

The complaint

Mr and Mrs M complain that Santander UK Plc unfairly declined their application to port their mortgage product to a new property. They said they had to pay an early repayment charge (ERC) and other costs because of this and would like these refunded with additional compensation, in order to resolve this complaint.

What happened

Mr and Mrs M took out a mortgage with Santander in November 2016. They borrowed £86,800 on a repayment basis over a term of 19 years and 10 months.

Mr M unfortunately suffered some health issues in early 2016 which meant he was unable to work for a period of time which caused them both some financial difficulty. Mr and Mrs M said they used a debt charity service to help them out of this and this has all now been resolved.

In January 2019, Mr and Mrs M switched their mortgage onto a two-year fixed rate which meant that if they redeemed their mortgage within that two-year period, there would be an ERC that would be incurred.

Mr and Mrs M decided they wanted to move to a new house so they could be closer to work and school for their children, so in November 2019, they contacted Santander to apply to port their mortgage (transfer their current mortgage product to a new property). Their plan at the time was to move into their new property in February 2020. They said they wanted to port their mortgage to the new property, and they worked out that they would have been left with around £24,000 equity after all their costs were paid. They said they wanted to use this money to repay some outstanding debts they had with other creditors.

Santander agreed the application and sent Mr and Mrs M a mortgage offer dated 20 December 2019 which was valid until 17 June 2020.

Mr and Mrs M said that around this time, and shortly after they received the mortgage offer, they had some unforeseen costs and had to buy a new car as Mrs M needed to have one for her work. So they took out a loan for £4,000 and expected to repay this when they received the surplus money from the house move.

On 6 January 2020, Mr and Mrs M were informed that the property they wanted to purchase was no longer available. So they extended their own property completion date to 21 February 2020 so that they could find another property – which they did. But they had to increase the amount they wanted to borrow and, in order to afford the monthly mortgage payments, extend the mortgage term. Mr and Mrs M informed Santander but this application was declined on 31 January 2020 and Mr and Mrs M said they were told about this on 4 February 2020.

Mr and Mrs M then found another property and they wanted to borrow the same amount as they currently owed – so on the same terms as their original mortgage. They submitted their application on 13 February 2020, and this was declined on 21 February 2020 due to Mr and Mrs M's credit files and history. Santander's underwriters explained that this

included information about returned direct debits, late mortgage payments and the new commitments that were not present when the original application was made in December 2019. They also said that Mrs M's employment status had changed.

Mr and Mrs M already had a set completion date for the sale of their property, and they sold their property on 21 February 2020. As a result of this, Mr and Mrs M said they didn't have anywhere else to go so they ended up renting. They also had to pay an ERC of £2,372.91 because their mortgage was redeemed.

Mr and Mrs M complained to Santander about how they were treated unfairly during this process and Santander sent out their final response on the matter on 15 May 2020. They said they would consider another application but only if Mr and Mrs M could provide some additional information which included information about Mrs M's new employment as of 2 March 2020. Santander also said they usually allowed three months after redemption for borrowers to find a new property and complete and if this was the case, they would reimburse the ERC. They said as a result of covid-19, they would extend this to five months. This meant that Mr and Mrs M had until 21 July 2020 to port their mortgage and complete on a new property.

Mr and Mrs M provided Santander with the information they had requested but their application was declined on 10 June 2020.

Santander offered Mr and Mrs M £250 compensation for any confusion that was caused when Mr and Mrs M applied for the second property because Mr and Mrs M believed this application was a continuation of the first one made in December 2019 – and not a new one.

Mr and Mrs M said they ended up renting the third property they wanted to buy from the owners and paid £450 a month which started from April 2020. They said they went to a broker to arrange a mortgage with another lender and they completed on that mortgage on 30 October 2020. They said they had to pay various fees during this time and in order to resolve this complaint, they would like these refunded with additional compensation for the stress and hardship caused to them.

Santander didn't offer anything further other than the £250 compensation, so Mr and Mrs M brought the complaint to our service where it was looked at by one of our investigators. Our investigator thought that Santander had acted unfairly in declining the third application that Mr and Mrs M made in February 2020. She thought that Santander should have agreed this application because Mr and Mrs M wanted to port their mortgage under the same terms and were not looking to borrow any more.

