

complaint

Mr and Mrs S complain that Santander UK Plc has lost their deeds. The property is currently unregistered and they want Santander to register it. They also complain about Santander's poor customer service.

background

The circumstances leading to Mr and Mrs S' complaint together with my initial findings were set out in my provisional decision of 22 January 2016, a copy of which is attached at the end of this decision.

In response to my provisional decision, the solicitor acting for Mr and Mrs S, ("the solicitor"), said that if the deeds had not been lost the first registration of the property would have been the responsibility of any purchaser. And he says this would have been a formality. Whereas now his clients will have to make an application for Good Leasehold Title which they are unlikely to get. He says that the lesser title which they are likely to get is not acceptable to lenders. So he suggests that I order Santander to register the title as a Good Leasehold title. Or if the registrar at the Northern Ireland Land Registry refuses to do this, then he suggests I should order Santander to take further steps to get the title registered as Freehold.

The solicitor also specifies certain of the documents he requires to be supplied under my provisional order. And disagrees with Santander that the form of title indemnity insurance is agreed

Santander in response to my provisional decision and some of the solicitor's responses said that it was not able to get a certified copy of the lease for several months. It said that all the draft documents and the indemnity insurance are in an agreed form and that nothing else is required to register the title. (Save for signing or executing the documents.) Santander further said that the solicitor has over-simplified the position of applying for registered title when the deeds are available. And over-complicated the position where they are missing. Santander also reminds me that the title position will be under-pinned by the indemnity insurance. And disagrees that a lesser title will not be acceptable to any prospective purchaser or lender.

my findings

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

I find that I find that it is fair and reasonable to amend my decision in the light of the comments and further information I have received from Santander and on behalf of Mr and Mrs S. However I do not propose ordering Santander to register Mr and Mrs S' title with Good Leasehold or Freehold Title as the solicitor has requested me to do. I say this because the title that will be registered is a matter for the registrar to determine. It is not possible for Santander to insist on any particular title.

I also do not agree that registration by a purchaser with the deeds would necessarily have been a formality. I say this because again it would be for the registrar to decide whether or not the information in the deeds would enable the appropriate title to be registered.

As for the complicated nature of registration without the deeds I note the contents of the practice direction for first registration where the deeds are lost, provided by the solicitor. From this I do not see that Mr and Mrs S themselves have to make an application for registration before they sell the property. And in any event I agree with the solicitor that they cannot comply with all the requirements set out in the relevant part of the direction and would have to rely on the registrar's discretion. However I am satisfied that any **purchaser** would be able to comply with the requirements set out there. And the practice direction says that Good Leasehold Title would normally be granted in these circumstances.

It is possible that the practice direction might change in the future so that a purchaser might have to provide something different from that now required. But it was only issued in October 2015 so I would expect that it is unlikely to be changed for some time. And of course the requirements for registration **with** deeds could also change at any time.

I find that if the property value is reduced because only a lesser title than Good Leasehold Title is granted by the registrar, any purchaser could be compensated by a suitable title indemnity policy.

However I see no reason for Santander to continue to hold onto the original certified copies of the deeds and documents which it has obtained. Or for it to delay providing Mr and Mrs S with signed, or executed, deeds and documents which are in an agreed form. Also, having further considered the requirements for making an application for first registration. I conclude that I need to ensure that any insurance policy should also benefit Mr and Mrs S' successors in title.

I accept that it may not have been straight-forward for Santander to obtain a copy of the lease. However I still find that matters most likely could have been resolved more quickly than they were. And that Santander's customer service overall was poor.

my final decision

My decision is that I order Santander UK plc, so far as it has not already done so, to

