

complaint

Mr H complains that Santander UK Plc lost his mortgage deed and failed to endorse it with a vacating receipt following repayment of the secured lending. As a result he's incurred considerable costs in obtaining a clear title. To resolve his complaint he wants Santander to compensate him for the loss of the deed and pay his legal costs.

background

Mr H is represented in his complaint by his solicitors, whom I will call "KG". On 15 December 2016 KG wrote to Santander:

"We act for Mr H and have been provided with his documents of title. Amongst the title deeds, we have found a mortgage dated 4 November 1975 to Abbey National Building Society. We are instructed that this mortgage has been repaid. We enclose the mortgage and would be obliged if you would have the vacating receipt sealed as appropriate and return it to us so that it can be registered in the Registry of Deeds."

Having received no reply (and no vacated mortgage) KG sent a reminder to Santander on 15 February 2017. Santander acknowledged this with a proforma letter saying the mortgage account number quoted was incorrect. From the documents provided, it seems KG had taken this from a 1976 Abbey National statement.

KG received the proforma letter on 20 February 2017 and replied on 22 February:

"With the letter of 15 December 2016, we actually provided you with the original mortgage. We are astonished that having received the original mortgage you are unable to locate the mortgage account number. In case it is of assistance, we enclose a photocopy of a mortgage account particulars card. We trust that this will now assist you in having the mortgage vacated."

Santander replied on 1 March 2017:

"Your letter has reached our department due to being an archive case, unfortunately the mortgage deed was not attached. If you could please send a replacement mortgage deed of release..."

KG replied on 7 March 2017:

"We sent to you on 15 December 2016 the original mortgage which had endorsed on it the usual vacating receipt which is required to release the mortgage and be registered in the Registry of Deeds....We do not understand you referring to this as being an archive case. The mortgage was sent to you as recently as two-and-a-half months ago. Where is the original mortgage? It should be easily found amongst your papers and when it is, please seal the vacating receipt."

Santander didn't reply and KG had to chase on 5 April. On 19 April Santander wrote:

"Please find enclosed form of receipt for the above customer sealed and signed."

Evidently this was a receipt designed to be attached to the mortgage, because KG replied on 26 April:

"We return a copy of the form of receipt. It is ineffective unless you provide the original mortgage which was sent to you. We have highlighted the appropriate wording, i.e. "within written deed". That form of receipt needs to be attached to the original deed so that its release can be registered in the Registry of Deeds. Please let us have the original deed without further delay."

Following two phone conversations KG wrote on 10 May:

"...the proposal from you that we should prepare a deed of release in respect of the mortgage and the costs of that be borne by our clients is not acceptable. We understand that you are suggesting that you had never received the mortgage in the first place. We enclose for your information our letter of 15 December 2016. This is the first letter that we sent to you. You acknowledged this by an undated letter which we received on 20 February 2017. The only issue in that letter was that the account number appeared to be incorrect. We then supplied you with the details of the account with our letter of 22 February 2017. In the circumstances, we would be obliged if you will confirm that you will pay our reasonable costs of completing a release...."

Santander replied on 16 May offering to seal a release in the following terms:

"SANTANDER UK PLC whose registered office is situate at 2 Triton Square, Regent's Place, London NW1 3AN (the Company) acknowledges that it received the balance of the principal money together with all interest thereon and costs outstanding to the Company on the security of the legal charge between (customer's name and address)

*The Deed made between Santander UK Plc and (customer's name)
This receipt shall operate as a discharge of the said legal charge.*

*IN WITNESS where of the Company has caused its Common Seal to be hereunto
affixed this (today's date)*

*The Common Seal of
Santander UK Plc
Was hereunto affixed by Order
Of the Board of Directors
In the presence of:"*

KG responded on 17 May:

"The standard release which you have included in your email is not appropriate as this is not a Land Registry case. It is a Registry of Deeds case. The position is that our client is entitled to his title deeds. Those title deeds include the original mortgage duly released....We will require a re-conveyance of the mortgage and a statutory declaration setting out the circumstances of the loss of the original document. These are essential parts of our client's title."

Santander didn't reply and KG had to chase on 9 June and again on 19 September. Santander's complaints resolution team wrote to KG on 5 October:

"...I would like to apologise for losing the mortgage deed that you sent to us for sealing. I am also sorry that you did not receive a response to the email you sent to us on 17 May 2017. I

can confirm that our deeds department can provide you with a deed of release which confirms that all monies have been repaid. They can also add a clause to this which states that the original deed is missing, and will be signed and sealed should it be found. Our deeds department advised you of this option in our message dated 16 May 2017, as they know that this has been accepted in other cases by the Irish Land Registry for unregistered cases where the mortgage deed has gone missing. If you would like us to provide you with this deed of release, then please write or send an email to us..."

