

The complaint

Mr and Mrs S complain that when they moved house, Santander UK Plc wouldn't agree to grant them a new mortgage in both their names, but with only Mrs S named on the deeds, although it had agreed to their previous property being held in this way.

What happened

Mr and Mrs S told us that after they first got a mortgage with Santander, they'd changed how they owned their home. In late 2016, they'd got permission from Santander to take Mr S's name off the deeds of their house, so it was owned solely by Mrs S. But the mortgage was still in both their names. This is referred to as a joint borrower, sole proprietor mortgage. Mr and Mrs S extended their borrowing on their home twice after this, in 2017 and 2019.

Then more recently, they wanted to move house, porting their existing borrowing and adding some new lending. Things didn't go smoothly, which unfortunately meant that Mr and Mrs S went through Santander's mortgage application process three times.

Mr and Mrs S said that it was only at the very final stages of their eventual move, at the end of April 2022, that their solicitor noted there was nothing from Santander to confirm they could own their new home in the same way as their old one. So they wrote to Santander then asking for this permission. But Santander said no.

Mr and Mrs S did manage to move, with borrowing from Santander, but they weren't able to get the joint borrower, sole proprietor mortgage they wanted. I understand that they are both named on the deeds of their new property, and on the mortgage.

Mr and Mrs S said they weren't told when permission was originally granted in November 2016, that this permission would need to be revisited if they moved house. They said they hadn't been able to find any written policy confirming Santander wouldn't lend in this way. And they noted that they'd been through three separate mortgage applications before finally being able to move, with no one noting this might be an issue.

Mr and Mrs S also said that how their property was held was nothing to do with Santander. They wanted Santander to pay the legal fees to cover changing the ownership of their new property into Mrs S's sole name, so it was held in the same way as the old one. Alternatively they said Santander should pay two thirds of the cost of the last change to title on their old property, because they'd expected that arrangement to continue for the full term of their mortgage and it had ended after only a third of that time.

Santander said it thought it had agreed to Mr S's name being taken off the deeds in 2016 because it had understood that he and Mrs S were separating. It didn't think it would have agreed to this change then, otherwise. And Santander wouldn't give Mr and Mrs S a joint borrower sole proprietor mortgage now. It said they both had to be named on the deeds. Santander said Mr and Mrs S could request a change to how they held the property once they had completed their move, but it indicated that this request wasn't likely to be accepted unless Mr and Mrs S were separating.

Our investigator didn't think this complaint should be upheld. He said that lending criteria and decisions change over time, so what Santander agreed to in 2016 doesn't mean we could reasonably say it would be bound to make the same decisions in 2022. And it also looked as if Santander hadn't fully understood the situation in 2016, as it had understood Mr S wouldn't be remaining in the property.

Mr S said our investigator hadn't understood what he had asked for. He wanted either Santander to cover the legal costs of reverting the new property back to joint borrower sole proprietor, or to compensate them for two thirds of the cost of setting up this arrangement originally, as it had only run for one third of the time Mr and Mrs S anticipated.

Mr S queried why Santander would have understood he was leaving the property. He'd never suggested this, and Santander had continued to write to him at that address.

Our investigator said he understood Mr S thought we ought to have looked more closely at the circumstances around the agreement to hold the property differently in 2016. And Mr S thought Santander knew he was staying in the property. But our investigator said those points wouldn't change his mind. Our investigator still wouldn't say that Santander had to offer Mr and Mrs S the same arrangement in 2022 that it offered in 2016.

Mr S replied again, to say he thought Santander set a precedent on allowing joint borrower sole proprietor arrangement on their previous property. He couldn't see why it had changed its mind, or that it reasonably could do so. Mr S repeated that this was really none of Santander's business. It had first charge over the property so its position was protected.

Mr S wanted this complaint to be considered by an ombudsman, so it was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it in part. This is what I said then:

Mr S has questioned why Santander would assume he was moving out in 2016. He said he'd certainly never suggested that. I note there's nothing to suggest this in the letter I saw. And whilst we don't have information on exactly why Mr and Mrs S chose to hold their property in this way, there are other reasons why they may have chosen to do so.

