

## The complaint

Mr and Mrs R complain that Santander UK Plc unfairly declined their application to transfer or port their mortgage to another property. As a result, they incurred an early repayment charge (ERC).

## What happened

In 2017, Mr and Mrs R took out a fixed rate mortgage with Santander. An ERC applied if the mortgage was repaid before August 2022.

In 2020, Mr and Mrs R applied to port their mortgage to a new property. But Santander declined their application. As a result, they incurred an ERC when they repaid the mortgage.

Mr and Mrs R consider that Santander's reasons for declining the application were flawed and based on incorrect information it held about the property they wanted to buy.

I issued a provisional decision. My provisional findings (which form part of this decision) were:

*Santander's final response said that the decision to decline the application was because the property didn't meet the definition of a "single dwelling", it was subject to an overage agreement, it included horse riding facilities and it wasn't clear if they would be used by the public, and the property came with an option to buy more land. It said the first two reasons were outside its policy and the second two may be although it would need to clarify. Santander also said that the application failed affordability checks.*

*When I asked Santander for clarification, the case was reviewed by an underwriter. They said that the application was declined solely because of the suitability of the property. They said that affordability had not been assessed. That was not the deciding factor and had not been fully investigated because the property didn't meet Santander's policy. It was only the multiple dwellings and overage agreement that were issues.*

*That leaves the questions of whether the property was a single dwelling and if it had an overage agreement.*

*Mr and Mrs R have provided evidence to show that the property does not have an overage agreement. It is a copy of the title deed. It is also consistent with what they have said all along – that the property used to have an overage agreement and that was reflected in out of date sales literature. This is supported by Santander's own submissions that accept that it discovered the overage agreement by looking up the property online. I'm satisfied this related to an earlier unsuccessful attempt to sell the property.*

*What I need to decide is whether it was reasonable for Santander to reach the conclusion that the property did not meet its definition of a single dwelling – its policy says "properties with annexes and/or ancillary accommodation occupied in conjunction with the main residence will be treated as a single dwelling".*

*Mr and Mrs R have been clear and consistent that it was always their intention to occupy the whole house. They have provided a letter from a qualified chartered surveyor, which confirms the property contains an area which could be used as ancillary accommodation. In the surveyor's opinion the property met Santander's definition of a single dwelling.*

*Santander's policy does not rule out properties with annexes or ancillary accommodation as long as it is "occupied in conjunction with the main residence." I am struggling to see how the property did not meet the definition. It isn't in dispute that there was ancillary accommodation, but Mr and Mrs R have told us they intended to occupy it in conjunction with their main residence. There is no evidence at all to suggest they ever intended to do otherwise.*

*There is also the issue of the stamp duty multiple dwelling relief. Mr and Mrs R have provided evidence that at the time in question they could legitimately claim this relief and the property would still meet Santander's definition of a single dwelling. When I put that evidence to Santander it said that Mr and Mrs R told it that the property was eligible for that relief because it had three self-contained flats. I invited Santander if it didn't agree with Mr and Mrs R's interpretation of the rules around claiming stamp duty relief for multiple dwellings then it should let me know why and provide evidence to support what it has said. It hasn't done so.*

*Looking at the evidence we have I consider it is likely that Santander has incorrectly conflated the ability to claim multiple dwelling stamp duty relief with its definition of a "multiple dwelling". But they are two separate things. The fact that Mr and Mrs R claimed that relief isn't relevant in this case in determining whether the property met Santander's definition of a single dwelling.*

*The surveyor that Mr and Mrs R instructed said it would have been good practice for Santander to instruct a surveyor to inspect the property and give a professional opinion on whether it was a single dwelling or not. I agree that would have been fairer in the circumstances. Santander said there was no point because all it would prove was that there was other self-contained accommodation at the property and it had no way of checking that Mr and Mrs R would occupy it as part of a single dwelling. But if that was the case, then it isn't clear how Santander could ever satisfy itself that a property with annexes or ancillary accommodation was going to be occupied in conjunction with the main residence.*