KG replied on 11 October that the deed of release proposed by Santander wasn't suitable for an unregistered title and that a reconveyance and statutory declaration were required. In addition Mr H would expect Santander to pay his expenses caused by its delay. Santander didn't reply and KG had to chase on 30 October. On 7 November Santander replied that the proposed deed of release confirmed that there was no money owing on the mortgage, whether the property was registered or unregistered. It might reimburse Mr H's expenses if it considered them reasonable.

On 15 November KG sent an alternative deed of release which Santander executed and returned on 6 December. On 31 January 2018 KG wrote to Santander:

"Please find enclosed our firm's invoice in respect of professional services rendered to our client in respect of this matter. We are instructed by our client to request settlement of the same from you directly given that it was your negligence in losing the original mortgage deed in the first instance that required this work to be done."

On the same day KG on behalf of Mr H initiated a complaint to this service. They said:

"It has taken Santander almost one year to provide us with a document that is suitable for registration in respect of our client's vacated charge. They also lost the original mortgage deed. We have been astonished at their conduct throughout this process which has been unacceptable and falls short of the standard expected of such a financial organisation.

Our client has incurred considerable costs in having this matter attended to following Santander's negligence in losing the original mortgage deed and their inability to provide documentation that could be registered at the Registry of Deeds....

We do not consider it to be unreasonable that Santander should pay our client's costs in connection with this matter....Further, our client should be compensated by Santander for the way in which they have failed to deal with this matter in a timely fashion and for the stress caused to our client during the year long process."

Santander said that in the absence of an acknowledgement, or registered post evidence, of the letter of 15 December 2016, it should not be concluded that Santander had received the mortgage and then lost it. But there were service issues because the deed of release it had put forward wasn't appropriate for an unregistered title. It offered a payment of £250 to apologise for the service issues.

Our adjudicator said Santander had said it had no record of receiving the mortgage deed sent on 15 December 2016. It said the apology it had made on 5 October 2017 was a courteous benefit of the doubt statement to resolve things. Without evidence to show Santander received the mortgage deed, the adjudicator couldn't safely say Santander had the document to lose. The adjudicator thought Santander's offer of £250 for the service issues in how it tried to rectify the matter was reasonable.

Mr H, through KG, didn't agree. They said:

"On 15th December 2016, we sent to Santander the original mortgage. If a document referred to in a letter as an enclosure had not been received, it was incumbent upon Santander to draw this immediately to our attention. Santander did absolutely nothing and as a consequence we sent a reminder on 15th February 2017. No explanation has been given by Santander for the delay between 15th December 2016 and their response received on 20th February 2017. Again, this is unacceptable and evidence of nothing but gross inefficiency.

Clearly, our two letters generated the undated letter which we received from Santander on 20th February 2017.

It is noteworthy that the only reason given for Santander being unable to deal with our request to be provided with a vacated mortgage is Santander's inability to locate the mortgage account number. Specifically, Santander does not say that it was not able to deal with our request because the original mortgage had not been sent. No such objection was raised by Santander in the letter received on 20th February 2017. The innuendo being made by Santander and, indeed, apparently adopted by you is that we omitted to send the mortgage. That is not correct. The only evidence that you have of the mortgage is our letter of 15th December 2016. This letter was not put in issue until the letter dated 1st March 2017 from Santander.

As a matter of practice, if a document of title is missing – as the mortgage document was – then that should have caused alarm bells to ring in the mind of any competent lender. Santander has given no reason whatsoever for failing to do this for a period of almost four months.

On 19th April 2017, Santander sent a form of release. That release was wrong on two counts. The first is the important one, namely that to be effective in the Registry of Deeds in Belfast, the release (otherwise known as a vacate) has to be endorsed on the original mortgage. It was not. The receipt has printed on it "...all monies secured on the within written deed." Even a casual reader would have seen that this was wrong.

The second error is that it refers to a mortgage dated 4th December 1975. That is not the date of the mortgage.

You will be aware of the lengthy correspondence which required us, at the end of the day, to have to draft a release of the mortgage as a standalone document. This involved us in considerable work and correspondence and the figure of £500.00 plus VAT which we presented to Santander is fair and reasonable in the circumstances.

