

The complaint

This complaint has been brought to us on behalf of the estate of Mr D by his executors. One of the executors, who I'll refer to as Mr H, has dealt with the complaint.

Mr H complains about Santander's service and says it obstructed the sale of the properties over which it has mortgages. He asks that we limit any claim that can be made on the estate of Mr D for a shortfall debt.

What happened

Mr D had two mortgages with Santander, secured on two leasehold flats in the same building. Mr H says the freehold was also part of Mr D's estate. Mr D lived with a friend in one property (flat 1) and the other property (flat 2) was let out. Mr D died in 2020.

Mr H says they hoped to sell flat 2 and use the funds to repay the mortgage on flat 2 and reduce the mortgage on flat 1. The eviction of the tenant from flat 2 was delayed due to the Covid 19 pandemic. The tenant left flat 2 in May 2022 and the executors marketed it for sale. The property didn't sell, and the prospect of a sale diminished when interest rates increased in late 2022. The executors decided to sell both flats together with the freehold. Flat 1 became vacant in April 2023.

The executors contacted Santander in mid-2023 as they expected to have to sell the properties for less than the outstanding mortgage balances. Mr H says Santander didn't engage constructively and referred the matter to internal departments that they couldn't talk to. The executors deposited the keys to the properties at a Santander branch in October 2023, with a letter saying they were surrendering the properties.

Since then, Mr H says Santander failed to take action to sell the flats. He says it sent letters about taking possession, despite them having surrendered the flats.

Mr H complains that Santander was obstructive in the way it dealt with their efforts to agree a sale of the flats; didn't take notice of their request to communicate only with their solicitors; avoided using emails in order to inhibit prompt communication, and used post which typically arrived over a week after it was dated; was slow in dealing with letters, phone calls or any other communications; sent letters in October 2023 and February 2024 and letters and emails to their solicitors after that, which were inherently stupid and contained inaccuracies and false allegations that it tried to contact him; failed to take action to sell the properties after they were surrendered and will ultimately sell the properties for less than the offer the executors received in 2023.

Santander said it had written to the estate's solicitors about the steps needed for it to consider agreeing to a shortfall sale. It said it wrote to the executors when it wrote to the solicitors and didn't get a response. Santander said it had to send letters to the executors regarding the legal process, and it wasn't responsible for postal delays.

Our investigator said Santander sent information to the estate's solicitor about its criteria for a shortfall sale and it was for Santander to make a commercial decision whether to agree to

a shortfall sale. Our investigator said while Santander's service could have been better and quicker, this wouldn't have made a difference as the shortfall sales proposed by the executors didn't meet its criteria.

Our investigator said that Santander didn't take legal possession of the flats until mid-2024, as there were squatters in the property prior to this. Santander had marketed the flats for sale without success, before offering them at auction.

Overall, our investigator didn't think that Santander had made errors that caused a financial loss to the estate of Mr D.

Mr H didn't agree. He said it wasn't right that Santander had relied on its own self-serving criteria for shortfall sales and taking possession. He said the decision whether Santander's poor service caused a financial loss should be on the balance of probabilities. Mr H said the estate had paid additional interest and legal costs due to Santander's delays.

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.

This complaint has been brought on behalf of the estate of Mr D – which is the eligible complainant under our rules. I can only consider what effect Santander's errors had on Mr D's estate. I can't require Santander to pay compensation to a third party or for a third party's upset, frustration or inconvenience. That includes the executors.

This has been a difficult matter for Mr D's executors to deal with over several years. But the executors are not themselves eligible complainants. So while I appreciate Mr H has found dealing with Santander frustrating, this isn't something I can fairly look into and require Santander to put right. I can however require Santander to pay compensation to the estate if I think its poor service caused the estate financial loss.

I should also say that where the evidence is incomplete or inconclusive, I make a decision on the balance of probabilities. That is, what I think is most likely in light of the available evidence.

The proposed shortfall sale in 2023

From what Mr H has said, the executors evicted the tenant from flat 2 and marketed it for sale from mid-2022. This was unsuccessful. There's no evidence to suggest that Santander was responsible for the delays in evicting the tenant or for the property failing to sell.

The executors gained vacant possession of flat 1 in April 2023. At this point, they knew it was unlikely the sales of flat 1 and flat 2, even with the freehold, would raise enough to repay the mortgages. Mr H contacted Santander about the possible options, such as a shortfall sale or voluntary repossession.

In May 2023 the estate's solicitors wrote to Santander saying the executors had been advised that the best option was to sell the freehold with the flats (the leases would be surrendered to the freeholder) at auction. As the reserve price was less than the mortgage debt, the executors asked Santander to agree to release its charges on receipt of the net sales proceeds.

Santander didn't agree. It said its policy is not to agree to a shortfall sale at auction unless there's a plan in place to pay the shortfall. It accepts there was a delay in it writing to the

estate's solicitors saying this. However, it says it had sent the solicitors information about its criteria for a shortfall sale in May 2023, which gave them this information.

Santander sent a copy of the information it provided to the estate's solicitors in May 2023 setting out its conditions for a shortfall sale. This includes conditions that the borrower (in this case the estate) must not have other assets; they must have exhausted other options; the property must have been marketed on the open market for a minimum of four weeks; no private sales would be considered; and it required an independent valuation and the agreed sales price needed to be in line with this.

