

## **The complaint**

Mrs S complains that Santander UK Plc misled her about whether it would offer a mortgage. It then declined her application as she wanted to buy an age restricted property. Mrs S feels she was discriminated against.

## **What happened**

In March 2022 Mrs S applied to Santander to port her interest only mortgage. Mrs S has health problems and wanted to move into a property better suited to her needs. In late March 2022 she told Santander the property she wanted to buy was in a managed assisted living retirement complex.

Mrs S's application was initially declined due to affordability concerns. The mortgage adviser appealed on Mrs S's behalf and her application was approved in late April 2022. However when the valuation was carried out in May 2022 the valuer said the property wasn't suitable security as it was an age restricted retirement flat. This was outside Santander's lending policy. Santander declined Mrs S's application in mid-May 2022.

Santander accepts that Mrs S told it the property was a retirement property and it didn't act on this until the valuation. It paid £250 compensation. Mrs S says this isn't enough for the distress and upset this caused her, and doesn't even cover her costs.

Our investigator said the property didn't meet Santander's lending criteria. It should have told Mrs S this much sooner, which would have avoided some of the distress caused. Our investigator said taking into account the effect this had on Mrs S, Santander should pay compensation of £700 (in total).

Mrs S didn't agree. She asked for more compensation, including for her legal costs.

## **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.

Porting is always dependent on the property the borrower wants to move to being acceptable to the lender. Santander doesn't offer mortgages where there are restrictions on who can buy the property. The property Mrs S wanted to buy had restrictions in that only people over a certain age could buy the property.

Mrs S says she feels discriminated against. Mrs S is right that Santander's policy does affect one group of people (those over the minimum age to buy the property) and this is because of their age.

The law relating to discrimination is a complex area. It's not the role of this service to make a decision on whether there's been a breach of equalities law. That's the role of the courts. While we take relevant law and regulation into account – and the Equality Act 2010 is relevant here – whether Santander's policy amounts to discrimination would be a matter for

the courts to decide.

The Equality Act 2010 allows providers of financial services to make decisions based on age, provided any risk assessment is carried out using relevant information from a reliable source. And even if Santander can't rely on that exemption, it may still be able to show that its actions were a proportionate means of achieving a legitimate aim, and so not unlawful discrimination.

Santander's policy not to lend when there are restrictions on who can buy a property is intended to reduce the risk that it won't be able to recover its loan from the sale of the property. Its concern is that restrictions (typically contained in lease agreements) on who can buy the property could affect the retirement property's value and marketability. That seems to me to be a reasonable concern, and I accept what Santander says about that.

As I said, it's not for me to say whether Santander's policy is wrong or breached the law or its regulatory obligations. My role is to make a decision about Mrs S's complaint in accordance with what I think is fair and reasonable in all the circumstances of the case. Mrs S was an existing customer, and she needed to move to a more suitable property. I'd expect Santander to consider her porting request fairly.

This was an interest only mortgage which was outside Santander's lending criteria. There were issues with affordability and reduced equity in the new property. There was evidence that suggested Mrs S had financial difficulties or problems managing her money in the past, and she'd missed or been late with mortgage payments in 2021. Mrs S explained what had happened, and Santander took into account her circumstances, her health and her need to move into a more suitable property when making a lending decision. Santander said it would offer the loan Mrs S needed (subject to the property valuation) in late April 2022. Following the valuation, Santander told Mrs S it couldn't offer her a mortgage for that property.

I don't think it was unfair for Santander to decline to port Mrs S's mortgage in this case. The property Mrs S wanted to buy didn't meet its lending policy, and I don't think in the circumstances it had fairly to waive this. This would have been in addition to the other concessions it would have made, related to affordability and the reduced equity in the new property.

However, Mrs S went through most of the mortgage application process, including an appeal, before her application was declined in mid-May 2022. Santander accepts it should have told Mrs S it couldn't lend when it became aware of the type of property. The evidence suggests this was 28 March 2022. Santander told Mrs S it couldn't lend on 16 May 2022.

Mrs S has told us how upsetting she found this matter. She needed to move for health reasons. She says she was misled by Santander that it would offer a mortgage, and suffered considerable distress when this turned out not to be the case. I think it's fair that Santander offers compensation for this.

Mrs S incurred legal costs in the expectation her sale and purchase would go ahead. I don't think Santander is responsible for this. Mrs S paid a deposit to her solicitor in February 2022, before contacting Santander. Mrs S says Santander should refund her legal costs because she could have stopped her solicitors doing further work. But for this to be fair I'd need to find that the costs were incurred between 28 March 2022 (when Santander became aware of the type of property) and mid-May 2022, and that it was necessary and reasonable for Mrs S to incur the costs. I haven't seen evidence this was the case. I also need to take into account that until Santander issued a mortgage offer, there was no guarantee it would lend. If Mrs S incurred costs before this that was at her own risk.

Given the various issues, and that the application had initially been declined, I don't think it's fair to say that Santander misled Mrs S that it would offer a mortgage. I don't think Santander could reasonably have known that Mrs S had assumed the mortgage would be approved and incurred costs on this basis.

I don't think it's fair and reasonable to require Santander to re-imburse Mrs S's legal costs. As I said, she incurred these costs before receiving a mortgage offer. And I don't think Santander misled her that it would certainly offer a mortgage. But it did allow Mrs S to continue with her application after late March 2022 when it should have told her it couldn't lend. It asked her to provide information and explain her circumstances, which would have been inconvenient. When she was told the loan was approved – albeit subject to the valuation – this would have raised Mrs S's expectations.

I must also take Mrs S's circumstances into account. Her existing property was no longer suitable for her. She says it was making her health problems worse. Mrs S told us about the effect on her mental health of having her mortgage application declined, two months into the process. Santander was entitled to decline the application, and it's likely this was the main cause of Mrs S's upset and distress. But the delay in telling her it wouldn't lend added to this. In the circumstances, I think compensation of £700 is fair and reasonable compensation for the additional upset caused by the delay in Santander telling her it couldn't lend.

Mrs S recently told us that she's unwell and living in a property with stairs is difficult for her. Mrs S says she wants to move home, but is worried that a similar problem will happen again. I'm sorry for to hear this, and for the time it's taken for Mrs S's complaint to be resolved. If Mrs S makes another porting application, I'd expect Santander to consider it fairly.

### **My final decision**

My decision is that I uphold this complaint. I order Santander UK Plc to pay £700 to Mrs S. It can deduct any amounts already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 7 April 2023.

Ruth Stevenson  
**Ombudsman**