

## The complaint

Ms S and Mr W complain that Santander UK Plc withdrew a mortgage offer, which led them to incur additional costs before securing a mortgage from another lender.

## What happened

In October 2021 Ms S and Mr W applied for a mortgage with Santander. Santander assessed their application and issued a mortgage offer on 11 November 2021. Following further checks it then withdrew the offer on 16 November.

Ms S and Mr W complained. They said it wasn't fair or in line with the terms of the mortgage offer for it to be withdrawn. They said they were intending to use the mortgage funds to repay debt elsewhere, and the withdrawal of the mortgage offer meant they were unable to do so. Although they secured a mortgage from another lender in early 2022, this meant they had to pay interest on the other lending for longer than they otherwise would have done.

Ms S and Mr W say they were intending to use the mortgage funds to repay two loans:

- A bridging loan lent to a limited liability partnership (LLP), of which Ms S and Mr W are members, and which was guaranteed by them as individuals. Ms S and Mr W say that because of the delay, the loan was not paid back by the due date of 21 October and when it was repaid, in January 2022, they were charged late payment fees and interest of £14,581.76.
- A personal loan of £25,000 at 6.7% taken out in 2019. Because of the increased costs in repaying the bridging loan, Ms S and Mr W were unable to repay the outstanding balance of this loan as they'd planned.

In addition, the mortgage they were able to secure from the other lender was at a fixed rate of 1.39%, compared to the 0.99% Santander had offered them. They want Santander to refund the lost interest and fees, and the difference between the two mortgage rates.

Our investigator recommended upholding the complaint. She said Santander was entitled to refuse Ms S and Mr W's mortgage application. But it should have carried out proper checks and declined it before issuing an offer, not after. She said that it was reasonable for Santander to have declined their application by 21 October 2021. It had therefore caused delay in Ms S and Mr W obtaining a mortgage elsewhere by 26 days, and should refund the additional interest paid over that period – but only in respect of the personal loan. And she said Santander should pay £250 compensation for their trouble and upset.

Neither party accepted that. Santander didn't think the complaint should be upheld. And Ms S and Mr W didn't think the suggested compensation went far enough. So the complaint comes to me for a final decision to be made.

## 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.

When it receives a mortgage application, a lender will need to carry out various checks and enquiries, and consider the information it's given, in deciding whether to lend. It's important to note that there's never an obligation to lend, and neither is there an obligation to give reasons for refusing an application.

However, an application should be considered fairly and in line with relevant law and regulations. Of particular relevance to this complaint is the part of the mortgage rules that says that when a lender issues a mortgage offer it is a binding offer – which means that (subject to any lawful conditions included in the offer) the lender is bound by the offer and cannot withdraw it.

In this case, Santander issued a binding offer subject to various conditions set out in the offer. It says it was entitled to withdraw the offer relying on one of those conditions.

I've considered what it says about that. But I don't agree. The offer was withdrawn because of the outcome of Santander's underwriting checks, based on information in Santander's possession before it issued the offer. Had Santander completed its checks before issuing the offer, the offer would never have been issued.

In the circumstances, I don't think it was fair for Santander to withdraw a binding offer when nothing had changed since it was issued based on information already in its possession.

However, I also don't think I can fairly say that Santander should have lent to Ms S and Mr W. As I've said, there's no general obligation to lend. The mistake Santander made here was issuing an offer before completing its underwriting checks. Had that mistake not been made, the offer would never have been issued. I don't think Santander would ever have lent to Ms S and Mr W and so I don't think I can fairly find that it should have honoured the offer.

It follows that it wouldn't be fair for me to require Santander to refund the difference between the interest rate Ms S and Mr W actually took in January 2022 and the rate in the Santander offer. Had things gone as they should, that rate would never have been available to Ms S and Mr W and therefore this is not a loss that flows from Santander's mistake.

I do think that had Santander carried out its full checks before issuing the offer, not only would the offer never have been issued but Ms S and Mr W's application would have been declined sooner. If that had happened, it's likely they'd have been able to apply to the other lender sooner, and complete on that mortgage sooner than they did.

### **Putting things right**

If that had happened, they'd have had access to the mortgage funds sooner, and paid off the other lending sooner.

I can't require Santander to compensate them for additional interest paid to the bridging loan. Ms S and Mr W were not the borrowers of that loan, the LLP was. And therefore it is the LLP, not Ms S and Mr W, that has suffered a loss through a delay in repaying the bridging loan. My remit only allows me to compensate complainants for losses they themselves have suffered; I cannot compensate third parties.

I appreciate Ms S and Mr W are guarantors of the LLP's loan, and members of the LLP. But an LLP is a legal person in its own right, separate and distinct from its members. The loan was in the LLP's name, and any additional interest is a loss suffered by the LLP, not Ms S and Mr W directly themselves.

However, I accept that had the mortgage completed sooner, it's likely less funds would have been needed to repay the bridging loan and so more would have been available to repay the personal loan.

I agree with our investigator that had Santander completed its underwriting checks before issuing an offer, it's likely it would have been able to decline Ms S and Mr W's application on or around 21 October. This is 26 days before Santander withdrew the mortgage offer, and to that extent Santander caused a delay of 26 days in the completion of Ms S and Mr W's mortgage.

I don't think it would be fair to require Santander to lend additional funds to replace the interest paid to the bridging loan because of the delay which Ms S and Mr W would otherwise have used to repay the personal loan. That's because it would never have lent to them had nothing gone wrong in this case.

Nor do I think it would be fair to require Santander to pay Ms S and Mr W the amount they would have used to clear the loan. Had nothing gone wrong, Ms S and Mr W would not have repaid this debt completely – they would have shifted it from the personal loan to the mortgage. But given the bridging loan term expired in October, before this application had been completed, there would always have been additional interest on the bridging loan and so I don't think Ms S and Mr W would have been in a position to reduce the personal loan balance by much more than they did.

In the circumstances, I agree that a fair resolution to this complaint is for Santander to refund the difference in interest between the personal loan and the mortgage it was consolidated to, for 26 days.

Ms S and Mr W will need to provide Santander with a statement for the personal loan covering this period. Santander should then calculate the amount by which Ms S and Mr W reduced the personal loan balance on completion of their mortgage in January 2022, and refund them the difference between 26 days interest on this sum at the personal loan rate of 6.7% and 26 days interest at the mortgage rate of 1.39%. It should add simple annual interest of 8% running from 16 November 2021 to date of payment. Santander may deduct income tax at the standard rate from the 8% interest element of my award, as required by HMRC, but it should tell Ms S and Mr W what it has deducted so they can reclaim the tax if they're entitled to do so.

Finally, I think offering Ms S and Mr W a mortgage only to withdraw the offer a few days later caused Ms S and Mr W confusion, upset and inconvenience. I think £250 is fair compensation in all the circumstances.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Santander UK Plc to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S and Mr W to accept or reject my decision before 24 April 2023.

Simon Pugh  
**Ombudsman**