In order to put things right, she asked Santander to do the following:

- Refund the ERC of £2,372.91 with 8% simple interest from the date the ERC was paid until the date of settlement
- Pay the difference in Mr and Mrs M's contractual monthly payment of £437.39 and the £450 in rent they were paying on the third property from May 2020 along with 8% simple interest
- Pay the difference in the interest rate because if Mr and Mrs M had ported their mortgage, their current fixed rate would have expired in April 2021. The rate they were on was 1.89% and the rate with the new lender was 3.18%. So the difference should be paid from September 2020 until April 2021 along with 8% simple interest
- Pay the £250 compensation that was offered if it hadn't been paid already
- Refund the broker fee of £595

- Refund the cost of conveyancing that Mr and Mrs M had to pay with the new lender of £360 because Santander would not have charged this had the application been approved

Our investigator thought that some of the costs that Mr and Mrs M incurred would have still paid because the redemption and purchase of the new property were not simultaneous, so she didn't think any other fees should be refunded.

Santander didn't agree with what our investigator had said. They made the following comments:

- They didn't feel that they had unfairly declined the third application as there were material changes to the contract. They said the loan to value (LTV) increased so the risk associated with the loan had clearly changed and they were right in taking this into consideration
- In order to gauge whether agreeing to the application was in the best interests of Mr and Mrs M, it was entirely reasonable to consider their financial position in order to assess their ability to sustain the mortgage payments. And in this case, there was evidence of financial difficulty in the past and since the previous mortgage offer, Mr and Mrs M had taken out an additional loan and missed other payments on other commitments which had impacted their credit file. Since the mortgage offer in December 2019, Mr and Mrs M had taken out new credit in the three months and their employment situation had changed
- Mr and Mrs M increased their borrowing on the new mortgage with another lender to £86,250 so they are not looking at 'like for like' and would question whether they would have been in a position to purchase the property with a lower sum. So they didn't agree to pay the difference in the interest rates

In summary Santander said, there were too many concerns around Mr and Mrs M's finances, and they were being asked to increase their risk against a poor financial record.

Mr and Mrs M also didn't agree with the investigator. They said they were given wrong advice by Santander which resulted in a loss of time to move home which caused them the need to pay for temporary accommodation. They made the following comments:

- The mortgage offer Santander had sent them in December 2019 was valid for six months. They sold their home and secured the original house purchase in November 2019, with the move set for early February 2020. This was based on similar financial borrowing to that which they already had in place. The fixed rate they were on was due to end in April 2021. The move would have left them with £24,000 equity which was earmarked to pay off the car loan and clear some other debts
- The move was closer to their work and school and in a less rural location which would have been more economical for their family in terms of travel, fuel and utility costs
- Each time they spoke to Santander, they were given a figure it would lend to them and they always found a property to purchase. They said Santander always gave them a lesser figure and this happened three times. They feel that had Santander given them correct advice in January 2020 that they could only port the amount they

had, they would have had time to find a property and arrange a move much quicker

- Their track record in January and February 2020 at finding, bidding on and winning three houses proves that they were moving fast, and it was Santander that let them down. The repercussions of this loss of time meant they ended up having to rent
- They feel that Santander changed the goalposts, and this was embarrassing to them and detrimental to their health. They had to rent and for some of the time, their family had to be split up and live with separate family members – at the height of the pandemic. They feel they deserve compensation for the upset and stress they have encountered
- The start time for repayment of their losses based on finalising their mortgage and it taking three months to complete is misjudged.
- On multiple phone calls they had with Santander they were told a decision would take five working days. So they disagree that it would have taken longer than a week or two for Santander to have completed their porting application. So if things had gone right, they would not have incurred fees such as renting, cattery and storage fees
- Their family was effectively homeless between February and September 2020. They were living month to month, not knowing if they were going to be ok and if they were able to stay in the house they were renting while they were waiting for a mortgage. They believe they are entitled to much more than £250 compensation and have never received this payment.

As Santander and Mr and Mrs M both disagreed, they asked for the complaint to be reviewed by an ombudsman, so it was passed to me to decide.

