

The complaint

Mr F is unhappy that Santander UK Plc withdrew its mortgage offer after he had applied to port (transfer) his mortgage interest rate product onto a new mortgage on the property he wanted to buy.

To settle the complaint, Mr F wants Santander to reimburse the early repayment charge (ERC) he paid on redeeming his mortgage, as well as his legal fees and disbursements.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr F being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr F had a mortgage with Santander, which was on a fixed rate product. If the mortgage was repaid, in full or in part, during the fixed rate period an ERC would be payable. The mortgage terms said that the interest rate product could be transferred onto a new mortgage on another property. There was a 90-day window within which Mr F could purchase his new property and receive a refund of the ERC, provided his application for a new mortgage was successful.

Mr F wanted to move house and had found a buyer for his property. He applied to port his mortgage interest rate product with Santander onto a new mortgage so he could buy the property he wanted to move to. Because he had less than six months left to run on his current interest rate product, Santander's policy was that he could take out a new interest rate product and have all the borrowing on the new product, but still be refunded the ERC.

Mr F discussed his mortgage requirements with Santander, and explained that he was purchasing the property from his father, and that it was for full market value. Mr F worked in the family business as an employee, not a director or shareholder.

Santander issued a mortgage offer on 22 April 2022. Because the solicitors Mr F had instructed on his sale and purchase were not on Santander's panel, the bank instructed its own solicitors to act for it on the mortgage.

On 9 June 2022 Mr F's solicitors told Santander's solicitors that the seller of the property was not Mr F's father, but was the limited company for which Mr F worked. Mr F's father was a director of the company.

Mr F sold his property on 23 June 2022, paying an ERC.

Santander's solicitors reported the position concerning the seller of the property to the bank on 13 July 2022. However, Santander's lending criteria does not allow it to lend where a

property is being sold by a limited company to either a director or a person connected with a director (which includes children of the director).

In the circumstances, Santander wasn't able to continue with the mortgage and had to withdraw the offer. Ultimately Mr F was able to purchase the property, using alternative funding.

Mr F complained. The crux of his complaint is that, although he acknowledges Santander has the right to decide its lending criteria, *"as soon as I said that I was buying from my Dad, they should have been prompted to ask me more questions, i.e. is your Dad an individual or does your Dad own a Company or whatever else they deem appropriate to make sure that exclusion didn't apply..."*.

Mr F wanted Santander to refund the ERC and the fees he'd had to pay. Santander didn't uphold the complaint, and so Mr F brought his complaint to our service. An investigator looked at what had happened. He noted there had been some delay by Santander's solicitors – first in telling Santander about the identity of the seller, and secondly in the solicitors letting Mr F's solicitors know that Santander wasn't able to proceed with the mortgage. The investigator thought Santander should pay £200 compensation for any inconvenience or distress caused by this.

Santander agreed to this, but Mr F did not and asked for an ombudsman to review the complaint.

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.

As Mr F has acknowledged, Santander is entitled to set its own lending criteria. I don't have any power to tell Santander who it should lend to, or on what terms; those are matters for Santander's commercial judgement. What I have to decide is whether Santander has treated Mr F fairly in its application of its lending criteria.

I've listened to the call recordings when Mr F was discussing his mortgage requirements with Santander. He told the bank that the property he wanted to buy was owned by his father. This is reflected in the mortgage application.

The mortgage offer issued on 22 April 2022 says, in Part B, section 1:

*"We may withdraw this offer if any of the following circumstances apply and, had we been aware of the true circumstances, we would not have provided the offer to you...
(a) There is a material change to the facts and circumstances relating to your loan application ..."*

I'm satisfied that the difference between the seller being Mr F's father as an individual and the seller being a limited company controlled by Mr F's father is a material change to the facts and circumstances relating to the loan. Given this, I'm satisfied Santander was entitled to withdraw the offer.

Mr F says that Santander should have been put on notice when he told them the property was owned by his father that it might actually be owned by the limited company run by his father, and asked more questions about this. But I disagree.

That's because the family business is a construction company. If this had been a new-build property and Mr F had said it was owned by his father, I'd have expected Santander to have asked more questions about this. But the application forms reflect that Mr F had told Santander that the property wasn't a new-build or under construction, and that it was more than 50 years old. In the circumstances, there is nothing that would – or should – have alerted Santander to ask more questions about the identity of the property owner.

I agree that the bank's solicitors could have acted more quickly in alerting Santander to the issue relating to the identity of the seller, as there was a delay of about five weeks before this was raised with the bank. However, the questions the solicitors asked of the bank relating to whether or not the company needed independent legal advice were legitimate; where a limited company agrees to sell a substantial non-cash asset (which is an asset that exceeds either 10% of the company's asset value or is valued at over £100,000), there are requirements that have to be met under the Companies Act 2006. So that is why the solicitors flagged this with Santander. I wouldn't expect solicitors to know what the bank's lending criteria are, as those are underwriting, rather than legal, considerations.

I also think the solicitors could have told Mr F's solicitors at an earlier stage that the mortgage offer had been withdrawn. But I don't think this would have changed things, because by the time Santander had withdrawn the offer, the sale had already completed. I think it's more likely than not that Mr F would still have gone ahead with his sale, even if matters had moved more quickly. And ultimately he was able to purchase the property he wanted from the company, using an alternative source of funds.

I find that Santander was entitled to withdraw the mortgage offer once it learned that the seller was not Mr F's father, but was a limited company. I'm not persuaded Santander could or should have known about this until it was made aware of the position by its solicitors. As a result, I find no basis on which I can fairly order Santander to reimburse the ERC, or any of the fees Mr F incurred.

Putting things right

There was delay by the solicitors in informing Santander of the identity of the seller, and in letting Mr F's solicitors know that the mortgage offer had been withdrawn. This caused distress and inconvenience to Mr F, for which a payment of compensation is due. I am satisfied that £200 compensation is fair, reasonable and proportionate for this.

My final decision

My final decision is that I partly uphold this complaint. In full and final settlement of this complaint Santander UK Plc must pay Mr F £200 compensation. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 September 2023.

Jan O'Leary
Ombudsman