The executors withdrew the properties from the auction. They received an offer for the property. This was a private offer from a potential bidder from the auction. Mr H asked Santander to agree to accept the net sale proceeds and write off the shortfall. Mr H says Santander failed to engage to allow the sale to proceed. The estate's solicitor had to chase it for a response.

Mr H says he explained the situation to Santander. I appreciate his frustration that Santander didn't agree to the proposal, which he says was the best outcome in the circumstances.

Santander says the proposed shortfall sale didn't meet its criteria. Mr H says Santander's criteria are self-serving. But Santander, like any other lender, is entitled to make a commercial decision about its own criteria and when it will agree to a shortfall sale. I can't fairly find it made an error when it didn't agree to this sale.

I'd also say here that Santander is entitled as a starting point to expect the outstanding mortgage balances to be paid in full. I think it's reasonable for Santander to want to see evidence (such as the written offer, what efforts had been made to sell the property and whether there's other assets in the estate) before agreeing to a shortfall sale.

I understand Mr H's frustration that Santander didn't respond to the proposal more promptly. If I thought this was the only reason the sale didn't complete I might view the matter differently. But that's not the case. The proposed shortfall sale didn't meet Santander's criteria. Santander hasn't said it would have agreed to the shortfall sale – and to write off the shortfall – outside its policy. It's possible the sale might not have completed even if Santander had agreed.

I don't think it's fair and reasonable to require Santander to pay compensation (or reduce any shortfall owed) on the basis of any difference between the offer received by the executors in 2023 and the amount that the properties actually sell for.

The surrender of the properties

The keys to the properties were delivered to a Santander branch in October 2023 with a letter saying the executors were surrendering possession. That doesn't in itself mean Santander was in legal possession of the flats from that time.

Santander instructed valuations of the flats in late 2023. In January 2024 it was told there were squatters in the flats. Santander says it only takes possession when it has vacant possession. It took possession of the flats after the squatters were removed in mid-2024. While Mr H says Santander's policy about when it takes possession is self-serving, it is entitled to make a commercial decision about its policies. Even if Santander had taken legal possession of the flats sooner, it seems unlikely it would have been able to market and sell them while they were occupied by squatters.

Mr H says Santander was responsible for the property and related costs such as insurance

and council tax from October 2023. He wrote to Santander saying it was responsible for putting insurance in place. I think the estate remained responsible for buildings insurance and property maintenance costs, and of course mortgage payments. This remained the case even if Santander paid costs or took steps to protect its security (the flats).

After taking possession, Santander has a duty to achieve the best possible price while taking into account other matters, such as market conditions and the debt increasing as interest accrues. After taking possession, Santander arranged for the flats to be marketed for sale. This wasn't successful and it arranged for the properties to be listed for sale by auction. It repeated this, at reduced reserves. I think Santander took reasonable steps to sell the properties. I can't fairly find based on the available evidence that it was due to an error by Santander that the flats failed to sell sooner or for a higher price.

Did delays and poor service cause financial loss to the estate of Mr D?

Mr H says delays by Santander caused loss to the estate as additional interest and charges were added to the mortgage balances. He says Santander used post instead of email. He wasn't able to speak directly to decision makers within Santander. Mr H says Santander sent letters that were incorrect and wrote to the executors or solicitors seemingly at random. There were delays in it responding to proposals for a shortfall sale.

As I said, the executors are not themselves eligible complainants, so I can't require Santander to pay compensation to them for their inconvenience or frustration. I think it's unlikely that the estate was caused loss by (for instance) Santander writing to the executors rather than the solicitors, using post rather than email or allowing Mr H to speak directly to decision makers or when it sent letters that Mr H consider incorrect or unnecessary. While there were delays at times in Santander responding to the executors and their solicitors, I don't think this resulted in a loss to the estate such as to make it fair and reasonable to require it to pay compensation or write off all or part of the debt owed.

It seems to me that the crux of the problem here was a lack of interest in the properties from potential buyers. The executors had control of the marketing of the properties for three years, without receiving an offer high enough to repay the mortgages. Presumably there weren't funds in the estate to cover the potential shortfall if the executors went ahead with a sale by auction or with the offer received in mid-2023. So they couldn't sell the properties without Santander agreeing to a shortfall sale.

I do understand why the executors proposed the shortfall sales in mid-2023 – they had limited options available to them. The executors had to wait for a response from Santander and that must have been frustrating. But their proposals didn't meet Santander's criteria. Given that Santander had sent its conditions for a shortfall sale to the estate's solicitors, the executors knew when they made the proposals there was a real risk it wouldn't agree. So I can't fairly say that Santander was solely responsible for the time spent (about five months) while the shortfall sales were proposed and ultimately declined.

For the reasons I've given above, I don't think the delays in the properties being sold after the executors handed the keys to Santander were due to errors by Santander.

Having carefully considered what the executors have said, I don't think it's fair and reasonable in the circumstances to require Santander to pay compensation to the estate of Mr D, reduce the debt owed by the estate of Mr D or write off any shortfall after the flats are sold.

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 D to accept or reject my decision before 23 July 2025.

Ruth Stevenson
Ombudsman