

## **The complaint**

Mr C complains that Santander UK Plc gave him incorrect information about his mortgage and he lost out as a result.

## **What happened**

In January 2022 Mr C called Santander to enquire about porting his mortgage from his existing property (property A) to a new self-build property (property B). The mortgage was a fixed term product which was due to expire in December 2022. Santander said at the time he'd be able to port his mortgage to property B and Mr C says, based on this information, he proceeded with the build and put property A up for sale. Mr C found a buyer quickly and they agreed to wait until July 2022 to complete the purchase as this is when Mr C expected property B to be ready.

Santander says it next spoke to Mr C about the port application in February 2022. During this conversation Mr C was told he wouldn't be able to complete the port on property B. This was because the property was not being purchased and Santander said it could not port the mortgage to a property already owned. It let Mr C know that if he repaid the mortgage before the end of the product term, an early repayment charge (ERC) would be applied.

Mr C complained to Santander about the conflicting information he'd been provided. In March 2022, Santander said it was sorry Mr C had first been told the mortgage could be ported and this was incorrect. To apologise for the initial confusion it paid £40.00 to Mr C's account.

Santander said it was too early to decide about the ERC and whether this could be avoided and said this will need to be considered at the time the mortgage was redeemed. In July 2022 Mr C sold property A and the ERC was applied to the redemption figure for the mortgage.

Santander looked at the complaint again at this point and said that it was unable to waive the ERC. It said this had been applied correctly and it had provided Mr C with the information he needed in February to understand whether he wanted to port the mortgage or not.

Mr C brought his complaint to this service. He says when Santander gave him the wrong information he lost out. Had it provided him with the right information about his ability to port his mortgage in January, he'd have had three options:

1. To go ahead with the build and purchase the property from his parents to enable the port of the mortgage (this would have meant stamp duty was payable on the purchase)
2. Go ahead with the build but attract the ERC (as happened)
3. Not go ahead with the build and wait until the mortgage on property A had expired, allowing it to be redeemed without the ERC (so delay the new build by six months).

Mr C says the lack of information at the right time meant he was only left with option 1 and 2 as he felt option 3 had been removed after property A had already been advertised and a buyer found. He said this has resulted in considerable stress for himself and his family with the upset caused by having to pay an ERC that he might otherwise have been able to avoid.

Our investigator looked at the complaint and said that they didn't think Santander needed to do anything else. She agreed Santander had made an error when it first told Mr C that he'd be able to port his mortgage. But the mortgage offer for Mr C set out that an ERC would be applied if the mortgage was redeemed before 2 December 2022. It was redeemed in July 2022 and so she thought it acted fairly when applying this and she felt it had considered whether it should have been waived. She felt the payment made for £40 was fair to compensate Mr C for the misinformation and it wouldn't be fair to expect Santander to do anything else.

Mr C didn't agree. He said he had no choice but to continue with the sale of property A as a buyer had already been found and he couldn't be certain if he'd sell for the same price later in the year. He also said he committed to works starting on property B and borrowed money from family to finance this which he agreed to repay when the property was completed and mortgaged. So it wasn't as simple as saying he could have changed plans after Santander provided the correct information as a number of things had already happened that he said couldn't be reversed.

Our investigator maintained that she didn't think Santander needed to do anything else so the complaint was passed to me for decision.

I issued my provisional decision in January 2023. I explained that I thought Santander needed to do more to reflect the distress and inconvenience caused with the information it provided. But I didn't think it needed to waive the ERC. I've copied what I said below:

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

*I'm planning on upholding this complaint in part. I appreciate it may still be a disappointment to Mr C, but I'll explain why I've reached this decision.*

*It isn't disputed that Santander provided incorrect information in January 2022 to Mr C. From what Mr C has provided and said, I'm persuaded this did result in him taking steps to both sell property A and commit funds, borrowed from his parents, for further work to property B, ready for its completion in July 2022. Mr C has said these were things that couldn't be reversed and the impact is a considerable amount of distress on himself and his family.*

*In February, not long after the incorrect information was provided, Mr C spoke with Santander again and it was confirmed that he couldn't proceed as he'd planned, based on the information provided in January. If he wanted to avoid the ERC, Mr C could port his mortgage from property A to B, if he purchased property B from his parents. Or he needed to delay the sale of his house until the end of the year and redeem the mortgage after 2 December.*

*Mr C said he had a buyer in place and wasn't sure whether he'd achieve the same sale price later in the year. So although he could have delayed the sale, there would have been a number of unknowns and he may have lost out with the sale price – but this is not something that can be determined. However, it is understandable why Mr C found the situation stressful when he realised his plan put in place based on the information provided was no longer an option. And if he wanted to complete on the sale of property A in July, he would need to pay the ERC and ask that Santander consider waiving this after the completion.*

*Santander has said it correctly applied the ERC and I agree this was done in line with the mortgage offer previously issued. But I think its actions with the misinformation will have caused distress and inconvenience to Mr C and I don't think it has fairly understood or reflected this with the payment made.*

*To put things right, Santander should make a payment of £250 to Mr C to reflect the distress and inconvenience caused when it was made clear that the information provided previously was wrong. This resulted in a loss of expectation and clearly caused upset and distress to Mr C and I think it is right that Santander fairly reflects this.*

*As Santander has already paid Mr C £40.00 it may deduct this from the £250 I feel it is fair to pay overall."*

Santander responded to confirm it accepted the provisional decision and would make payment of the additional £210 upon confirmation from Mr C that he accepts.

