

complaint

Mr F is unhappy that Santander UK Plc's paid outstanding service charges, ground rent and associated costs on his behalf and then added them to the mortgage. He has said that Santander didn't tell him it was going to do this, despite having a correspondence address for him.

Mr F believes that had Santander written to the correct address, he could have cleared the outstanding rent and charges early in the process and would, therefore, have had to pay less. He's also unhappy that the correspondence about this matter was sent to the mortgaged property, which Santander knew was being rented out.

background

Mr F bought the leasehold property in question in 2014. It appears that at the time, there were payments outstanding for ground rent and service charges. However, it doesn't seem that either Mr F or Santander were aware of these outstanding costs.

Shortly after completing the purchase, Mr F joined the armed forces. Santander agreed in the circumstances for the property to be rented out. Mr F provided it with a correspondence address, which was different to that of the mortgaged property. It appears that some of Santander's systems were updated with this address, but not all.

Mr F has said that at the time he bought the leasehold property the freeholder's management company was in administration. So it seems likely that the freehold of the property was subsequently sold and the new freeholder decided to collect the outstanding rent and costs. Informing Mr F of the change of freeholder and the collection activities would have not have been Santander's responsibility.

The freeholder applied to the courts for an order to enforce the payment of the outstanding rent and charges. This was granted in early March 2015. The freeholder's agents then contacted Santander. It explained that there were outstanding rent and charges and asked for payment – it provided a copy of the court charge. Santander didn't immediately pay these costs. It wrote to Mr F about the demand it had received. Unfortunately, this letter wasn't sent to Mr F's correspondence address, but rather to the mortgaged property, so he didn't get it.

Subsequently Santander was informed that the freeholder intended to enforce the terms of the lease allowing it to take possession of the property unless the money was paid. If the freeholder had taken possession of the property in these circumstances, Santander wouldn't have been able to reclaim from the freeholder any of the money that it had lent Mr F. Effectively, it would have lost the security for the mortgage. In these circumstances, the terms of Mr F's mortgage allowed Santander to pay the amount of the judgement and add it to the mortgage balance. This is what it did in April 2015.

When this happened, Mr F noticed the change in the mortgage balance and questioned it. He was told what had happened. He complained to Santander because it hadn't made him aware of what it was intending to do.

Santander upheld his complaint in part. It said that because it had sent its advice to Mr F to the wrong address, it would refund the administration fee that was charged when it paid the court order. It also offered him £100 for the poor service it gave Mr F. In addition, it offered to pay him £30 because it hadn't dealt with his complaint when it was originally raised.

Following Mr F raising concerns about Santander sending information to the wrong address, it said that it would pay for him to register with the Credit Industry Fraud Avoidance System (CIFAS) if he was worried about his personal information being misused.

One of our adjudicators considered Mr F's complaint, but didn't think that it had acted incorrectly when it had paid the costs under the court order. She also thought that the offers made to Mr F for the errors that Santander did make were fair.

Mr F didn't accept the adjudicator's findings. He remained of the view that if Santander had sent its March 2014 letter to the correct address, the amount that he needed to pay would have been significantly less because it could have been sorted out before the legal costs were incurred. As such, the complaint has been passed to me to consider.

my findings

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

It is normal for the owner of a leasehold property to have to pay ground rent to the freeholder. They will also usually have to pay service charges for maintaining the property to either the freeholder or a management company that it has appointed to care for the building. Mr F has not disputed that this is the case. He has, however, raised concerns about the fact that some of the charges that have been paid are for a period from before he owned the property.

As the courts have made an order against Mr F for all of these costs, it wouldn't be for me to question that decision. I note that Mr F has appealed the judgement, so it is something that would be better dealt with during that process.

There is no question that Santander sent its letters about this matter to the wrong address. However, it was not for Santander to inform Mr F that the freeholder was attempting to get payment for the overdue rent and service charges. That was the responsibility of the freeholder. In order for the courts to make an order for those costs, it would have needed to be satisfied that the freeholder had made attempts to get payment direct from Mr F. So I think it is reasonable to conclude that it did.

However, this correspondence was, most likely, sent to the leasehold address. It was Mr F's responsibility to ensure that he either had arrangements in place to have such correspondence forwarded to him or to ensure that the freeholder had an alternative address to send correspondence to. I don't consider that Santander can be held responsible for Mr F not being aware that the freeholder was attempting to collect the overdue monies or that it was commencing court action against him.

Having looked at the terms and conditions of Mr F's mortgage, I am satisfied that Santander was entitled to pay the outstanding costs on his behalf if it felt that its security was in danger. Given that a court order had been issued for the monies claimed and the freeholder was threatening to take possession of the property, I think it was reasonable for Santander to believe that its security was at risk. So I don't think that it acted inappropriately when it paid the costs and added them to the mortgage balance.

However, it is possible that had Mr F received Santander's letter at the end of March 2015 he would have paid the money direct to the freeholder's agents. If this had happened, Mr F wouldn't have incurred an administration fee for what Santander did. Nor would he have paid interest on an increased mortgage balance.

Santander has refunded the administration fee, which I think is entirely reasonable. It also said that if Mr F paid the amount of the court order off the mortgage within 6 weeks of its offer (it later extended this timescale), it would refund all of the interest that had been charged. This gave Mr F the opportunity to put himself back in the position he would have been in if he had paid the funds to the freeholder, so I think it was the right offer to make.

I have considered the consequences of Santander's letter to Mr F at the end of March 2015 being sent to the wrong address. Initially, I would say that whether it was a breach of the data protection act or not is not something for me to consider. That concern would be more appropriately addressed to the Information Commissioner's Office. What I can however, look at is the service that Mr F received overall. It's clear that Santander had the correct address and so the letter in question shouldn't have gone to an incorrect address. This was a failing on Santander's part and it has accepted that this was the case.

Santander has offered to pay for Mr F to register with CIFAS if he is worried that the contents of the letter might be used for fraudulent purposes by someone. There is, unfortunately nothing that Santander can now do to prevent such a thing happening. However, its suggestion about CIFAS may put Mr F's mind at rest about potential problems going forward.

I have noted that Mr F seems to think that if Santander's letter had been received he could have prevented things like the legal costs being added to the debt. However, the evidence I have seen shows that the court order had already been obtained before Santander was aware of the situation. So I don't think that the misdirection of Santander's letter would have made any difference to the amount Mr F had to pay.

Santander has acknowledged that it provided poor service to Mr F, from not updating his address correctly to not dealing with his complaint when it was first received. I can understand that this situation has been very upsetting for Mr F. However, I can only make an award for the increased stress and upset that he suffered solely because of the actions of Santander.

In other words, for any increase in stress and upset its actions caused, over and above that which would always have occurred because of the freeholder pursuing him for the rent and arrears through the courts. Having carefully considered all of the events that happened, I'm satisfied that the amount Santander has already offered is the appropriate amount.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 December 2016.

Derry Baxter
ombudsman