

The complaint

Mr and Mrs H complain that Santander UK Plc caused delays with their mortgage application and then unfairly applied an early repayment charge (ERC) when they moved to another lender.

What happened

Mr and Mrs H had a mortgage with Santander which was taken out in October 2014. They borrowed £385,995 over a term of 13 years and 6 months, on a capital repayment basis.

Mr and Mrs H were on a fixed rate which they took out in November 2018 and this rate was due to expire in November 2024. Mrs H explained to Santander that they wanted to purchase a second property because it was nearer to her work and they required this as a second home. Mrs H explained that their broker told them that borrowing additional funds on their existing mortgage was the best way to do it.

Mrs H first contacted Santander on 14 May 2020 to explain what she wanted to do, but Santander explained that it wouldn't be possible to proceed with the remortgage application due to the restrictions that were in place. They said because of the value of Mr and Mrs H's property, they would need a physical valuation carried out and because of covid-19, it wasn't possible to get a surveyor out because of the lockdown that the country was in at that moment in time. Mrs H called again in June 2020 and she said she was told the same.

Mrs H contacted Santander again on 14 July 2020 to start the mortgage application, but Santander explained there was a 'unauthorised let marker' on the system. Mrs H explained that she spoke to Santander in 2018 about the possibility of letting out the property, but they had chosen not to do so. Santander at the time, sent out a letter to Mr and Mrs H and said they could proceed with the let if they paid a fee – and as they didn't hear back from Mr and Mrs H, they applied the marker on the system. Santander removed the marker on the following day, on 15 July and Santander offered £100 to Mr and Mrs H for the error. Santander then proceeded with the application.

The application was then approved by the underwriters on 28 July 2020 subject to a valuation, but Mr and Mrs H said they never heard anything, so Mrs H called Santander on 14 August 2020 to find out what was going on. Mrs H said she told Santander on this call that there had been delays and she was under pressure to complete on the other property – and was considering going to another lender to get things moving. Santander explained that on this call, they made it clear that Mr and Mrs H would incur an ERC if they moved their mortgage.

Santander instructed the surveyor on 19 August and on 20 August, the mortgage was redeemed which meant that Mr and Mrs H incurred an ERC of £10,432.34.

Santander accepted that there was a three-week delay and offered £250 to Mr and Mrs H because of this. Mr and Mrs H wanted the ERC refunded due to the delays, but Santander explained the ERC was charged in line with the terms and conditions of the mortgage so didn't agree to refund it.

Mrs H then asked if she could port the mortgage over to the new property in order to get the ERC refunded, but Santander said this was not possible as porting a mortgage (transferring

the product from one property to another), is not possible if the property is already owned, as it must be done simultaneously.

Mr and Mrs H were not happy with this, so they brought their complaint to our service where it was looked at by one of our investigators. Our investigator didn't uphold the complaint. He acknowledged the delay that had been caused by Santander but said due to covid restrictions in place, and the delays in general, there was no guarantee that the mortgage would have completed in time. And he also said it was Mr and Mrs H's choice to redeem the mortgage and move to another lender.

Mr and Mrs H didn't agree with this. They made the following comments:

- There was no guarantee that the mortgage wouldn't have completed in time and the mortgage only progressed because she raised a complaint
- Their application was sitting around for three weeks and when she called in August, the surveyor was instructed the following day with an appointment made within one day. Mrs H believes had this of happened sooner, they would not be in this position
- They believe that Santander should let them return to them by porting the mortgage to the new property, because it is all down to their errors
- They have suffered significant loss by paying the ERC as a direct result of the errors caused by Santander

As Mr and Mrs H disagreed, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

My provisional decision

I issued a provisional decision on 23 February 2022. I said:

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

Mr and Mrs H have paid a substantial ERC so I can understand why they are unhappy about it. Having looked at everything, I think that Santander have acted unfairly. I'll explain why.

Mr and Mrs H wanted to purchase another property so that it was closer to Mrs H's work. She first contacted Santander on the 14 May 2020 and was told it wasn't possible as a physical valuation needed to be carried out on the property because of its value – before any application could take place.

Mrs H said she called again in June 2020 and she was told the same thing, but Santander have not been able to locate any of these calls – and the contact notes I have been provided with don't reflect any calls either. It wasn't until Mrs H called again on 14 July 2020, then an application was made. The issue with the 'unauthorised let market' was resolved the following day, so I think this didn't cause any delays. And Santander offered Mr and Mrs H £100 as compensation for this, which I think is reasonable.

