DRN-3321133

The complaint

Mr and Mrs L are complaining about the information they were given by Santander UK Plc when they contacted them to switch their mortgage product and take some additional borrowing. They say they would have done things differently if they'd been given the correct information.

What happened

Mr and Mrs L had a repayment mortgage with Santander. Their mortgage was in two parts and on different interest rates. In June 2020 Part 1 had an outstanding balance of around £177,000 on a 1.99% 5-year fixed rate which expires on 2 July 2024. Part 2 had an outstanding balance of around £223,000 on a 2-year fixed rate product at 1.49% which expired on 2 October 2020.

In May 2020 Mr L called Santander to talk through applying for some additional borrowing. He asked the call handler if it was possible to tie in the additional borrowing with switching to a new rate. The call handler explained that the process was to be referred to a mortgage adviser who would look at things in more detail and sort out a new rate at that stage. But they could also sort out a new rate first and do the application for additional borrowing afterwards.

On 1 June 2020 Mr L called Santander again. He explained that they wanted to borrow some extra money for home improvements, and also take out a new rate on Part 2 of their mortgage. The call handler explained there were two ways of doing things. Mr and Mrs L could either book a new fixed rate first and apply for the additional borrowing afterwards, or complete an application for additional borrowing and then apply for the new fixed rate. He told Mr L he'd need to decide which route he'd like to go down during that call so the right process could be followed.

Mr L asked for advice about which was the best way to proceed, including the difference in cost. The call handler looked at the loan to value (LTV) of Mr and Mrs L's mortgage and calculated that the maximum they could borrow would be around £138,000, limited by an LTV of 85%.

After discussing the available rates and what would be the most cost-effective option, Mr L decided to book the 1.64% fixed rate for his existing borrowing first and do the additional borrowing application separately afterwards. The call handler passed him to a mortgage adviser to arrange the rate switch. A 5-year fixed rate of 1.64% was agreed (including a product fee of £999 added to the loan) with the new rate due to come into force when Mr and Mrs L's existing fixed rate expired on 2 October 2020. Santander sent a rate switch offer to Mr and Mrs L, which they signed and accepted on the same day.

Later that day Mr L called Santander again to apply for the additional borrowing. He spoke to a different call handler who took the details of Mr and Mrs L's income. She explained that Mr and Mrs L would only be able to borrow around £60,000 based on their income. She said a mortgage adviser would call them to complete the application.

On 6 June 2020 a mortgage adviser called Mr L back. The mortgage adviser explained that he was calling to arrange the additional borrowing and to arrange a new fixed rate for when the existing rate expired. Mr L said that they'd already agreed a new fixed rate, and explained what had happened.

The mortgage adviser didn't know Mr and Mrs L had already agreed the rate switch until Mr L told him. He asked if Mr and Mrs L had returned their agreement and Mr L confirmed they had. The mortgage adviser explained he would try and cancel the rate switch as he thought Mr and Mrs L could have received a better deal if they'd waited to speak to him.

Mr L said this is what he'd asked for in his first call. He said he'd understood from the call he'd had that he'd get a better rate by applying for the new fixed rate before completing the additional borrowing, and that applying for a new fixed rate first would also be a shorter process.

The mortgage adviser said he'd check if it was possible to cancel the rate switch. He called Mr L back and explained that Santander could now only offer the additional borrowing at the additional borrowing rate of 1.99%, because the existing rate switch couldn't be cancelled. It also became clear that Mr and Mrs L wouldn't be able to apply for the additional borrowing until the new fixed rate began in October 2020. Mr L said he wanted to complain, and the mortgage adviser explained he would pass his complaint on to be investigated.

On 11 June 2020 Santander replied to Mr and Mrs L's complaint to say they didn't think they'd done anything wrong. They said, in summary, that the call handler had given Mr L correct information based on what he'd known at the time. They said they'd allow Mr and Mrs L's rate switch from 1.49% to the new fixed rate of 1.64% to go ahead immediately, to allow them to complete their additional borrowing application straight away.

