

complaint

Mr B complains that, when he ended his mortgage with Santander UK Plc, he was charged a mortgage administration fee by Santander and a further fee by his solicitor. He says this is discriminatory, as it breaches the bank's duty to treat him fairly.

background

Mr B had a mortgage with Santander. At the end of the loan, he was required by the terms and conditions to pay a fee described as a "mortgage administration fee". This fee was set out in his mortgage offer, and was described in the offer and in the terms and conditions. As his mortgage was in Scotland and therefore subject to Scottish law, he was also required to instruct a solicitor to discharge the security over his property.

Mr B complains that this is double-charging that would not occur if he was living in England. Mr B says that Santander didn't warn him that he would be required to pay a solicitor. He points to a previous decision by another ombudsman upholding a complaint against a different lender that broadly supported his complaint.

Santander says that its fee is clearly set out in the mortgage terms and that it is fair for it to charge the fee.

Our adjudicator didn't recommend upholding the complaint; Mr B didn't agree, and So his complaint has come to me to review and determine.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

A mortgage loan is a loan secured on property. Money is lent in return for a promise it will be paid back, with interest. To allow the lender to enforce recovery of the debt if it needs to, the loan is registered against the property's title, allowing the lender to possess and ultimately sell it to recover the money it has lent.

When the debt has been repaid, that registration is removed – meaning that the lender no longer has any hold over the property and the borrower can sell or re-borrow as he or she wishes.

In England and Wales, a charge is registered at the Land Registry in favour of the lender. At the end of the mortgage term, its removal is a relatively straightforward administrative process generally carried out by the lender. In Scotland, a standard security is registered at the Registers of Scotland. Scottish law requires that its removal at the end of the term be done by a solicitor executing a deed signed by the borrower and the lender.

Santander charges a fee, which it calls a mortgage administration fee, at the end of all mortgages. It charges this fee regardless of where a borrower is located. In addition, in Scotland, the borrower must instruct a solicitor to draft and execute the deed – and generally pay a fee for doing so. The essence of this complaint is that Mr B considers it unfair that he should have had to pay two charges when his mortgage came to an end.

He says that he was not told that he would have to do so. I have considered the terms of the mortgage Mr B took out. Section 8 of his mortgage offer says that *“a Mortgage Account Fee for the provision and general administration of your mortgage. This fee can be paid on completion or deferred until the end of your mortgage. If you defer the payment, this fee will not increase”*.

It does not say that the fee is for expenses incurred specifically in closing down the mortgage (although Santander has muddied the water slightly by wrongly describing the fee in its final response as a *“Mortgage Exit Fee”*).

Nor does Section 8 say that the fee is for expenses incurred in removing either the Land Registry charge or the Registers of Scotland standard security (as appropriate). I am not therefore persuaded that the fee represents double-charging for work done by the solicitor in Scotland. In Scottish cases, the solicitor charges for drawing up and executing the deed discharging the standard security. Santander says that, under the terms of this mortgage, it charges for its administrative costs in setting up, running and ending the mortgage. I find that the bank's fee and the solicitor's costs are two separate things.

Mr B also says that he was not told that he would have to incur the solicitor's costs. He points to section 8 of the mortgage offer, which says *“You may have to pay other costs and expenses associated with your mortgage. These costs will always be made known to you in advance”*. However, I am not persuaded that this creates an obligation on Santander to inform Mr B that he will need to pay a solicitor to have the standard security discharged.

The requirement that this be done by deed via a solicitor is one imposed by Scottish law, not by Santander. The warning in section 8 relates, it seems to me, to third party costs incurred via Santander or required by Mr B or Santander under the mortgage terms and conditions.

The solicitor's fees for discharging the standard security are not covered by the mortgage terms and conditions as they are not required as part of the contract between Mr B and Santander, or incurred by Santander on his behalf. If the loan is repaid, the contract between Mr B and Santander comes to an end. It is in Mr B's interest to have the standard security discharged at the same time as without doing so he cannot sell the property or take out another mortgage, but he does not have to do so to bring the mortgage contract to an end. In all the circumstances, I am unable to conclude that Santander has discriminated against Mr B or treated him unfairly.

However, while Santander may not be obliged to warn holders of Scottish mortgages that they will incur additional legal fees at the end of their mortgages – and so I don't uphold this complaint – it would in my view be helpful if it did so.

Finally, Mr B points to a previous decision, issued by another ombudsman in respect of a different lender. Ombudsman decisions are based on the facts and circumstances of individual cases and do not set precedents for later cases. I have considered the decision referred to by Mr B; however I hope that he will understand why, in light of the particular facts of this case and for the reasons I have given, I have found the fee he was charged by Santander to be fair.

my final decision

For the reasons I have given, my final decision is that I do not uphold this complaint.

Jeff Parrington
ombudsman