I think it's most likely that, if Santander did indeed assume Mr S was moving out of the mortgaged property, that this assumption was a mistake. But I reach this decision solely for the purposes of looking at what happened more recently, when Mr and Mrs S asked to move house and hold their new property on the same basis. Mr and Mrs S's complaint is that Santander won't do now what it did in 2016. It isn't a complaint about Santander's 2016 decision (and the time limits on bringing a complaint to our service mean we might not be able to consider a complaint about that now).

Santander now says that it won't lend on a joint borrower sole proprietor basis. Our investigator said Santander was entitled to change its mind about this. But our service has asked if Santander can show us that this policy has come into force since Mr and Mrs S's original request in 2016, or indeed since the additional borrowing they took out on their old home in 2017 and 2019. Santander hasn't responded to our questions on this.

It seems most likely that when Santander said it wouldn't lend to Mr and Mrs S on a joint borrower sole proprietor basis in 2022, it was doing so on the basis of a longstanding

policy, which it has previously overlooked in Mr and Mrs S's case. And I note that Santander also didn't comment on how Mr and Mrs S's existing home was owned, when it either offered them more borrowing, or dealt with any of their three recent mortgage applications. It was only when Mr and Mrs S's solicitor suggested they explicitly confirm how their new property would be held, that Santander objected.

However, I should be clear that my conclusions above don't mean Santander has to agree to a joint borrower sole proprietor mortgage now. I don't think it's fair and reasonable to suggest that having made a mistake in the past binds Santander to continue making the same mistake in future. And I don't agree with Mr S that how the property is held is simply none of its business. I think Santander has a strong vested interest in ensuring it fully understands who has a claim on the property that Mr and Mrs S are using as security for its lending, and if Mr S continues to live in the property, and pay the mortgage, but isn't named on the deeds, then his claim on the property wouldn't necessarily be extinguished entirely, it might just be much more complicated to deal with. For those reasons, I don't think Santander has to agree to this change again in future.

But I do think that Santander has provided Mr and Mrs S with poor service. Because it doesn't seem to have raised any concern about how they held their previous property, either when it agreed additional lending for them or when it processed any of their three recent mortgage applications, I think that Mr and Mrs S had no reason to suspect that this would be an issue. So it was an unpleasant surprise, very late in the day, when Mr and Mrs S realised that they couldn't simply replicate their existing arrangement in their new home.

I think it's unlikely that Mr and Mrs S would have obtained the lending they wanted elsewhere, as many lenders prefer not to offer joint borrower sole proprietor mortgages at all, and those that do generally do so in circumstances where the person not named on the deeds agrees not to reside in the property. So I don't think it's very likely that a competitive mortgage deal could have been obtained for Mr and Mrs S, allowing them to hold the property in the way they wanted, if they'd been aware of Santander's objection earlier. But I do accept that, because Mr and Mrs S only found out about Santander's objection very late in the day, they lost the chance to try to secure lending in the way they wanted.

For that reason, I think Santander should pay Mr and Mrs S some compensation. I think a payment of £300 would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Santander just said it accepted my provisional decision.

Mr S wanted to clarify that when he said the ownership of the property was none of Santander's business, he'd understood that only those named on the deeds had any rights over the property and that Santander would have first charge until the mortgage is paid or moved, so it would be fully protected. But I'd said that in Mr S's circumstances, his claim on the property wouldn't necessarily be extinguished entirely, it might just be much more

complicated to deal with. So Mr S said that if the issue isn't quite as cut and dry as he'd previously thought, then he understood the statements made in my decision.

Mr S also noted that, as I'd suggested, there are many reasons why a person may not want to be on the deeds of the property they are paying towards.

Mr S said the compensation amount I had proposed, of £300, didn't quite cover two thirds of what he'd paid to have his name taken off the deeds of his old property, which is what he'd suggested as a compromise settlement. But he said if Santander also agreed, then the amount was close enough to covering two thirds of those fees, so he wouldn't ask for more compensation.

Santander has accepted this decision, as I set out above. As both sides have agreed with my proposed resolution, and I haven't changed my mind, I'll now make the decision I originally proposed.

My final decision

My final decision is that Santander UK Plc must pay Mr and Mrs S £300 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 6 January 2023.

Esther Absalom-Gough
Ombudsman