Mr and Mrs H then proceeded with the application which was approved on 28 July 2020, but Mr and Mrs H didn't hear anything until Mrs H called Santander on 14 August 2020 to find out what was going on. I have listened to this call and Mrs H explains that they are under pressure to complete on the property. Santander explained that their application was marked as an 'internal training case' in error which meant it didn't proceed to the next stage automatically. Santander apologised for this. A valuation was then instructed on 19 August 2020, but Mr and Mrs H redeemed the mortgage on 20 August 2020 after arranging a mortgage with another lender.

I accept that Santander acted quickly as soon as they found out the error that had occurred with the application and offered Mr and Mrs H £250 for inconvenience caused. But I think there is more that needs to be considered.

Santander told us that physical valuations were allowed to resume in Scotland on 29 June 2020 and as they had a backlog of cases, they worked through in date order.

I have listened to the telephone call that Mrs H initially had with Santander on 14 May 2020. The adviser at Santander explained that it wasn't possible for Mr and Mrs H to continue with the mortgage application, for the reasons that have already been explained. The adviser told Mrs H that they would keep Mrs H's case on file, and they would be in contact to let her know when they were able to proceed. Later, in the same call, the adviser said they are not able to proceed so what they are doing, is keeping an eye and when they have changes in their ability to process applications, they are calling customers back if they are able to proceed. This didn't happen.

Had Santander contacted Mrs H when they were ready to proceed with the application, this would have given Mr and Mrs H an additional two weeks which is in addition to the three week delay that Santander caused by delaying the application – to complete on their property. It's therefore more likely that things would have moved along quicker so that Mr and Mrs H could have completed on their mortgage by the end of August 2020. Santander would have been aware that physical valuations were able to go ahead prior to it happening from 29 June so the reasonable thing for them to have done here, was to let Mr and Mrs H know this – so that they could proceed with their application. It's also fair to say that Mr and Mrs H may have called back sooner to find out about the valuations starting sooner had they not have been told they'd get a call back.

Mr and Mrs H managed to get a mortgage with another lender very quickly and they ended up completing on time. It doesn't appear they were subject to any chain so it's more likely than not, had it not been for the five week or so delays caused by Santander, Mr and Mrs H would've been able to complete on their property purchase on time.

Santander explained to us that they would not proactively contact a consumer when an application was not in progress but that isn't what Mrs H was told on the telephone call. The adviser made it clear that Santander would contact customers to let them know when they could proceed. I think had Santander done this, this would have made a difference to Mr and Mrs H.

Mr and Mrs H were under considerable pressure to complete on their purchase and the contact notes I have seen, reflect that. In the end, they felt that they had no choice but to find another lender in order to try and complete their purchase on time. This left Mr and Mrs H with an additional financial burden during what was already a difficult and stressful period.

I appreciate that Mr and Mrs H were told on the call in August 2020 that they would be charged an ERC if they went to another lender, but due to the pressure that they were under, I feel Santander left Mr and Mrs H no choice as they would have lost the property they were trying to buy.

I think that in order to put things right, Santander should refund the ERC to Mr and Mrs H. I think the compensation that has been offered for £250 and £100 for the initial errors that occurred is fair and reasonable, however the ERC should also be refunded.

My provisional decision

My intention is to uphold this complaint and I required Santander to:

- Refund the ERC plus 8% simple interest from the date the ERC was paid until the date of settlement

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

Developments

Mr and Mrs H and Santander both responded to the provisional decision. Mr and Mrs H accepted it and had nothing further to add. Santander said they don't dispute that there were delays and poor service during the application process, but they are unable to agree with the outcome which has been reached regarding the ERC.

They said after reviewing the complaint and the movement on the mortgage and current account, they are uncertain as to why Mr and Mrs H made the decision to redeem their mortgage. Santander said Mr and Mrs H wanted to borrow £200,000 against their mortgage to purchase another property. They said the application indicated that Mr and Mrs H had access to the remainder of the funds required. After the delays they encountered, Mr and Mrs H made the decision to pay off their mortgage with a transfer from their current account. They transferred £219,508.98.

Santander said that as Mr and Mrs H clearly had access to these funds and the mortgage account was not repaid with funds being received from a solicitor, they don't understand why Mr and Mrs H didn't use these funds to purchase the property they were buying – but instead redeemed their mortgage. Santander said that had they done this, they wouldn't have incurred the ERC. They said it seems that Mr and Mrs H made the choice of their own volition to end their mortgage with Santander when it was not necessary. Santander also provided information which shows that Mr and Mrs H's property hasn't been sold and asked that we reconsider the position regarding the ERC.

My second provisional findings

I issued a second provisional decision dated 27 April 2022. I said:

Having considered the information that has been provided, I have departed from my provisional decision and now set out what I think in my second provisional decision.

