

## **The complaint**

Mrs K and Mr P complain that Santander UK Plc (“Santander”) unfairly declined their application to port their mortgage product to a new property. They said they were not borrowing any more money and only wanted to borrow the same amount. Mrs K and Mr P said they have now lost out on fees that they paid during the application process.

## **What happened**

Mrs K and Mr P took out a capital repayment mortgage with Santander in October 2019. The mortgage was for £188,393 over a 25-year term and it was on a fixed rate of 1.79% until January 2027.

In March 2021, Mrs K and Mr P made an application to port their mortgage (transfer their current mortgage product to a new property). They wanted to do this under Santander’s loyal mover policy as they had no increase in their borrowing and no other changes being made to the mortgage. Mrs K and Mr P said they received a decision in principle (DIP) at the time.

Santander told Mrs K and Mr P that they couldn’t offer the level of borrowing that was required because Mrs K and Mr P had taken a six month payment deferral within the 12 months preceding their application – so it was outside of their lending criteria. Mrs K and Mr P had the payment deferral approved from March to September 2020.

Santander said they were able to offer a maximum amount of £66,680 however this wasn’t enough for Mrs K and Mr P as they required the full amount of their current mortgage which at the time was £183,500.

Mrs K and Mr P said that when they applied for the payment deferral, they were told there wouldn’t be any impact on their credit files and they weren’t told that they would lose the benefits of the loyal mover’s scheme.

Mrs K and Mr P said they waited for five weeks while the application was being reviewed by Santander’s underwriters, only to be told they could borrow the lesser amount. They said they have lost out on fees that they have paid such as solicitor, broker and valuation fees.

Santander said they followed the Financial Conduct Authority (FCA) guidelines but they didn’t let Mrs K and Mr P know it may affect future applications because they wouldn’t have known what the lending criteria would be in the future as it is subject to change.

Santander said they don’t recommend that customers pay fees prior to receiving a mortgage offer other than the valuation fee. So they didn’t think that any fees should be refunded.

Mrs K and Mr P remained unhappy, so they brought the complaint to our service where it was looked at by one of our investigators who thought that Santander had acted unfairly. He said that the mortgage rules in place allow Santander to carry out an affordability calculation, but it would be unfair for them to decline the mortgage on that basis – if they found that the mortgage was unaffordable – so he upheld the complaint.

Santander disagreed. They made the following comments:

- In order to gauge best interests, they have to consider a customer’s financial position in order to assess their ability to sustain the mortgage payments, where there is a material change in circumstances. They said the Mortgage Conduct of Business (MCOB) rules do not preclude them from doing so

- Mrs K and Mr P had a combination of furlough, they took six months payment deferral and they followed their policy. They believe it was appropriate for them to decline the application in March 2021
- As Mrs K and Mr P are no longer on furlough for more than one year, they can approach Santander to borrow the same amount as long as there are no other changes, and do not foresee there being an issue with their application
- They said Mrs K and Mr P first contacted them on 18 March 2021 to discuss their application and didn't have all the required information to commence the application until 22 April 2021. They said it appears Mrs K and Mr P approached the solicitor prior to them assessing the application – so didn't agree to refund these costs
- They also didn't agree to refund the two broker fees as Mrs K and Mr P could have contacted them directly in order to make a mortgage application. They said any advice would still be valid in the future. They said after making enquiries, they can see Mrs K and Mr P's house was never sold so may have decided not to sell, even if the porting application had been successful
- They feel a payment of £200 for distress and inconvenience would be more appropriate rather than the £350 recommended by the investigator

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

### **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.

There are rules in place that cover this type of situation 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 the application that Mrs K and Mr P made, to see if Santander have acted fairly.

Mrs K and Mr P wanted to borrow the same amount as their current mortgage. They were not intending on borrowing any additional funds or making any changes that was a material change to the terms of that mortgage.

Santander wouldn't offer them the same amount as their current mortgage, as they said they didn't meet the affordability assessment. Santander have raised concerns about a change in Mrs K and Mr P's circumstances and also because they took a payment deferral within the last 12 months.

I have seen Santander's lending criteria in relation to the loyal mover policy which states that the policy applies to existing borrowers wishing to sell their property and purchase a new one. It notes that borrowers must be applying for the same amount, in the same names, with no changes to their circumstances in the last 12 months or adverse changes

that suggest affordability cannot be maintained. So based on this, I can see the reason why Santander declined the porting application.

