

## The complaint

Ms Y complains that Santander UK Plc didn't fairly consider her request to extend the term of her interest only mortgage. Ms Y asks that Santander extends her mortgage for the maximum term possible, up to when she'd be at its maximum age limit (about 18 years).

## What happened

Ms Y took out an interest only mortgage in 2010. The mortgage was in joint names with her father, who died in 2019. The term is due to expire in January 2024.

In late 2021 Ms Y asked Santander to extend the term. Santander initially said Ms Y should contact it within six months of the expiry date. It then agreed to consider an extension, but declined. It said it had concerns about affordability, Ms Y's existing defaults and her continued use of unsecured debt. Santander said it would re-consider nearer the term end if Ms Y's financial position showed month by month improvement.

Ms Y said she'd been offered a mortgage by another lender and Santander offered to waive the early repayment charge if she chose to re-finance. Ms Y didn't want to re-mortgage as the monthly payments would be higher than her Santander mortgage. Ms Y doesn't want to sell the property and says this wouldn't be straightforward as she holds the property title as tenants in common with her mother, and can't sell the property without her consent. Ms Y has dependent children and she doesn't want her mother (who lives in a cottage at the property) to have to move. Ms Y has told us she has a mental health disability and the uncertainty about what will happen has caused her significant worry and upset.

I sent a provisional decision to the parties, saying in summary that Santander should re-consider Ms Y's request for an extension and whether this would be in her best interests. I said Santander would need information and documents from Ms Y in order to consider what was in her best interests. I said it should provide a list of what it needed and make reasonable adjustments in the way it communicated with Ms Y.

Santander agreed with my provisional decision and provided a list of the documents and information required. It said Ms Y has contact details for a named mortgage adviser who she can contact if she wishes. We sent a copy of the list of documents and information to Ms Y, to help her prepare for what she'll need to provide.

Ms Y didn't agree. She didn't agree that Santander needed further information as she said she'd demonstrated she could maintain mortgage payments. Ms Y provided more background and information about her circumstances. She said Santander had already confirmed she'd meet affordability tests with £8 to spare and said there was more than £400,000 of equity in the property.

Ms Y asked that the ombudsman make a decision about the term extension, rather than Santander. Ms Y said Santander shouldn't increase her payments after her product ends. She said she'd have had a product in place if it weren't for Santander's delays with the term extension.

## **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.

For Santander to offer an extension it's required to act responsibly and make sure Ms Y can afford this in the longer term. This means it would have to assess this as affordable or, if not, in Ms Y's best interests. I said in my provisional decision that I didn't have enough information fairly to require Santander to extend the term of Ms Y's mortgage on the basis it's affordable or in her best interests without it conducting further checks into her situation. This is still the case.

The rules on mortgage regulation set out by the Financial Conduct Authority (FCA) require an affordability assessment before a lender offers a mortgage or agrees to vary a contract.

While a term extension would be a variation of Ms Y's contract, I think the transitional provisions set out in MCOB 11.7.1 and 11.7.3 apply here. These allow a mortgage contract to be varied provided certain conditions are met (which seems to be the case here) and the variation is in the customer's best interests.

Santander says because the mortgage was originally in joint names affordability has to be considered for a term extension in a sole name as this is a material change. But I think Santander can rely on MCOB 11.7.1 and 11.7.3 to offer an extension despite concerns about affordability if it's in Ms Y's best interests.

That's not to say that Santander can't or shouldn't ask for information to establish whether an extension is affordable. It's unlikely to be in Ms Y's best interests to extend the term if she can't maintain interest payments. Her debt would increase and potentially leave her in a worse position, especially given the extension she requested is for a relatively long period.

I think it's fair for Santander to ask Ms Y for information and evidence about her financial situation and other circumstances, provided this is reasonably necessary for it to make a decision as to whether a term extension would be affordable, or if not would still be in her best interests.

