

complaint

Mr and Mrs D have complained about the way in which Santander UK Plc has dealt with claims from their management company for service charge arrears.

background

The background to the complaint was set out in detail by the adjudicator in his letter to Santander dated 29 October 2015. Mr and Mrs D have a copy of this letter, so they are aware of its contents. So I won't set out the background in detail – what Santander has done isn't disputed – the only issue is whether or not Santander was right to do what it did.

Briefly, in 2012 Santander received a demand from Mr and Mrs D's freeholder for outstanding service charges. It included a court order showing Mr and Mrs D had been held liable to pay by 6 January 2012.

Santander paid the amount claimed on 1 February 2012. But in March 2012 Mr D provided a copy of a court order to set aside a judgment. Mr D says that he had already paid the landlord the amount later claimed from Santander and that the freeholder was wrong to claim the costs twice.

It seems the freeholder obtained two separate court orders but the judgment to set aside was ambiguous as to which order was set aside. Santander maintained it was entitled to pay the claim and told Mr and Mrs D to sort the situation out with the freeholder.

Santander recorded the payment it had made as arrears, and there was collections activity to recover this. Mr and Mrs D eventually settled the amount direct with Santander.

Our adjudicator thought that Santander acted reasonably in paying the amount claimed in the second order. But he didn't think Santander was entitled to pay the additional costs claimed by the freeholder's solicitors when it served a notice on Santander threatening to forfeit the lease.

He asked Santander to reimburse the difference between the amount requested in the court order and the additional costs claimed by the solicitors, which Santander had paid. He also asked Santander to pay compensation of £200 for distress and inconvenience.

Mr and Mrs D accepted the adjudicator's findings.

Santander disagreed. In summary, Santander says that case law says that if a tribunal has ordered a tenant to pay outstanding sums due to the landlord, the tenant *"was likely to be required to pay the costs which the landlord incurred obtaining that determination"*.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator, for largely the same reasons.

I've noted what Santander says – that if a tribunal determines that a tenant is required to pay outstanding service charges, then the tenant “*was likely*” to have to pay the costs the landlord incurred in obtaining that determination.

Here it appears that a court had decided Mr and Mrs D owed a certain amount to Santander. That order made no mention of additional costs the freeholder might later incur should Mr and Mrs D not pay the judgment debt.

So I'm not persuaded Santander was entitled to pay those additional costs without there being a determination by a court or tribunal that covered those costs. The costs claimed aren't service charges, they're administrative charges (as defined in Schedule 11 to the Commonhold and Leasehold Reform Act 2002). In the circumstances, I think Santander treated Mr and Mrs D unfairly when it added those additional costs onto the amount the court had ordered Mr and Mrs D to pay.

I'm also satisfied Santander's actions resulted in trouble and upset to Mr and Mrs D. I agree with the adjudicator that a payment of £200 is fair and reasonable for this.

my final decision

My decision is that I uphold this complaint. In settlement I require Santander UK Plc to do the following:

- reimburse Mr and Mrs D's mortgage account with the difference between the amount claimed in the court order, and the amount Santander UK Plc actually paid (“the additional amount”);
- remove any interest accrued on the additional amount;
- pay Mr and Mrs D compensation of £200 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 15 February 2016.

Jan O'Leary
ombudsman