I'll firstly comment on the information that Santander have provided regarding the fact that Mr and Mrs H haven't sold their property.

It was never Mr and Mrs H's intention to sell their property. They wanted to purchase a second property nearer to Mrs H's work as it would be easier for her in terms of travel. Mr and Mrs H wanted to borrow £200,000 for the purchase of their second home.

The purchase price of the second property that Mr and Mrs H were buying was £485,000. They wanted to borrow £200,000 from Santander against their existing mortgage, to purchase the property. Mr and Mrs H have told us they always intended on using some of their own funds to cover the deposit and other associated costs. So this does explain the savings they already held.

However, having re-considered the information that Santander provided us and some further information from Mr and Mrs H, it seems that Mrs H already owned a second property which was based in the same area which was closer to her work. Based on the information provided to Santander, it appears that this property was possibly let out. And this mortgage was held with the same lender that Mr and Mrs H took out the new mortgage with.

We asked that third party lender to provide us with copies of the mortgage application form and the mortgage offer and it shows that Mrs H applied for this mortgage (in her

sole name) in March 2020 – which was before Mr and Mrs H approached Santander. We also asked Santander to provide the mortgage application that Mr and Mrs H completed with them, and the application was made on 15 July 2020. Having looked at this application, Mr and Mrs H did declare that they held another mortgage, so this wasn't something that they kept from Santander. And the other lender also knew that Mrs H held another mortgage with Santander too.

I do understand that Mr and Mrs H wanted to try and stay with Santander but due to the delays it wasn't possible, so they went with the other lender. The information that has now come to light does show that Mrs H had already approached the other lender before contacting Santander, and she said she wanted to ensure things were moving as she didn't want to lose the new property she had found close to work, and ideally, still wanted to stay with Santander.

Having looked at the mortgage offer provided by the other lender; it shows that Mrs H was already tied into a mortgage deal so it seems like she would have had to pay an ERC to the other lender if she redeemed that mortgage. And the mortgage application that she made with them shows that she wanted to port that mortgage to the new property she wanted to purchase. A condition of that offer was that the mortgage held with Santander had to be paid off – because Mrs H couldn't afford to keep both.

So it now seems that Mrs H would have had to pay an ERC regardless, either with Santander if she redeemed that mortgage, or with the other lender if she redeemed that one. The other lender has told us that Mrs H redeemed that mortgage on 13 March 2020 and paid an ERC of £5,937.81 but she completed on the new property (the same one she was trying to buy when she applied for the mortgage with Santander), on 26 August 2020. The mortgage with Santander was redeemed on 20 August 2020. Because Mrs H completed within a specific period of time, the other lender refunded part of the ERC to Mrs H - £5,699.74.

I accept the ERC with Santander was for much more, so I do understand why Mr and Mrs H wanted to stay with Santander, but because of the delays, they felt they had no option but to go with the other lender. But knowing now that Mrs H would have had to pay an ERC with the other lender if the Santander mortgage application had gone through, I don't think it's fair that Santander refund the entire ERC that Mr and Mrs H were charged.

I still think that Santander caused delays and as I've already explained, the initial adviser that Mrs H spoke to said she would call Mrs H back when applications were proceeding again. I still believe that had this of happened, the application with Santander would have gone through much quicker so Mr and Mrs H wouldn't have had to redeem their mortgage with Santander. They would have however, of had to redeem their mortgage with the other lender.

I therefore intend on asking Santander to pay the difference in both ERC's. Mr and Mrs H paid an ERC of £10,432.34 with Santander and had a partial ERC refund from the other lender of £5,699.74. So based on this, I think that Santander should refund £4,732.60 which is the difference in both ERC's.

My second provisional decision

For the reasons given above and in my original provisional decision, I intend to uphold this complaint and direct Santander UK Plc to:

- Refund £4,732.60 plus 8% simple interest from the date the Santander ERC was paid until the date of settlement

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

Developments

Santander responded to the provisional decision and accepted what I had said. Mr and Mrs H responded to it also and said they had no further comments to make.

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 Santander have accepted the provisional decision and Mr and Mrs H have no further comments to make, I see no reason to depart from my provisional decision.

My final decision

For the reasons given above and in my original provisional decisions, I uphold this complaint and direct Santander UK Plc to:

- Refund £4,732.60 plus 8% simple interest from the date the Santander ERC was paid until the date of settlement

If Santander UK Plc deducts the tax from any interest it pays to Mr and Mrs H as above, they should provide Mr and Mrs H 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 Mrs H and Mr H to accept or reject my decision before 22 June 2022.

Maria Drury
Ombudsman