*I also asked Santander what its intention was in setting this policy. In other words what risks was it trying to avoid. It didn't respond.*

*Overall, I'm not satisfied that Santander has provided a cogent argument that the property did not, in fact, meet its lending policy or that it has applied its policy correctly in the circumstances of this case.*

*After carefully looking at all of the evidence we have, I don't consider Santander has acted fairly and reasonably because:*

- On the face of it the property met its lending policy – although there was ancillary accommodation Mr and Mrs R intended to occupy it in conjunction with their main residence. There was an outbuilding, but we have evidence this is not suitable to be used as a dwelling.*
- It based too much of its decision on speculation, assumptions and out of date and incorrect information. And it didn't listen to Mr and Mrs R when they tried to correct*

*it. I consider it would have been good practice for Santander to take steps to check if its understanding was correct, bearing in mind the implications to Mr and Mrs R of their application being declined.*

- *It placed too much weight on the fact that Mr and Mrs R were claiming multiple dwelling stamp duty relief.*
- *It didn't arrange for a survey to be carried out.*

*It hasn't presented a persuasive case to show that Mr and Mrs R's application was considered fairly and objectively. In my experience, the underwriter went further than good practice would require in making assumptions about Mr and Mrs R's circumstances. While I agree that many of those points were valid and might need to be explored before Santander could approve the application, to an impartial person they look like reasons why the application was declined. Santander has confirmed that wasn't correct. But its own final response stated that affordability was a reason for the decline – and that is what I initially thought. Looking at the notes overall, they don't support that the application was being considered objectively and fairly.*

*I accept that Santander has a very wide discretion about what properties it considers to be acceptable security. I would be very reluctant to interfere in that. But it should be straightforward for a mortgage lender to demonstrate that it has fairly applied its policy when making a decision. I don't think it has done so here.*

*I accept that we don't know whether Mr and Mrs R would have qualified for a mortgage had they undergone all of the checks. They were looking to borrow almost £200,000 more. But they have also said that they would have been able to increase their deposit so that the amount of borrowing was the same as they already had. In those circumstances, under the relevant rules, it was unlikely that Santander would have been able to decline the application on affordability grounds. In any event, Mr and Mrs R have disputed many of the points that Santander made in regard to affordability. Bearing in mind they were able to source an alternative mortgage, it is likely that after completing more thorough checks, Santander would have found the increased mortgage was affordable. But it is difficult for me to undertake a full assessment here. It was Santander's decision not to fairly consider the application, so I don't think it would be fair or reasonable for Mr and Mrs R to lose out as a result of that.*

*In all the circumstances, I consider it would be fair and reasonable for Santander to refund the ERC in full with interest. It's clear that Mr and Mrs R have been caused distress and inconvenience because of the way that Santander dealt with their application. They would always have had to go through a full application – but they wasted time and effort in pursuing the abortive application. They also had the upset of incurring a significant ERC. Along with the trouble of having to pursue their complaint to this extent. After looking at what happened and what Mr and Mrs R have said, I consider that Santander should pay them £350 to reflect that.*

*Santander should also refund any costs that Mr and Mrs R incurred in obtaining a letter from a chartered surveyor in respect of this complaint, if they provide evidence of the amount paid.*

Mr and Mrs R accepted my provisional decision. Santander did not. It made a number of points, including:

- It had been correct in determining that the property was not suitable for mortgage purposes based on the statement by Mr R that the property contained flats.
- There is no doubt that the property was more than one unit at the time of purchase. If a valuation had been carried out a value of “not applicable” would be returned, with only a figure for the value of the property after it had been converted back to a single dwelling.
- It provided the guidance it issues to surveyors to consider for properties with annexes. The guidance said that it will consider lending on a property with annexe accommodation if it is appropriate to the type of property and locality. The valuer should take into account the relative size of the two areas of accommodation and the current configuration – but the prime consideration is whether the property is readily marketable as a single residential unit for owner occupation. If there is evidence that the annexe has been let to unrelated parties on an assured shorthold tenancy agreement it is unlikely to meet Santander’s requirements.
- At the point of purchase the property would not meet its policy, although the property could be altered to meet its policy. But no funds would be released until the property had been converted.