Mr C didn't accept the findings. He explained why he felt some things hadn't been given the consideration they deserved and he asked that I reconsider the decision. I've summarised the points he's raised below:

- That Mr C was reasonable to seek advice from Santander on the port of his mortgage and to act on this advice once received – setting the wheels in motion as he did.
- When the advice later transpired to be incorrect, Santander should cover the ERC as this only needed to be incurred because of its actions.
- Mr C says the impact of borrowing money from his parents has not been truly understood. He said he made a promise to repay this by July 2022 (which hadn't been mentioned by my provisional decision). After he committed to spending this money – as he had with the materials and building work paid for in January and February – he had no choice but to proceed with the sale of his house as he couldn't delay the sale of this and the repayment of the loan.
- Santander shouldn't have made Mr C wait until the mortgage had been redeemed before it would confirm whether the ERC could be waived.
- Mr C also questioned whether the outcome would have differed had he not called Santander back so soon after the initial call, allowing it the opportunity to correct the incorrect information it had provided earlier.

### **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.

I've reconsidered the information on this complaint, while taking account of the additional comments Mr C has made in response to my provisional decision. I'll address these below.

I agree, Mr C acted reasonably taking steps to seek advice from Santander about the ability to port his mortgage. And when it said this was an option, it follows that it was reasonable to take steps to continue with the plan he had in place which included the later transfer of his mortgage from property A to property B.

When it became clear the advice was wrong and the mortgage couldn't be ported, Mr C lost

out because of a loss of expectation. I know Mr C has highlighted that he only became aware the information was wrong soon after the initial call because he himself took steps to call Santander to discuss the future port. But it doesn't change the fact that soon after the initial mistake, Santander confirmed the mortgage couldn't be ported and it couldn't say if the ERC would be waived. The actions taken by Mr C between the wrong and right information being provided meant the options he had available were limited. And he had undertaken the purchase of materials and work for property B at considerable expense.

Mr C maintains that he would not have completed the work with property B had he been given the correct advice in January. So I've considered whether I think it is most likely that he would have delayed this project.

I appreciate Mr C has said he wouldn't have gone ahead with the build had the correct information been given when he first called Santander. I think it is possible he would have waited but I'm not persuaded it is the most likely outcome.

Had Mr C been given the right information in January he would have had the three options, outlined in my provisional decision above. He would not have had a buyer for property A but the option to sell and pay the ERC on completion would have remained as well as the option to purchase property B or delay the build.

The port was requested to be moved to a new build property that Mr C was building. The planning permission was granted in February 2019 and had a standard condition that the work shall have begun before the expiration of two years from the date of the approval. While this only requires work to have commenced, the deadline for this was February 2021, a year before when Mr C says he undertook to have the work started. This indicates work had already started on the project before January 2022 when Mr C called Santander to enquire about porting his mortgage to the completed property.

It may be that the work could have waited as it is evident the planning conditions had been met, but with it being sometime since the permission was granted and work on the project had started, I'm not persuaded the most likely outcome is that Mr C would have waited.

Santander said it would consider whether the ERC could be waived and refunded when the mortgage was redeemed and it couldn't be considered until this point. I think this is understandable as until the mortgage was redeemed, there was no payment to consider. So while it would have been helpful to know from the outset, I don't think Santander was acting unfairly when it failed to give an answer on this sooner.

The loan agreements Mr C has provided between himself and his parents don't include a repayment date. But I'm happy to accept that he made a promise to repay this money when he said. Loans between family members can be stressful and I understand why Mr C has highlighted this and the desire to make sure he repaid the loan when he said he would and that this added pressure. I've taken account of this when thinking about the award for the distress and inconvenience.

Mr C says, had he been aware that he wouldn't have been able to repay his parents in July as he'd planned, he wouldn't have instigated the building works and needed the loan until later.

Overall, I can't be sure Mr C would have definitely taken a different course of action had he been given different information about the port sooner. And even if he had, I can't be certain that he's lost out by paying the ERC. Mr C said he continued with the sale of property A because the future resale value wasn't guaranteed and there is a number of other hypotheticals around different steps being taken which mean saying Mr C is in a worse

position because of the ERC and the mortgage finishing earlier isn't something I can say. And with all this in mind, I can't say it's most likely he would have delayed the project.

Equally, I can't say whether the outcome would be different if Santander didn't inform Mr C until later that it gave the wrong information as each case is judged on its own merits. But the ERC was set out in the mortgage offer as needing to be paid if the mortgage was redeemed before the end of the product term. So even if given misinformation about this not being applicable, it has been applied correctly.

I understand the points Mr C has made in relation to my provisional decision but with all the above in mind, I cannot agree it would be fair and reasonable to ask that Santander refund the ERC. I know Mr C feels a fair concession would be a reduced ERC, but as it has been applied correctly, I don't think this would be fair either.

It is clear this situation has caused a great of stress and Mr C has explained how the stressful the self-build situation was too and that this compounded this. But I've not seen anything which persuades me that the award I said I planned on making for this is unreasonable. And I still feel an increase in the amount of distress and inconvenience is warranted and Santander should increase this to £250 – taking account of the £40 previously paid.

I see no reasons to depart from the decision I set out in my provisional decision and uphold Mr C's complaint in part.

### **Putting things right**

To put things right, Santander UK Plc should make a payment of £250 to Mr C to reflect the distress and inconvenience caused when it was made clear that the information provided previously was wrong.

This resulted in a loss of expectation and clearly caused upset and distress to Mr C and I think it is right that Santander fairly reflects this.

As Santander has already paid Mr C £40.00 it may deduct this from the £250 I feel it is fair to pay overall.

### **My final decision**

For the reasons set out above, I uphold Mr C's complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 March 2023.

Thomas Brissenden  
**Ombudsman**