

## **The complaint**

This complaint has been brought to us on behalf of the estate of Mr M (who I'll refer to as Mr M1) by his executors. One of the executors, who I'll refer to as Mr M2, has dealt with the complaint.

Mr M2 says Santander is responsible for the loss of the title deeds to Mr M1's property. He says Santander should pay compensation for the costs and losses that resulted from this.

## **What happened**

Mr M1 had a mortgage with Santander which he repaid some years ago. He chose to leave his property title deeds with Santander, using its deedsafe scheme. Mr M1's property title was unregistered, which meant title to his property was evidenced by the deeds.

Santander wrote to Mr M1 in early 2023 to say it was closing the deedsafe scheme. It said Mr M1 could expect to receive the deeds within six weeks. Santander sent the deeds to Mr M1 on 15 February 2023 by recorded delivery.

Mr M1 died in June 2023. His executors marketed the property for sale from late 2023. They received an offer in April 2024. The sale couldn't progress as the property title was unregistered and the title deeds were missing. Solicitors advising the executors wrote to Santander in late April 2024 asking for the deeds.

Santander instructed solicitors to reconstitute the title and arrange for the title to be registered, at its own cost. The property title was registered in the names of the executors in mid-August 2024. Santander also paid for indemnity insurance related to the title.

Mr M2 raised a complaint with Santander in August 2024. He asked for compensation for costs and losses of about £12,000. This included legal costs, the costs of insuring and maintaining the property, Mr M2's professional time and a reduction in the purchase price agreed with the buyer. Mr M2 says Santander wouldn't have arranged the title registration at its own cost if it wasn't culpable.

Santander was unable to track the delivery of the deeds. It said this information was no longer available from the delivery service as more than a year had passed since it sent the deeds to Mr M1. It said it had sent the deeds by recorded delivery and declined to cover the costs requested by Mr M2.

Our investigator said it was reasonable for Santander to send the deeds by recorded delivery and it wasn't responsible for the third-party delivery service. Our investigator said it wasn't fair to require Santander to pay the costs and losses requested by Mr M2.

Mr M2 didn't agree. In summary, he said Santander was responsible for the safe delivery of the deeds.

## **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.

Mr M2 said first Santander and then our investigator failed to provide an adequate explanation in response to the evidence and facts he'd provided. I should explain that I'm not required to respond to each point raised by the parties. What I have to do is explain how I reach my decision as to what's fair and reasonable in the circumstances. I should also say that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – that is, what I think most likely happened based on the available evidence.

Title deeds for unregistered property are important documents, so Santander had to take reasonable steps to ensure their safe delivery.

I don't agree that, by choosing a delivery service, Santander became responsible for the actions of the delivery service. Santander's responsibility was to take reasonable steps to ensure the safe delivery of the deeds. I think it did this by using a recorded delivery service and writing to Mr M1 in advance of this, to tell him to expect the deeds within six weeks.

Mr M2 says there's no evidence Santander posted the deeds to Mr M1. Santander has a record that it sent the deeds and the tracking reference. I think that's sufficient evidence for me fairly to find that Santander sent the deeds to Mr M1 by recorded delivery.

Mr M2 provided a copy of a letter (undated) which says "I refer to our previous correspondence and have the pleasure of returning your title deeds to you. The deeds have been formally sealed thus removing any charge we held over the property. Please keep these documents safe as they will be required should you wish to sell, transfer or mortgage your property in future."

I think this letter would have been sent with the title deeds. If Mr M1 received the letter, it seems likely he also received the deeds.

We don't know what became of the deeds. I don't need to make a finding about that. What I have to decide is whether Santander made an error. Even if the deeds were not delivered to Mr M1, I don't think Santander would reasonably have known this. Santander sent the deeds to Mr M1 by recorded delivery. If it didn't hear anything from the delivery service or Mr M1, I think it was entitled to assume the deeds had been delivered.

Solicitors acting in relation to Mr M1's estate contacted Santander in July 2023 to inform it of Mr M1's death and to ask for the deeds. Santander replied to say the account was closed.

Santander wasn't contacted again by the executors or their solicitors until May 2024. It couldn't then track the delivery because of the amount of time that had passed since it sent the deeds to Mr M1. I understand Mr M2's frustration that Santander can't provide evidence that the deeds were delivered. But that's not evidence that they were not delivered. That's simply due to the information no longer being available from the delivery service.

I don't think Santander was responsible for any delays with the property sale or the related costs. This is for the following reasons.

As I've said, I don't think, based on the available evidence, I can fairly find that Santander was responsible for the deeds going missing. I don't think it made an error when it sent the deeds to Mr M1 by recorded delivery.

I don't agree with Mr M2 that Santander admitted culpability by offering to arrange and pay for the title to be reconstituted and registered. This was a goodwill gesture intended to assist

the executors.

Mr M2 says Santander took too long to complete the reconstitution and registration of the title and the property sale was delayed in the meantime. There was no requirement for the executors to accept Santander's offer. If the executors were in a position to have the title reconstituted and registered more quickly, they were free to arrange this.

Mr M2 says the executors weren't aware that the land was unregistered and the deeds missing until April 2024, when they sold the property. That's not consistent with the evidence. Mr M2 provided a copy of a letter sent to Mr M1 in January 2023. This referred to the "title deeds for your unregistered property". The letter explained what's meant by an unregistered property.

This letter sent in January 2023 also said Mr M1 could expect to receive the deeds within six weeks. Mr M2 provided a copy of an "Important Notice". This is undated. This says "I refer to our previous correspondence and have the pleasure of returning your title deeds to you...". Solicitors acting in relation to Mr M1's estate contacted Santander in July 2023 asking for the deeds.

I think the executors were reasonably aware in mid-2023 that the property title was unregistered and that they were unable to locate the deeds. If they wanted to avoid any delay with the sale of the property, they could have started the process of reconstituting and registering the title before receiving an offer for the property in April 2024.

For completeness, I should say that the complainant here is the estate of Mr M1. I can't usually award compensation to, or for the costs and losses of, a third party such as Mr M2. While I appreciate that Mr M2 spent time dealing with this matter, that's not something I can require Santander to pay him compensation for.

Mr M2 says the estate of Mr M1 incurred costs due to the sale of the property being delayed and dealing with issues related to the property title. As I've said, I don't think Santander was responsible for this. It follows that I don't think it's fair and reasonable to require Santander to pay compensation to the estate of Mr M1.

### **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 the estate of Mr M to accept or reject my decision before 7 May 2025.

Ruth Stevenson  
**Ombudsman**