Mr and Mrs L went on to apply for additional borrowing of just over £65,000. This was completed on an additional borrowing rate of 1.99%.

Mr and Mrs L brought their complaint to us. They said, in summary, that they felt they were mis-led by the call handler of 1 June 2020 and pressured to make a decision, when they should have been able to talk to a mortgage adviser first about the best way to proceed.

They said if they'd been able to speak to a mortgage adviser beforehand, they would have applied for the additional borrowing at the same time as applying for a new fixed rate, which would have led to them being in a better financial position overall because their additional borrowing would have been at a lower rate.

Our investigator didn't uphold Mr and Mrs L's complaint. Mr and Mrs L didn't agree, so their complaint was passed to me for review and a decision.

I issued my provisional decision on 18 January 2022. I provisionally decided to uphold Mr and Mrs L's complaint. This is what I said.

In the call on 1 June 2020 the call handler was giving information to Mr L, not advice. But I think it's important to highlight that during this call Mr L was unsure of the best way forward and asked for advice about how best to proceed. And when the call handler spoke to Mr L he said very early on in the call that Mr L must make a decision during the call about how he wanted to proceed. So I can see why Mr L felt pressured into making a *decision then and there.*

The call handler looked at the value of Mr and Mr L's house and told Mr L they could borrow up to £138,000 – limited by an LTV of 85%. He went on to base the information he gave about the available rates on this figure. He explained that the additional borrowing rate was 1.99%. But he then went on to tell Mr L that if they did the additional borrowing and rate switch application at the same time they could take the whole amount on a 5-year fixed rate of 1.64%. Mr L initially said they'd like to do that.

But Mr L then asked the call handler if the fixed rate of 1.64% would still be available if he completed the applications at the same time, because the LTV would increase due to the additional borrowing. And it's only then that the call handler said that the 1.64% rate was based on an LTV of 63%, rather than the LTV of 85%. Mr L said 'so the 1.64% would probably not be available because the mortgage would go up?' The call handler said that the available rates would 'most likely' go up after the additional borrowing application because the LTV would have increased to 85%.

It's clear from the call that it's this information which led Mr L to change his mind and decide to apply for the new fixed rate before applying for the additional borrowing. And I think this is important, because if Mr and Mrs L had known at that time that they'd be unable to borrow above 75% LTV based on their income, I think Mr L would have stuck to his decision to go ahead with applying for everything on the same rate.

I think it should have been clear to the call handler that Mr and Mrs L needed advice on the best way to proceed – which he was unable to give them. So I think Mr and Mrs L should have been referred to a mortgage adviser to discuss how much they could borrow based on their income, and the rates available to them at that level of borrowing, before they were forced to make a decision about how they wanted to go ahead with the additional borrowing and the rate switch. I don't think it was fair for them to be told they needed to make a decision before a proper assessment of the amount they could borrow had taken place, because it affected the rates that would have been available to them.

If Mr and Mrs L had spoken to a mortgage adviser upfront, it would have been clear they'd still qualify for the lower fixed rate available under 75% LTV once the additional borrowing had been completed. And I think they would have made a different decision about how to proceed.

I'm also bearing in mind that I think it was clear Mr and Mrs L wanted to complete the additional borrowing application straight away. And at no point during the calls before they accepted the rate switch was it explained to them that if they applied for a new fixed rate before applying for the additional borrowing, they couldn't complete the additional borrowing application before their current fixed rate expired – which was over three months later. I think this was important information which should have been explained to Mr L when he asked for advice about how best to proceed.
Santander say Mr L should have explained Mr and Mrs L's intention to complete additional borrowing to the mortgage adviser Mr L spoke to when he completed the application for the new fixed rate. They also say the terms and conditions make it clear no changes could be made to the mortgage before the new fixed rate came into effect.

But I think it was reasonable for Mr L to expect that the mortgage adviser would have known Mr and Mrs L intended to apply for additional borrowing, bearing in mind the discussion he'd had with the previous call handler about it. And I think he would have expected any restrictions about when they could apply for the additional borrowing to be explained to him before then.