However, 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 K and Mr P did take a payment deferral for six months from March to September 2020 – during the pandemic. And Mrs K wasn't working as she was at home looking after their young children. But after the payment holiday ended, they maintained their mortgage payments.

Mrs K and Mr P had a buyer for their property which I can see at the time had a sale price agreed of £455,000 and the property they wanted to buy was valued at £535,000. This meant that the loan to value (LTV) would have actually decreased so there was no risk to Santander. Even if the LTV had increased slightly, the risk to Santander would have been minimal – but this wasn't the case.

In addition to this, Mrs K and Mr P secured a fixed rate in 2019 which doesn't expire until 2027. This meant that had Mrs K and Mr P not wanted to move, they would have continued with this mortgage regardless. Santander would have allowed Mrs K and Mr P to continue with the mortgage they already had, had Mrs K and Mr P decided not to port. So Santander already had an obligation to continue with this mortgage.

I think that Santander should have allowed Mrs K and Mr P to port their existing mortgage to a new property they wanted to purchase. And because of this, Mrs K and Mr P have had to pay fees that they would like reimbursed. I have considered what Santander have said about the fees that Mrs K and Mr P have paid but I do think that some of these should be refunded. I'll explain why.

I appreciate that Mrs K and Mr P may have approached their solicitor prior to receiving a mortgage offer, but had Santander approved the mortgage application, as they should have done, these costs would have been relevant. So I think the solicitor fee for £205 should be refunded. Mrs K and Mr P have paid two lots of broker fees of £250 each. Our investigator thought that Santander should refund both costs. However, I think that only one fee should be refunded. Mrs K and Mr P have explained that they used two different brokers as they were desperate to purchase the property – which they have now ended up losing.

While I accept they were in a stressful position and wanted to go ahead with the property they found, it was ultimately up to them to use two brokers. So I think Santander should only refund one of these fees. I have notified Santander and Mrs K and Mr P separately, to let them know this is my intention. Miss K and Mr P responded and said they feel it's unfair to only refund one broker fee. They said they would never have appointed another broker had Santander allowed them to proceed with the loyal mover's scheme. They said while they can accept the one payment for the broker fee, they don't agree that £350 is acceptable for what they have lost physically and emotionally. They said their main goal was to maintain the loyal mover's scheme and port their mortgage. Miss K and Mr P also challenged the fact that Santander are unable to locate the telephone call where they were told the payment deferral would not affect them in anyway.

Miss K and Mr P also confirmed that their situation has now changed as Miss K has now gone back to work and Mr P's salary has increased so feels this may change Santander's outlook.

Santander originally said they would only award £200 for the trouble and upset that was caused to Mrs K and Mr P, but have responded to say that they are willing to award an amount of £350. I understand that Mrs K and Mr P don't agree that £350 compensation is enough for the distress that they went through. Our awards are not intended on punishing businesses, but we make awards based on what we think is fair and reasonable based on the circumstances of each individual case. I do understand that it was a stressful time for Mrs K and Mr P, but I believe that £350 is reasonable in the circumstances of this complaint.

For completeness, I note that Mrs K and Mr P said they lost out on the opportunity to take advantage of the stamp duty holiday. While I agree that Santander should have approved their porting application, it would be very difficult to say that the mortgage would have completed on time. There are a number of outside factors that could have occurred, the property could have fallen through or their buyers could have pulled out for example, so I don't think that it would be fair to hold Santander responsible for this.

I also note that Mrs K and Mr P would like Santander to provide us with the telephone call whereby they state that a payment deferral would not impact them. But as I have agreed that Santander should have approved the porting application, this isn't necessary.

Santander have explained to us that Mrs K and Mr P can now approach them to consider a new porting application and when Mrs K and Mr P are ready to go ahead, they should contact Santander who should consider this in line with MCOB 11.6.3.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Santander UK Plc to:

- Refund the broker fee of £250 plus 8% interest on this amount
- Refund the solicitor fee of £205 plus 8% interest on this amount
- Pay £350 compensation for the distress and inconvenience caused
- Reconsider Mrs K and Mr P's porting application when they are ready to proceed – taking account of MCOB 11.6.3

If Santander UK Plc deducts tax from any interest it pays to Mrs K and Mr P as above, they should provide Mrs K and Mr P with a tax 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 K and Mr P to accept or reject my decision before 7 October 2022.

Maria Drury  
**Ombudsman**