I took a different view of the complaint to the adjudicator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

my provisional decision

In my provisional decision, I said:

"Mr H makes several points about the mortgage which KG sent on 15 December 2016:

- if a document referred to in a letter as an enclosure had not been received, it was incumbent upon Santander to draw this immediately to our attention;
- no explanation has been given by Santander for the delay between 15th December 2016 and their response received on 20th February 2017;
- Santander does not say that it was not able to deal with our request because the original mortgage had not been sent. No such objection was raised by Santander in the letter received on 20th February 2017;
- if a document of title is missing then that should have caused alarm bells to ring in the mind of any competent lender.

These are good points, but they all depend upon the proposition that the letter of 15 December 2016 was received by Santander. I hasten to add that I don't doubt KG sent this letter. But the proforma letter received on 20th February 2017 doesn't establish that it was received. That letter could equally have been generated in response to KG's letter of 15 February 2017.

KG point out, with some force, that Santander's letter of 5 October 2017 contains a clear acknowledgement that it lost the mortgage deed. Santander says the apology was a courtesy and gave the benefit of the doubt without evidence. And I note that Santander had already said in its letter of 1 March 2017, and evidently in the phone calls prior to 10 May, that it hadn't received the mortgage deed.

"Benefit of the doubt" apologies aren't unusual, though Santander may now regret not having made it clear in this case that that was what it was. Be that as it may, I don't consider it's been proved on the balance of probabilities that Santander did receive the letter of 15 December 2016 and the deed. It had denied this before 5 October, and I consider non-receipt is the most probable explanation for Santander's failure to reply to the 15 December letter. There was otherwise no reason for it not to simply execute the vacating receipt on the mortgage. Therefore I don't find, on the balance of probabilities, that the loss of the mortgage deed was due to any fault by Santander.

Santander has offered to pay compensation of £250 for putting forward a deed of release which wasn't appropriate for an unregistered title. I wouldn't have ordered it to do that because on the basis of my finding that it wasn't to blame for losing the mortgage, Santander wasn't obliged to bear the cost of preparing a standalone deed of release anyway.

The mortgage with the pre-printed release having gone astray, somebody had to prepare a standalone deed of release. But Santander wasn't at fault so there's no reason why it should bear the expense of that. The expense falls on Mr H because it's his misfortune that the mortgage went astray.

It also seems to me that costs would have been saved if the alternative deed of release which Santander executed on 6 December 2017 had instead been drafted and put forward on 10 May 2017 as Santander had suggested on the phone.

However as the background above shows, there were a great many delays by Santander in dealing with KG's correspondence, which I consider probably prolonged the process and

increased the costs by an equivalent amount. Therefore I consider the offer to pay £250 to be appropriate, albeit for a different reason.”

the responses to my provisional decision

Santander acknowledged my provisional decision but made no further comment. Mr H responded through KG.

They said my provisional decision was predicated on the finding that, on the balance of probabilities, the loss of the mortgage was not due to the fault of Santander. Such a finding would be perverse and would fly in the face of the evidence. KG had never wavered in the stance that the mortgage was sent to and received by Santander, and Santander couldn't resile from its letter of 5 October 2017, which wasn't qualified in any way.

KG said there were two telephone conversations. On 8 May 2017 Santander telephoned to confirm receipt of KG's letter of 26 April 2017. On 9 May 2017, it telephoned to say that it could not find the original mortgage. It did not say that it had been lost in the post nor that Santander did not receive it.

KG said the costs incurred were down to Santander having lost the original mortgage and refusing for an unacceptable period of time to put things right, leaving KG to provide the correct form of release which should have been provided by Santander.

my findings

I remain of the view that, on the balance of probabilities, the loss of the mortgage was not due to the fault of Santander. I don't doubt that KG sent it, but I haven't been persuaded that it was received by Santander and subsequently lost.

Mr H is justified in relying strongly on the letter of 5 October 2017, but I note that Santander had already said in its letter of 1 March 2017, and evidently in the phone calls prior to 10 May, that it hadn't received the mortgage deed.

KG said in the third paragraph of their letter of 10 May 2017 that they understood Santander was suggesting it hadn't received the mortgage. I'm still of the view that that is the most probable explanation for Santander's failure to reply to the 15 December letter.

Accordingly I'm not persuaded to alter my provisional findings and I confirm them here.

my final decision

My decision is that I uphold this complaint and order Santander UK Plc to pay Mr H £250 compensation for poor service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 November 2018.

Edward Callaghan
ombudsman