In my provisional decision I said Santander should provide a full list of what it needed, to try to minimise the impact on Ms Y. Santander provided a list of documents and information it needs from Ms Y. Ms Y said Santander's list includes new items. I think the new requests might relate to matters that Santander was previously unaware of (such as that Ms Y expected to have a court hearing related to a financial settlement with her ex-husband). In fairness though Santander might need to ask for further information – for instance if there are transactions in Ms Y's recent bank statements that it needs to understand or it becomes aware of a possible change in Ms Y's circumstances.

Ms Y provided some of the information requested by Santander to us, which we can forward to Santander if that's what Ms Y wants.

Ms Y says the uncertainty about the term extension is causing her distress, and she's concerned about her payments increasing after her product ends in early March 2023. To move forward Ms Y will need to engage with Santander and provide information and documents to help it assess affordability and what's in her best interests. I appreciate this isn't easy for her, and I'd expect Santander to make reasonable adjustments in accordance with what Ms Y has told it about her mental health disability.

Ms Y said Santander failed to make reasonable adjustments for her disability when it had

obstructed her request for an extension. She said any omissions in the information she provided were due to her disability.

I can't fairly require Santander to offer an extension without considering whether this is affordable and in Ms Y's best interests. And to do this, it does need information and documents from Ms Y. Ms Y could consider appointing a representative to deal with Santander on her behalf, to protect her from some of the stresses involved. This could be a family member or an independent financial adviser (IFA). If she finds it difficult to contact her creditors, she could provide written authority to Santander for it to contact them direct.

I'd also recommend Ms Y consider asking an IFA for advice about her possible options. It's possible Santander will be unable to offer a term extension and there may be other options available to Ms Y that an IFA can offer her. Ms Y asked how her payments would be affected if the term wasn't extended, and what would happen if she had to sell the property at the end of the term. Ms Y says there's more than £400,000 of equity in the property, and it's possible she will have options. I'd encourage her to speak to an IFA to explore her options.

When considering if an extension is in Ms Y's best interests, I think it's fair for Santander to take into account (and ask for information and evidence about) the following.

- The effect on Ms Y of continuing uncertainty due to her mental health disability. Ms Y says Santander is aware of her disability and the need to make reasonable adjustments.
- What options Ms Y has to repay the mortgage when the term ends or in the future.
- If Ms Y has no means to repay the mortgage balance other than to sell the property, I haven't seen anything to suggest this would be different at the end of a term extension.
- Ms Y says there's more than £400,000 of equity in the property. There's no guarantee that property prices will rise or even remain the same. The amount of equity could decrease during an extension.
- Ms Y has two dependent children and it's likely to be easier for her to move to a smaller property after they become adults.
- Ms Y says when her children reach 18 years old her mother will be nearly 80 years old. She doesn't want her mother to have to move when she's nearly 80. However, Ms Y's mother could live for some years more than this, and indeed more than the extension Ms Y asks for. It might be easier for her mother to move before the term expires in January 2024 or after a shorter extension.
- Whether Ms Y can meet monthly payments. It might not be in Ms Y's best interests to offer an extension if she isn't able to meet the monthly interest payments and this increases her debt.
- Ms Y says she was offered a mortgage by another lender. She didn't want to re-mortgage as the monthly payments are higher and she says they aren't affordable. Interest rates have increased since Ms Y took out her current product. Most likely Ms Y's payments will increase significantly when her product expires in early March 2023 even if she stays with Santander. Santander will need to assess whether this is affordable.
- Ms Y said her unsecured debts result from an abusive relationship: her ex-partner made her take out debt for his benefit. Ms Y has debt management plans with these creditors. She says these are renewed annually and the creditors require none or only nominal payments. I don't think it's fair to decline an extension on the basis this might change

such that the mortgage payments wouldn't be affordable, unless there's some reason to think this is likely to happen. Santander asked for letters from each of these lenders confirming the repayment plans agreed. I think this is a reasonable request. Ms Y says it's difficult for her to contact the lenders. Ms Y could appoint a representative to do this for her or provide written authority for Santander to contact the lenders directly.

