

## **complaint**

Mrs P complains that when she remortgaged to Santander UK Plc the solicitor didn't ensure the previous lender's charge was removed, which caused her problems when she later applied for a lifetime mortgage elsewhere to repay Santander.

Mrs P has been supported in bringing this complaint by her brother, Mr H.

## **background**

In October 2003 Mrs P remortgaged to Santander (formally Abbey National). A mistake was made by the previous lender which led to its charge not being removed.

The solicitor (that was acting for both Mrs P and Santander in the remortgage) wrote to Santander on 25 November 2003 saying *"Following completion of registration of your charge we enclose the official copy for your retention."* Enclosed with the letter was an 'Official Copy of Register Entries' from the Land Registry dated 7 November 2003 which showed both Santander's charge dated 27 October 2003 as well as the charge from the previous lender which dated back to 1990.

In 2018 Mrs P's interest-only mortgage term with Santander was coming to an end so she arranged to remortgage onto a lifetime mortgage product with a different lender.

On 26 October 2018, as the solicitor was preparing to complete the remortgage they discovered the previous lender's charge was still registered on Mrs P's property. This was eventually removed in late November and the remortgage completed on 23 November.

In the meantime, Mr H raised complaints with Santander, the 2003 solicitor and the previous lender.

Mr H says the 2003 solicitor didn't deal with the complaint, citing the 15-year longstop as set out in the Limitation Act 1980 as the complaint was raised a few days after the 15-year time limit expired.

The previous lender upheld the complaint and covered Mrs P's financial loss due to the delayed completion.

Santander rejected the complaint, saying it wasn't responsible for the mistake.

Our investigator initially agreed with Santander, but upon review he issued a revised assessment explaining the solicitor was acting for Mrs P and Santander and this was an ancillary activity to the mortgage. He said £300 compensation should be paid by Santander for the inconvenience caused.

Mr H – on behalf of Mrs P – accepted the second assessment. Santander didn't accept it, but made no further submissions, instead it just commented that the investigator had changed his mind and that it didn't think £300 was warranted.

## **my findings**

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

Whilst Mr H accepted the investigator's assessment on behalf of Mrs P I feel I should deal with his claim of £1,750 compensation for his time spent dealing with matters. Mrs P is the eligible complainant as she was Santander's customer. Whilst she can authorise Mr H to act on her behalf this doesn't mean he can air his own grievances or claim compensation for the time he says he incurred assisting his sister.

I don't need to make a finding on whether something went wrong, as that's not in dispute. I also don't need to consider the financial loss Mrs P incurred as the previous lender has already covered that.

Under our rules, we can only consider "regulated" activities, or things that are ancillary to them. And conveyancing, in itself, isn't a regulated activity. However, arranging for the removal of the previous charge and registration of the new charge by the solicitor is done for the benefit of the lender as it protects its security. It must be done to complete the lending process, so this is part of the regulated activity which Santander delegated to the solicitor – but for which it remains responsible.

It's not in dispute that the previous charge wasn't removed, which could have affected Santander's security if it needed to realise that. So, under our rules, I can hold Santander responsible for the later issues that affected Mrs P due to that omission. I went on to look at whether – separately from any responsibility for the solicitor – Santander made mistakes. Having considered everything I'm satisfied Santander in itself didn't make a mistake. But as I've set out above, Santander was responsible for the solicitor's failure to ensure the charges were correctly registered (and deregistered) on the mortgaged property.

As I said, the financial loss has already been covered by the previous lender so I don't need to consider that here. I'm just looking at how much compensation – if any – is due from Santander for the trouble and upset caused to Mrs P. Mrs P was understandably upset and inconvenienced by the delay in her remortgage completing, with it completing just under a month later than planned. Having considered everything I'm satisfied the £300 compensation put forward by the investigator is fair and reasonable and so that is the award I'm making.

### **my final decision**

I uphold this complaint and order Santander UK Plc to pay Mrs P £300 for the trouble and upset caused to her. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 6 May 2020.

Julia Meadows  
**ombudsman**