My provisional decision

I issued a provisional decision on 22 February 2022. I said:

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 M have provided very detailed information regarding their complaint and I understand they feel very strongly about it. I want to assure Mr and Mrs M that I have taken into account everything they have said, but if there is something that I haven't mentioned, it's not because it hasn't been considered – it has, and I have thought very carefully about the arguments they have made.

Mr and Mrs M are unhappy that their application to port their mortgage to a new property was declined after it was initially approved by Santander in December 2019. They feel they have been treated very unfairly and caused a great deal of stress and inconvenience.

There are rules in place that cover this type of situation and that I have to consider. These rules followed on from the Financial Conduct Authority's (FCA) Mortgage Market Review (MMR). The MMR led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR rules have brought about requirements for stricter lending assessments, aimed to protect consumers and encourage mortgage lenders to act more responsibly. The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they passed the tests under the old rules, but not under the new rules. So the FCA introduced certain rules to address this.

Mortgage Conduct of Business rules (MCOB) 11.6.3 says that a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing

mortgage and there is no additional borrowing, (other than for product fees) and no changes to the terms of the mortgage that affect affordability. I've looked at each application that Mr and Mrs M have made.

First porting application – December 2019

Looking at the first application that Mr and Mrs M made in December 2019, I can see they were not making any material changes that would have affected affordability. Santander didn't carry out an affordability assessment.

Santander said they carried out a credit check when this application was made which showed adverse information on Mrs M's credit file but because it was historical and over 12 months old, and the amount Mr and Mrs M wanted to borrow wasn't changing, they didn't have an issue with it. They approved the application and proceeded to send Mr and Mrs M a mortgage offer. This mortgage offer was valid until June 2020. I think that Santander dealt with this application fairly.

Second porting application – January 2020

Unfortunately, the property that Mr and Mrs M intended to purchase fell through, so they found another property with a higher purchase price, so they wanted to increase their borrowing from around £75,000 to £120,000. Mr and Mrs M also wanted to increase the term of their mortgage.

These changes were a material change to the contract so it would have been reasonable for Santander to have conducted an affordability assessment to ensure that the new mortgage was affordable to Mr and Mrs M. However, Santander said they declined the application due to the fact that there was adverse credit on Mr and Mrs M's credit file. I think because there was a change to the mortgage both in terms of how much Mr and Mrs M wanted to borrow, and an increase in the mortgage term, it was reasonable for Santander to look at affordability. I therefore don't think that Santander were unfair in the decision they made and I do appreciate why Santander had concerns about this. They had to satisfy themselves that the risk they were taking on was acceptable to them, and based on those circumstances, they didn't feel it was. I can't say that Santander did anything wrong here. However, I do have a different opinion on the third application that Mr and Mrs M made in February 2020 which I will go on to explain now.

Third porting application – February 2020

As Mr and Mrs M were unable to proceed with the second property, they found another property they wanted to purchase, and they made an application to Santander in February 2020. They wanted to borrow the same amount as their original mortgage – so around £75,000 and they were not looking to extend the term or make any other changes that would have been classed as material changes to the mortgage.

I have looked at Santander's underwriting notes and they declined this application on the basis of Mr and Mrs M's adverse credit information and because they had concerns over their ability to sustain the mortgage payments.

Santander also had concerns about Mrs M's employment which had changed, and because the LTV was increasing. They said this was material, so they had every right to carry out an affordability assessment which they were then not happy with.

The FCA rules for mortgage lending allow lenders to set aside affordability checks for existing borrowers who aren't borrowing more money or making any other material changes to the mortgage contract – as this was the case here. They do not say a lender *must* set them aside, but they can use their discretion to do so. If a lender does carry out an affordability assessment, it would then be unfair to use that assessment as

a reason to decline the application.

Mrs M's employment status changed from employed to self-employed but from what I can see, it was only Mr M's income that was being used in the application. Even so, Santander shouldn't have used this as one of the reasons to decline the application because it was linked to affordability.

I understand that Mr and Mrs M took out further borrowing since the first application as Mrs M needed a new car for her work. They did this because they thought they would pay this and other debts off from the surplus money they would have received from the sale of their house – which they thought was still going ahead at that time.

Santander were not happy with historical adverse credit information and returned direct debits. They said that Mr and Mrs M had taken out a new loan since the original offer in December 2019 and they had missed other commitments which impacted their credit file.