### **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.

As I have said, it is for Santander to decide what properties it accepts as security. But it operates a policy. For it to treat Mr and Mrs R fairly and reasonably it must apply its policy in an objective and fair way. I have very carefully considered all of the evidence that Santander has provided. It has not persuaded me that it has interpreted (or applied) its policy in a fair or reasonable way in the individual circumstances of this case.

I say that because:

- Santander’s policy allowed “*properties with annexes and/or ancillary accommodation occupied in conjunction with the main residence will be treated as a single dwelling.*” Mr and Mrs R have always said they intended to occupy all of the property as a single dwelling – even though it had ancillary accommodation.
- Santander didn’t arrange for a survey to be carried out. It said in response to my provisional decision that if a valuation had been undertaken, the surveyor would have provided no value unless the property was converted into a single unit of accommodation. But Santander has not provided any evidence to support that is what would have happened. In fact, the evidence it has provided contradicts what it has told me. The policy allows annexes and ancillary accommodation where it is occupied in conjunction with the main residence. So it is not clear why the property would need to be converted.

Further, Santander has also provided a copy of its guidance to surveyors in respect of properties with annexes. I am surprised that Santander has only provided this information at this stage of the complaint – it has had ample opportunity to give us any relevant evidence. But it doesn’t help its case. I say that as the guidance sets out that properties with annexes (I’ve assumed it applies to ancillary accommodation too) are acceptable subject to a number of factors. First, if Santander has such guidance, it goes against its position that there was no point in getting a survey done. Why would it have

this guidance if it would never lend in these circumstances? Second, the guidance puts a lot of emphasis on the surveyor's judgement on whether the property would be used as a single dwelling. Mr and Mrs R have provided an opinion from a chartered surveyor that the property did meet Santander's definition of a single dwelling. It seems more likely that a surveyor instructed at the time would have reached a similar conclusion, taking into account the evidence available to me. Third, the guidance puts some emphasis on the property being marketed as a single dwelling and not being occupied by tenants. Santander relied (incorrectly in my view) on out of date sale literature. But the property was being marketed as a single dwelling. And there is no evidence that any of the self-contained accommodation was ever let.

I consider that if Santander has acted fairly, it would have instructed a surveyor to determine if the property met its definition of a single dwelling. If it had, based on the evidence available to me, it seems more likely than not that the surveyor would have found that the property was a single dwelling – while it had ancillary accommodation, it was going to be (and could be) used in conjunction with the main residence.

- Santander based too much of its decision on speculation, assumptions and out of date and incorrect information. And it didn't listen to Mr and Mrs R when they tried to correct it. I consider it would have been good practice for Santander to take steps to check if its understanding was correct, bearing in mind the implications to Mr and Mrs R of their application being declined.
- Santander placed too much weight on the fact that Mr and Mrs R were claiming multiple dwelling stamp duty relief.

For those reasons, and the reasons set out in my provisional decision (above) I don't consider that Santander fairly and reasonably considered Mr and Mrs R's application. It hasn't been able to persuade me or provide evidence to support that the decision it made was reached fairly and reasonably in the circumstances of this case. It was Santander's decision not to fairly consider the application, so I don't think it would be fair or reasonable for Mr and Mrs R to lose out as a result of that.

### **My final decision**

My final decision is that Santander UK Plc should:

- Refund the ERC (which I understand to be) £58,533.79.
- Refund any costs in obtaining a letter from a chartered surveyor in respect of this complaint – upon evidence of payment.
- Pay interest on the above amounts at 8% simple per year from the date paid until date of settlement.
- Pay Mr and Mrs R £350 for any distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 7 June 2022.

Ken Rose  
**Ombudsman**