While the terms of the switch agreement do say that no changes could be made to the mortgage, I don't think this should have alerted Mr and Mrs L that they couldn't complete the additional borrowing application before the new rate came into force. I say this because during the conversation with Mr L the call handler had explained that the additional borrowing application would be a separate process to be completed after the new rate was taken. So I think Mr and Mrs L would have seen the additional borrowing application as a separate process, rather than a change to the existing mortgage.

I think if this had been explained to Mr and Mrs L before they accepted the new fixed rate agreement, this would also have contributed to them making a different decision about how to proceed. It's clear Mr and Mrs L wanted to make the additional borrowing application as soon as possible. And I don't think they would have chosen to fix the rate first if they'd known there'd be a significant delay before they could make their application.

Putting things right

Overall I don't think Santander have treated Mr and Mrs L fairly. I think they should have done more to make sure Mr and Mrs L received the correct information to make an informed decision about how to proceed with their additional borrowing and rate switch application before Mr and Mrs L committed to the rate switch.

In order to put things right, I need to decide what, if anything, Mr and Mrs L would have done differently if they'd spoken to the mortgage adviser before they committed to the rate switch, rather than afterwards.

I've needed to make some assumptions here about what Mr and Mrs L would have done. So I'll consider anything else Mr and Mrs L, and Santander, would like to add on this point. But provisionally I think after speaking to the mortgage adviser it's most likely Mr and Mrs L would have decided to complete the additional borrowing application and the rate switch at the same time.

I've asked Santander about the rates that would have been available to Mr and Mrs L at the time of the conversation with the mortgage adviser on 6 June 2020. I understand that the
5-year fixed rate available for under 75% LTV was still at 1.64%. I think it's most likely this is the rate Mr and Mrs L would have chosen to switch to and to complete their additional borrowing application on. So I think Santander should re-work Mr and Mrs L's account to put them back in the position they would have been in if they'd taken this option, rather than taking the additional borrowing at the higher rate of 1.99%.

Santander have told me it generally takes around four weeks for an additional borrowing application to be processed, so they should use this timescale when re-working the account.

Santander's error has caused upset and inconvenience for Mr and Mrs L. So I think Santander should also pay them £300 in compensation. I think this is fair, reasonable and in line with awards made in similar circumstances, taking into account the impact on Mr and Mrs L.

I asked Santander and Mr and Mrs L to reply with anything they wished to add by 18 February 2022.

Mr and Mrs L replied with some further points they'd like me to consider. They said they thought they'd been charged a separate fee for the additional lending application, and they'd like that to be refunded.

They also said (in summary) that they thought they should be allowed to repay the additional borrowing without being charged an early repayment charge (ERC.) They said they only decided to take out the new fixed rate because they thought they could borrow the higher amount of £138,000 – which they needed to complete the work on their house and to allow Mr L's father to be comfortable. And when they were told they could only borrow around £65,000, they were already trapped with Santander because of the ERC on their new fixed rate product.

Santander replied to say they accepted my provisional decision, and were willing to re-work Mr and Mrs L's mortgage account. They've explained how they will go about administering this, as follows:

- Provide the 1.64% Fixed Rate for the additional borrowing and backdate this to when the additional borrowing completed. The customers will need to sign our paperwork for this to go ahead. The 1.64% Fixed Rate will end at the same time as the original borrowing, which will allow the customers to choose one new rate when the time comes for the two loan parts;

- We will waive the associated Early Repayment Charge for the additional borrowing;

- We will provide the customers with 8% simple interest on the difference in payments until settlement. This will be paid to their Santander current account;

- Once the backdate has been completed, this will create a credit on the Mortgage Account. The customers can either confirm they wish to have the funds reduce the mortgage balance, or they can choose to receive a refund to the Santander current account which pays the mortgage;

- We will provide a goodwill payment to the customers of £300. This will be paid to their Santander current account.