But most of these were historic which Santander were already aware of. There were late payments on two credit cards for Mr M but these were settled in 2017. And Mrs M also had late payments on a credit card, but these were settled in 2018. There were missed mortgage payments in 2019 and this was prior to the first application in December 2019 – when Santander already approved the first porting application.

Mr and Mrs M had a valid reason for needing to take out a loan in order to purchase a car. In any event, the fact that Santander have said there was evidence of financial difficulty in the past and since the previous mortgage offer, this all falls under affordability. While I appreciate that things had changed for Mr and Mrs M since December 2019, they knew they had sold their property and were relying on the surplus funds to repay their debts. That purchase didn't go through. Their circumstances changed at that point and their priority was to find another property to purchase. The point here is that the terms of the mortgage were not changing so Santander should have allowed Mr and Mrs M to port their mortgage.

Mr and Mrs M were not borrowing any further funds. They wanted to keep their mortgage on the same terms. The application was on a like for like basis with the mortgage amount, mortgage term and contractual monthly payment all remaining the same. I do think it was unfair for Santander to decline their porting application for the reasons they did.

The LTV increased from 50.66% to 62.49%. While the LTV has increased, I accept this meant an increased risk to Santander but this was a minimal risk. Mr and Mrs M still had a considerable amount of equity left in their property so if there were any issues in the future, Santander's security would not have been at risk.

In addition to this, Mr and Mrs M were already on a fixed rate which wasn't expiring until April 2021. This meant that had Mr and Mrs M not wanted to move, they would have continued with this mortgage regardless. Santander would have allowed Mr and Mrs M to continue with the mortgage they already had, had Mr and Mrs M decided not to port. So Santander already had an obligation to continue with this mortgage.

Because Santander declined this application, Mr and Mrs M had to rent the property they wanted to buy and ended up paying the ERC of £2,372.91 when they redeemed their mortgage.

Although Santander gave Mr and Mrs M five months from redemption to complete on a new property, the final application after Santander reviewed it again, was declined in June 2020. So it was highly unlikely that Mr and Mrs M would have arranged another mortgage and completed in just a matter of weeks.

Had the application of been approved in February 2020, Mr and Mrs M would have kept their interest rate of 1.89% and not had to secure another mortgage with another lender,

paying a higher interest rate of 3.18%. I think this has also had an impact on Mr and Mrs M.

I understand why Mr and Mrs M are unhappy with what has happened, and why they would like to be reimbursed for the fees they have had to pay. I think there are some fees that Santander should reimburse in order to put things right for Mr and Mrs M.

Putting things right

As I've already explained, I think that Santander should have allowed Mr and Mrs M to port their existing mortgage to the new property they wanted to purchase – the third application made in February 2020. Because of this, they should put Mr and Mrs M back in the position they would have been in had that mortgage been approved.

They should therefore refund the ERC of £2,372.91 and the broker fee of £595. The ERC would never have been charged if the application was approved. And Mr and Mrs M wouldn't have had to pay an additional fee to a broker to try and find a mortgage urgently – in order to secure the mortgage on the property they were renting out. Mr and Mrs M also had to pay a valuation fee when taking out the new mortgage, but Santander said they wouldn't have charged this if the porting application was approved, so Santander should also refund this fee of £360.

Mr and Mrs M said they started to rent the property they wanted to buy (the third one) in April 2020 and they told us they paid £450 in rent per month. I think it's likely that if Santander did approve the application, it would have taken at least three months for completion to go through. This isn't unusual and given the pandemic, I think this amount of time was reasonable based on what we know of the mortgage market. So, Santander should pay the difference in Mr and Mrs M's contractual monthly payment of £437.39 and the rent payment of £450 from May 2020 which is three months from when they made their application in February 2020, until October 2020 when they completed on their new property.

Had Santander allowed Mr and Mrs M to port their mortgage, the interest rate they would have been on would have been 1.89% which would have expired in April 2021. Mr and Mrs M secured a new interest rate on their new mortgage of 3.18%. Santander should pay the difference in the interest rate from October 2020, when Mr and Mrs M completed on their new property, until April 2021 which is when the fixed rate of interest they were on with Santander would have expired. But this should only be on the amount of Mr and Mrs M's original mortgage with Santander.