- Santander expressed concerns about Ms Y's continued use of unsecured borrowing. Ms Y says further borrowing isn't available to her because of her poor credit record. It's unclear if Santander remains concerned. Whether it's fair to take this into account depends on the circumstances – for instance, if Ms Y is borrowing in order to meet her regular outgoings this would be unsustainable, especially when her monthly mortgage payments increase.
- Santander says it can't rely on Ms Y's payment history to demonstrate affordability as she received payments from a friend. Ms Y says since returning to work she's been making mortgage payments from her own income (from August 2022). Ms Y's payments will increase significantly in March 2023 and Santander will need to consider if the higher payments are affordable.
- Ms Y says her mental health disability means she can only work part time. Ms Y says she doesn't expect her mental health disability to change. She says her work is in a secure role. On this basis, her earned income will likely remain the same.
- Some of Ms Y's income is child related (child benefit and maintenance from her ex-partner). Santander says Ms Y's income will reduce once her youngest child reaches 18 years. At this point it would also be easier for Ms Y to move to a smaller property. Ms Y says her income will increase at this point, as she's likely to retire and receive her pension. If this is Ms Y's intention, it would be reasonable for Santander to ask for information and evidence about her pension.
- Ms Y says one way or another she'll find a way to maintain payments, and her mother and her friend would help if necessary. Santander can't rely on this to demonstrate affordability. However, Ms Y said her mother and her friend are willing to provide guarantees and Santander should discuss this with Ms Y. It would be fair for Santander to ask for information and evidence from the potential guarantors if this is to be explored as an option.

#### *What happens now?*

Ms Y says while her PIP award was reviewed in late 2022 she doesn't yet have the PIP award letter. And the hearing related to the financial settlement with her ex-partner didn't take place and there's nothing she can provide to Santander about this.

Ms Y says she's uncomfortable about sharing her personal health information with strangers, and this is why she provided only part of her PIP award letter to Santander. I do understand this. However, we've asked Santander to consider whether a term extension is in Ms Y's best interests. And to do so, Santander will need to ask further questions of Ms Y – it simply can't grant a term extension without assessing whether it's an affordable or realistic option for Ms Y. I appreciate the difficulty, inconvenience and sensitivity for Ms Y. But, in fairness, Santander does need information and evidence about Ms Y's financial and (where relevant) personal circumstances to reach a fair decision about what's in her best interests.

Santander has sent a list to Ms Y of the information and documents it needs, so she knows what is required. I would encourage Ms Y to provide relevant documents and information to Santander and keep it up to date with any changes in her situation.

Ms Y says the title to the property is held as tenants in common with her mother, and she can't sell without her consent. I appreciate this could present problems selling the property, and might also make it difficult for Ms Y to take out a mortgage. I don't know if this will be a problem for Santander when considering a possible term extension. As I said, I think Ms Y should consider taking advice from an IFA about her options, and/or appointing a representative to help her through the process with Santander.

Ms Y's mortgage product ends in early March 2023 and her monthly payments are likely to increase significantly. Santander says Ms Y can choose a new product now so that she and they know what Ms Y's payments will be (assuming the term is extended). Ms Y can consider looking into products which don't have an early repayment charge, which would allow her to switch products if product rates reduce in future.

It is worth noting however that mortgage interest rates have significantly increased since Ms Y took this mortgage. So it's very likely that her monthly payment is going to increase substantially, regardless of what Santander is able to offer her. We can't require Santander to offer Ms Y a lower interest rate simply because she can't afford what it can offer her. So it may be that Ms Y needs ultimately to look at downsizing her property. I do realise this is not what she wants, and will likely caused her stress and upset. This is why I think an IFA will be best placed to advise her on what to do.

### **My final decision**

My decision is that Santander UK Plc should fairly consider Ms Y's request for a term extension, and engage with Ms Y and ask her for the information, documents and evidence it needs to do this.

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

Ruth Stevenson  
**Ombudsman**