What I've decided – and why

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

Mr and Mrs L say they were charged an additional fee when they switched to the new fixed rate product early so they could complete the additional borrowing. They think this was added to the borrowing, as it's not showing as having left their bank account. Santander say they weren't charged an additional fee at this point, and the only fee applied was the product fee of £999 for the 1.64% fixed rate, which was added to the loan.

I agree that if Mr and Mrs L were charged an additional fee when they switched their product early to take out the additional borrowing, this should be refunded – because it wouldn't have been charged if they didn't need to leave the product early to make a separate additional borrowing application. But I've not seen anything to show they were charged a fee when they took out the additional borrowing, either through leaving their previous product early or when taking out the additional borrowing.

There's nothing in the additional borrowing paperwork to show a fee for taking the additional borrowing has been added to the loan, and there was no product fee associated with the additional borrowing application. And the ERC for Mr and Mrs L's previous product wasn't applied, because Santander allowed them to leave the product early. I've looked at the mortgage account history and the only fee added to the total borrowing over this period is the £999 product fee for the 1.64% fixed rate.

I can see that there was another fee mentioned in relation to both Mr and Mrs L's previous product and the additional borrowing– which is the mortgage account fee of £225. This fee can't be added to the loan, as it's payable on completion, although it can be deferred until the mortgage ends. Santander's explained that it's set out separately in each product switch or additional borrowing offer, but it's only charged once over the life of the mortgage.

I don't think Mr and Mrs L paid the mortgage account fee when they left their product early to apply for the additional borrowing, because I think it would have shown in their bank account – but even if they did, I don't think it was a loss to them, because it's a fee that's payable once over the life of the mortgage anyway.

I've thought carefully about what Mr and Mrs L have said about being tied into the fixed rate with Santander. Sadly, they've recently experienced a bereavement which means they're now likely to be able to make a lump sum payment to their mortgage. So I can understand why they'd like to be on a rate where they'd have more freedom to repay the additional borrowing without ERCs. But I must make my decision based on what it's *most likely* they would have done at the time, rather than with hindsight due to the change in their circumstances. And at the time their preference was for a fixed rate.

I do appreciate why Mr and Mrs L felt tied to taking the additional borrowing with Santander because of the ERC, even when they found out they couldn't borrow as much as they wanted. But they could never have borrowed the amount they originally wanted from Santander, because the amount they actually borrowed was the maximum Santander would lend to them under their policy.

So, to borrow the amount they wanted they would have had to go to another lender. But there was no guarantee they would have been able to borrow the amount they wanted with another lender. And even if they had been able to borrow significantly more with another lender, I think it's most likely they would still have taken out another fixed rate, as this was their preference in line with their circumstances at the time. So, they'd still have a product with an ERC now.

Overall, I still think it's most likely Mr and Mrs L would have taken the additional borrowing on the same rate as the rate they'd chosen for their other borrowing, if they'd been given the correct information about how much they could borrow when they should have been. So, I don’t think it would be reasonable for me to require Santander to allow them to switch the additional borrowing to a tracker rate now, or allow them to repay it without being charged an ERC.

Putting things right

I’m sorry to disappoint Mr and Mrs L, but after considering everything carefully I’ve not seen anything to lead me to depart from my provisional decision.

So I still think Santander UK Plc should put things right as follows:

- Santander UK Plc should re-work Mr and Mrs L’s mortgage account to reflect how they would have proceeded if they’d completed a combined application for the additional borrowing and the rate switch in early June 2020, in line with what I’ve set out above and in my provisional decision.

- If this means Mr and Mrs L have paid more than they needed to in their monthly payments, the overpayments should be refunded to them. Santander UK Plc should pay 8% simple interest a year from the date the payment was made to the date of the refund.

- If Santander considers that they’re required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr and Mrs L how much they’ve taken off. They should also give Mr and Mrs L a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

- Santander UK Plc should also pay Mr and Mrs L £300 in compensation.

My final decision

My final decision is that I uphold this complaint, for the reasons I’ve explained above and in my provisional decision. Santander UK Plc should put things right as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs L to accept or reject my decision before 9 April 2022.

Helen Sutcliffe
Ombudsman