I understand that Mr and Mrs M would also like their storage and cattery fees refunded, but these costs are costs that they would have had to pay regardless. Had Santander approved the mortgage in February 2020, it would still have taken some time for the mortgage to complete. Mr and Mrs M told us they had a completion date for the sale of their property set for the end of February 2020 so they would have still had to arrange for these services even if the application had been approved. I therefore don't agree that these should be refunded.

Mr and Mrs M said they didn't realise at the time, when the first property fell through, that the original mortgage offer wasn't still going to be valid until June 2020. Santander agreed to pay Mr and Mrs M £250 compensation for any confusion. Mr and Mrs M have told us that they have not received this payment. If Santander have not made this payment to Mr and Mrs M, they should ensure that this is made, if Mr and Mrs M agree to this

I appreciate that this caused some stress and inconvenience to Mr and Mrs M and I know the efforts they went through to try and get things sorted out. They had to rent a property when they redeemed their mortgage and they have told us that they were not all able to live together for a while until they found somewhere bigger to rent. This

caused them unnecessary upset at a time which was already quite difficult for them. I therefore think that Santander should pay an additional £250 for distress and inconvenience that was caused to Mr and Mrs M.

My provisional decision

For the reasons given above, I'm intending to uphold this complaint and require Santander to:

- Refund the ERC of £2,372.91 with 8% simple interest from the date the ERC was paid until the date of settlement
- Pay the difference between Mr and Mrs M's contractual monthly mortgage payment of £437.39 and the £450 in rent they were paying on the third property from May 2020 up until October 2020 along with 8% simple interest which should be calculated from May until October 2020
- Pay the difference in the interest rate between 1.89% and 3.18% from October 2020 until April 2021 along with 8% simple interest from October 2020 until April 2021
- Pay the £250 compensation that was offered originally if it hadn't been paid already
- Pay an additional £250 for distress and inconvenience caused
- Refund the broker fee of £595 plus 8% interest on this amount
- Refund the cost of conveyancing that Mr and Mrs M had to pay with the new lender of £360 plus 8% interest on this amount

If Santander UK Plc deducts tax from any interest it pays to Mr and Mrs M as above, it should provide Mr and Mrs M with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Developments

Mr and Mrs M responded to the provisional decision and said they both accepted it. They said they were still disappointed with the level of compensation but were grateful that it was raised a little.

Mr and Mrs M said they don't see any real punishment given to Santander or any kind of deterrent to stop them repeating the unfair behaviour Mr and Mrs M experienced against other customers. They said they would write to the Financial Conduct Authority (FCA) separately.

Santander responded to the provisional decision and said they didn't have anything further to add.

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.

I'd like to pick up on the point that Mr and Mrs M made about the fact they didn't see any punishment given to Santander. We're not the industry regulator, the FCA is. So where we make awards for compensation, those are to reflect the distress and inconvenience suffered by the customer, and we also think about putting customers back in the position they would have been in, had any errors not occurred. These aren't intended as a form of fine,

punishment or deterrent for the business involved. I understand that Mr and Mrs M have said they will contact the FCA about this, and they are in their right to do so if they wish.

As Mr and Mrs M agreed with the provisional decision, and Santander had no further comments, I see no reason to depart from my provisional decision.

My final decision

For the reasons given above, I uphold this complaint and require Santander to:

- Refund the ERC of £2,372.91 with 8% simple interest from the date the ERC was paid until the date of settlement
- Pay the difference between Mr and Mrs M's contractual monthly mortgage payment of £437.39 and the £450 in rent they were paying on the third property from May 2020 up until October 2020 along with 8% simple interest which should be calculated from May until October 2020
- Pay the difference in the interest rate between 1.89% and 3.18%. from October 2020 until April 2021 along with 8% simple interest from October 2020 until April 2021
- Pay the £250 compensation that was offered originally if it hadn't been paid already
- Pay an additional £250 for distress and inconvenience caused
- Refund the broker fee of £595 plus 8% interest on this amount
- Refund the cost of conveyancing that Mr and Mrs M had to pay with the new lender of £360 plus 8% interest on this amount

If Santander UK Plc deducts tax from any interest it pays to Mr and Mrs M as above, it should provide Mr and Mrs M with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 1 April 2022.

Maria Drury
Ombudsman