- without further delay provide Mr and Mrs S with the original certified deeds and documents relating to the title in its possession;
- provide the Mr and Mrs S with a statutory declaration regarding the missing deeds in a form which it is able to and which is reasonably acceptable to the solicitor;
- provide a deed of release or other confirmation reasonably acceptable to the solicitor confirming that Mr and Mrs S have redeemed their mortgage;
- provide, so far as it is reasonably able to, any other evidence required by the Land Registry to register the title which would not have been required had the deeds been available;
- as quickly as reasonably possible to provide a title indemnity insurance policy to cover any loss in value of the property arising from the title deeds to it being lost. Such policy to be for the benefit of Mr and Mrs S and their successors in title and to be in a form reasonably acceptable to Mr and Mrs S' solicitor.
- pay Mr and Mrs S' reasonable legal expenses, costs and fees incurred in resolving this complaint.
- pay Mr and Mrs S £500 in compensation for the stress, worry and other emotional effects its actions have caused them.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 3 May 2016.

Ros Barnett
ombudsman

copy of provisional decision

Following Mr and Mrs S paying off their mortgage Santander told Mr and Mrs S that their deeds were being sent to their solicitors, (the “solicitors”), in October 2013. The solicitors said that they never received them. In early 2014 Santander told Mr and Mrs S they it would reconstitute the deeds. It initially said that this would take three weeks.

In Autumn 2015 after considerable correspondence with the solicitors Santander arranged for a certified copy of the missing lease to be obtained. Santander has also paid Mr and Mrs S £65 for their time and phone calls in trying to sort out the problem. It has said that it will pay the solicitors' costs in helping them. And it has offered £500 compensation for distress and worry. Mr and Mrs S are not satisfied with this they want Santander additionally to register their title at the Land Registry.

Our adjudicator felt that Santander had done all that was necessary to resolve matters. Mr and Mrs S did not agree so the matter has been passed to me to decide.

my provisional findings

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

I have seen the schedule of deeds sent by the solicitors to Santander. It was stamped by Santander in 1988 confirming that it had received the deeds referred to. So I am satisfied that Santander held the deeds at that stage. I do not know what happened to them afterwards. But I am persuaded that the solicitors did not receive them in October 2013 or at any time later.

Santander has said that it would try to put Mr and Mrs S back into the position that they would have been in had the deeds not been lost. I do not agree that giving them a certified copy of their lease is sufficient for this purpose.

The Registrar of the Land Registry has provided a copy of the instructions setting out other requirements for registration of a title when deeds have been lost. These include for instance the requirement for a statutory declaration explaining what is known about the missing deeds. It is not clear to me whether Santander has satisfied these other requirements. And as the solicitors have pointed out, the registrar's requirement might change in the future.

However, Mr and Mrs S's title was not registered, so I do not find that Santander ought to make an application to register it. This would mean that Mr and Mrs S ended up with something different from what they would have had, had the deeds not been lost.

So to put Mr and Mrs S as far as is possible back into the position that they would have been in if the deeds had not been lost, I find that Santander, so far as it has not already done so, needs to:

- Provide the Mr and Mrs S with a statutory declaration regarding the missing deeds in a form which it is able to and which is reasonably acceptable to the solicitors;
- Provide a deed of release or other confirmation reasonably acceptable to the solicitors confirming that Mr and Mrs S have redeemed their mortgage;
- Provide, so far as it is reasonably able to, any other evidence currently required by the Land Registry to register the title which would not have been required had the deeds been available;
- Provide a title indemnity insurance to cover any loss in value of the property arising from the title deeds to it being lost.
- Pay the solicitors' reasonable costs incurred in helping Mr and Mrs S resolve this complaint.

I find that Santander did not give Mr and Mrs S good customer service in dealing with the lost deeds. I am not persuaded that it did everything reasonable to try to get a certified copy of the lease in a timely manner. Nor did it respond in a reasonable time to the solicitors' correspondence. However Santander has offered Mr and Mrs S £500 for the stress, worry and other emotional effects its actions

have caused Mr and Mr S. Overall I am satisfied that this is at least in line with what we would have awarded in similar circumstances. So my provisional decision is that it ought to pay Mr and Mrs S that sum.

my provisional decision

Subject to any further comments or information that I receive as above, my provisional decision is to order Santander UK plc to provide and pay the sums and items set out above.