

FINAL DECISION	
complaint by:	Mr [REDACTED]
complaint about:	Santander UK Plc
complaint reference:	1291-9970/AH/MA12
date of decision:	19 March 2014

This final decision is issued by me, Emma Peters, an ombudsman with the Financial Ombudsman Service. It sets out my conclusions on the dispute between [REDACTED] and Santander UK Plc. Final decisions will be published. To prevent [REDACTED] being identified, he will be referred to as "Mr D".

Under the rules of the Financial Ombudsman Service, I am required to ask [REDACTED] to let me know whether he accepts or rejects my decision before 22 April 2014.

complaint

Mr D complains, through his representative, that he has been charged unnecessary legal fees and arrears fees on his mortgage account by Santander UK Plc.

background

Mr D agreed a mortgage in 1995 with a previous business, now part of Santander UK Plc (Santander). In subsequent years the mortgage account fell into arrears.

Since 2005 there have been several occasions when the level of mortgage arrears on Mr D's account has reached a level considered sufficient by Santander to commence legal proceedings. Legal fees of varying amounts have been charged to Mr D's mortgage account from 2005.

A decree of possession was granted by the Sheriff's Court in January 2010 and judicial costs were ordered to be paid by Mr D. Whilst Santander was granted the decree, it decided not to pursue the action.

Mr D believes that it is unfair that he was charged with the costs of legal action against him, particularly as he believes the action in 2010 was dismissed due to mistakes made by Santander and its legal representatives.

Legal proceedings commenced again in 2012, and this legal action is currently on hold pending the outcome of this complaint with this service.

adjudicator's findings

The adjudicator completed a thorough analysis of arrears charges and legal charges applied to Mr D's account since 2001 to see if they had been applied fairly, both in light of the terms and conditions of the mortgage and this service's accepted good practice regarding fees chargeable to mortgage accounts. As a result of his investigation he found there were two legal fees that Santander did not have documentary evidence for, totalling around £320, and it has since agreed to refund these fees to Mr D.

However, the adjudicator considered that the majority of fees that have been charged by Santander appeared to have been reasonably applied to his mortgage account.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence and wider circumstances.

arrears fees

Mr D's mortgage statements show that some repayments have been missed whilst other repayments have been made for a lower figure than the amount due – seemingly outside of an agreed arrangement with Santander. Therefore, I am not persuaded that the arrears fees levied by Santander have been unfairly applied.

legal fees

I note and endorse Santander's agreement to repay around £320 of legal fees, regarding fees which could not be supported with written evidence.

Mr D has been charged legal fees of around £5,000 during the period from 2005 to 2011. Nearly £3,000 of these fees relate to the legal action taken by Santander in 2010.

In 2010, Santander took court action to try to take possession of Mr D's property. The decree of possession was issued by the court and the judge ruled that legal costs should be paid by the consumer. However, Santander has confirmed that whilst the decree was valid, the registers of Scotland would not accept it without proof of calling up notices being served.

It seems that the decree awarded to Santander was not enforceable. The issues with enforceability of the decree appear to stem from a Supreme Court judgment in November 2010, changing the steps that lenders are required to take prior to possession, rather than an "error" having been made by the bank. As a result, Santander dropped its legal proceedings at that time.

Santander has now offered to waive half of the fees relating to the legal action in 2010, which amounts to approximately £1,500 of fees. I consider this to be reasonable, as neither Santander nor Mr D is responsible for the unenforceability of the decree of possession; rather it was due to a change in legal requirements. It seems fair, under the circumstances, for the cost to be shared.

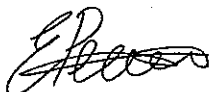
conclusion

I consider that Santander's offer to refund around £1,800 of legal fees in total is reasonable in the context of the complaint and the wider circumstances. I am satisfied that the remaining legal fees and arrears charges do seem to have been fairly applied to Mr D's account.

my final decision

My final decision is that I uphold this complaint in part, to the extent that Santander UK Plc refunds the pre-agreed figure of around £1,800 of legal charges to Mr D's account relating to:

- unevicenced legal fees identified by the adjudicator, and
- half of the court action costs from 2010.



Emma Peters
ombudsman