover all the expenses they incurred, as well as compensate them for all the distress they'd been caused.

In its final response Santander acknowledged it shouldn't have confirmed contracts could be exchanged on 16 June 2023, and offered £150 compensation for this. However, the bank didn't accept it was responsible for the delayed completion.

Santander said it had acted in good faith based on the information provided by the broker about who was acting for Mr J and Ms L. The bank said that the broker would, or should, have been aware of the position regarding dual representation.

In relation to sending correspondence by fax rather than email, Santander explained that it didn't use email as this wasn't a secure medium. The bank said that solicitors are

responsible for keeping their records updated on the panel, but that if a number is entered manually, the system will default to the one the solicitors have entered in the record.

Dissatisfied with Santander's response, Mr J and Ms L referred their complaint to our service. An Investigator looked at what had happened and wrote two very detailed letters setting out her findings. The Investigator wasn't persuaded Santander was at fault in relation to the delayed completion, as this was as a result of the broker providing Santander with incorrect information about which solicitors were acting for Mr J and Ms L.

The Investigator thought Santander ought to have been aware there was an issue with the fax number recorded by the solicitors, and asked the bank to pay an additional £150 compensation for this – so £300 in total. Santander agreed to this.

Mr J and Ms L didn't accept the Investigator's findings and asked for an Ombudsman to review the complaint. They agree their broker was partly to blame, but said that Santander had *"taken"* their £120,000 deposit, which it later said it shouldn't have done. They reiterated that Santander should have done due diligence before confirming contracts could be exchanged.

In addition, Mr J and Ms L say that Santander were advised more than once by CW of the situation in relation to who was acting, and they think the bank is only telling *"half the story"*.

Mr J and Ms L also said they would be carrying out their own investigations *"and if/when more cases arise then the spotlight may come back to fall on the Ombudsman to see what was or wasn't done to prevent these problems recurring"*.

A response was also provided by the broker, who said: *"Had they not advised that everything was done and the client could exchange (this was completely wrong as a form was outstanding and there was also an outstanding issue regarding the title) we would not have had any issue as we could have either switched to Santander's dual rep solicitor or to [CW] and would not have exchanged until everything was correct."*

### **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 everything the parties have sent us – including the contemporaneous, timed, notes from Santander's system showing the contact between Santander, solicitors and broker. After giving careful consideration to all the evidence, I've reached the same conclusion as the Investigator – for broadly the same reasons.

First, in relation to the use of faxes, this is still standard throughout both the mortgage industry and the legal profession. Email is not considered to be a secure medium, and for this reason faxes are still widely used. I agree with the Investigator that Santander could, and should, have taken more care to ensure that its response to CW's enquiry sent in early May 2023 had been received. However, equally, it can be argued that CW should have followed this up, as I would expect a solicitor to have a list of outstanding points and to check them off when replies were provided.

There was, I accept, a delay in replying to CW's enquiries due to the fax issue, and I agree with the Investigator that compensation of £300 is appropriate for this. But I'm not persuaded additional compensation is due, for the following reasons.

Santander has acknowledged that it shouldn't have confirmed that it needed nothing further on 16 June 2023. This led to exchange of contracts, when there were outstanding issues – the need for the valuer to see the title plan, and for the confirmation from the solicitors that there was no sub-sale. But I'm not persuaded that these issues resulted in completion not taking place on the due date. The reason for the late completion was because Santander had been led to believe that CW was acting for Mr J and Ms L, when it was not, and it was this that had the knock-on effect of causing the delayed completion.

This mortgage application was made through Mr J and Ms L's own mortgage broker, so Mr J and Ms L had no direct contact with Santander. The bank was provided with information from the broker which I am satisfied it was entitled to rely on as being accurate.

Where a firm of solicitors is on a lender's panel, they can act for both purchase and lender. But if the solicitors are not on the lender's panel, the lender is entitled to instruct a separate firm to act for it. This may or may not be a 'panel' firm that can represent both purchaser and lender, but could be a different firm altogether. This is called dual representation.

In this case, CW told Santander twice that it hadn't been instructed by Mr J and Ms L to act for them on their purchase, and that P was acting for them. Twice Santander followed this up with the broker, and was told both times by the broker that CW was acting for Mr J and Ms L on the purchase.

It was only when completion was imminent that, despite having been told by the broker that CW was representing Mr J and Ms L, Santander learned this was not, in fact, the case. But for this, I'm satisfied that need for dual representation would have come to light much sooner. The broker said, on the day of completion, that P was acting for Mr J and Ms L, and CW were acting for Santander. Here I note that Santander's intermediaries portal states that if a panel solicitor wasn't acting for the purchasers, Santander would instruct its own solicitors to act for it. The broker can't appoint these solicitors, and so he had no authority to instruct CW to act for Santander.

As it was, Santander was only aware of the situation at the eleventh hour. CW declined to represent both Mr J and Ms L and Santander, given the short timescale. After Santander instructed SF, it transpired that there were other enquiries which needed to be raised in order that SF could be satisfied that the transaction was in order and the property was suitable security for the mortgage. I'm satisfied it was entirely reasonable (indeed expected) for SF to draw to Santander's attention new and/or outstanding issues, and for these to be answered before completion could take place.

One of these was about the mixed use of the property, with part of it being used as a holiday let. In response to Santander's enquiry about this, the broker confirmed to Santander that the annex at the property would never be rented out. Whether a property is residential, commercial or a mix of both has potential implications in relation to Santander's risk appetite for lending, as well as potential regulatory issues. In addition, Santander does not, as far as I know, allow mortgaged properties to be used as Airbnb rentals. After Santander was told that the property was to be used for wholly residential purposes and that the annex would never be rented out, Santander was satisfied that the residential mortgage criteria had been met. If Mr J and Ms L have any queries about the information provided by their broker to Santander, that's something they'll need to raise with him.

In the circumstances, whilst I fully acknowledge that this was an extremely stressful time for Mr J and Ms L, I'm not persuaded Santander can be held responsible for the late completion. I think that, even if the outstanding enquiries Santander raised with CW in May 2023 had been answered before exchange of contracts, the problems that arose over who was acting for whom would still have occurred, given that Santander had twice been told by the broker

that CW was acting for Mr J and Ms L, after CW had said it was not – and when in fact P was acting for Mr J and Ms L. I can't therefore hold Santander responsible for the expenses incurred due to late completion, or the legal costs that arose due to SF having to be instructed at such a late stage.

I will also mention that Mr J and Ms L are mistaken that Santander “took” the £120,000 deposit. Santander was never in possession of the deposit, which is paid to the vendor's solicitors on exchange of contracts.

### **Putting things right**

I'm satisfied that a total payment of £300 compensation is fair and reasonable for Santander not checking that its faxes had gone through to CW. I think this is appropriate, given that CW ought to have checked it had responses to all outstanding points prior to exchange of contracts.

Because I'm satisfied Santander isn't responsible for the late completion – for all the reasons I've given above – I'm not persuaded Santander should compensate Mr J and Ms L for the additional expenses they incurred.

### **My final decision**

My decision is that Santander UK Plc must pay Mr J and Ms L total compensation of £300. I make no other order or award.

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 Mr J and Ms L to accept or reject my decision before 17 March 2025.

Jan O'Leary  
**Ombudsman**