

The complaint

Miss W complains that Santander UK plc wouldn't allow her to transfer, or port, her mortgage with it to a new property.

What happened

Miss W has a mortgage with Santander. In 2018, she took a fixed rate interest rate product of 2.39% until 2 August 2023, on a mortgage of just over £100,000. The mortgage was payable on a capital and interest repayment basis over a term of 25 years.

In January 2023, through a broker, Miss W applied to Santander to port most of the mortgage to a new property. She wanted to downsize and use some of the equity in her existing property to repay debts, including arrears of around £3,000 on the Santander mortgage. She said she was selling her property for £225,000 and buying a new one for £198,000, and she wanted to port £95,000 of the mortgage.

Santander declined her application. Miss W and her broker appealed, but Santander wouldn't change its mind. In March 2023, Miss W complained.

Santander said it had done nothing wrong; it had considered Miss W's application several times, but its decision to decline it remained the same.

One of our Investigators looked into the complaint and recommended that it be upheld. The Investigator noted that Santander had concerns about how Miss W would afford the mortgage if it allowed her to port it, but he said that the rules of mortgage regulation allowed for Santander to set aside those concerns in circumstances like Miss W's. He concluded that Santander should have allowed Miss W to port the mortgage. Miss W's proposed sale and purchase had since fallen through, so the Investigator said that Santander should pay Miss W £300 compensation and reimburse any costs arising from her failed porting application, subject to invoices, but not including the costs of a lease extension.

Miss W didn't say whether or not she accepted the Investigator's recommendation, but Santander did not accept it. It said it was right to be concerned about affordability, and the risk to it would have increased if it had allowed Miss W to port.

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.

First of all, I've noted everything Miss W has told us about her extremely difficult and tragic circumstances. I have a great deal of sympathy for the situation she has found herself in and I hope she will accept my condolences on her losses.

Miss W wanted to leave the mortgaged property, and in doing so she planned to downsize and reduce her mortgage balance slightly, which would also have enabled her to repay other

debts including the mortgage arrears. Santander rejected her application on grounds of affordability.

In making my decision, I must take account of relevant rules and regulations. Those include the rules of mortgage regulation, which are set out in the Mortgages and Home Finance: Conduct of Business Sourcebook and are known as MCOB. As our Investigator pointed out, MCOB 11.6.3 R is relevant here.

MCOB 11.6.3 R says that a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing, (other than for product fees) and no changes to the terms of the mortgage contract that affect affordability. That isn't to say that a lender mustn't consider affordability, but it means that it wouldn't be fair for the lender to rely on the outcome of an affordability assessment, on its own, to reject a porting application.

Miss W didn't want to make any changes to the mortgage contract which would have been material to the affordability of the mortgage – quite the opposite in fact: she wanted to reduce the mortgage balance slightly. So, had she been able to port the mortgage to a new property, the mortgage would have been more, not less, affordable.

I've looked very carefully at Santander's records of its assessments of Miss W's application. I think those records are clear that Santander's main concern was Miss W's ability to afford the mortgage. It also had some wider concerns about Miss W's circumstances, including her credit file. But Miss W's mortgage was already with Santander, with more than another 20 years left on the term. Had Miss W been able to reduce her mortgage balance, and clear the mortgage arrears and some other debts, her financial position would have improved and the risk of her getting into more financial difficulty would have reduced. I would also expect Santander to have kept in mind its overarching duty to take into account Miss W's best interests and, therefore, her extremely difficult personal situation and keenness to leave the mortgaged property.

Santander has pointed out that the loan-to-value ratio of the mortgage would have increased if Miss W had ported, and that would have made the mortgage riskier for it. I think that's a valid point and one that Santander was entitled to consider, although I note that this doesn't appear to have been part of its reasoning at the time it declined Miss W's application. In the particular circumstances of this case, however, this doesn't lead me to conclude that Santander's decision to decline the application was fair.

Miss W planned to sell her property for £225,000 and buy a new one for £198,000. She wanted to port £95,000 of the mortgage, which at the time had a balance of just over £102,000. So the move, had it gone ahead, would have resulted in less equity in the mortgaged property and therefore more risk to Santander if it needed to take the property into possession and sell it. But I don't consider this increased risk significant enough to outweigh the factors in favour of Miss W's move – and bearing in mind that Santander wasn't required to assess the affordability of the mortgage. The loan-to-value ratio would only have changed by around 3%, and would still have been below 50%. It would also have been significantly lower than the original LTV ratio when Miss W took out her fixed rate product in 2018, when she borrowed just over £100,000 against a property value of £138,000. In these circumstances, there would have been very little risk to Santander of being unable to recover its money should it have needed to take steps to do so.

In all the circumstances, I don't consider that Santander acted fairly in declining Miss W's application, and I consider that Miss W should fairly receive some compensation in recognition of the disappointment and upset she experienced as a result. I share the Investigator's view that £300 is a fair award.

I think it would nevertheless be difficult to conclude with any certainty that Miss W's sale and purchase would have completed successfully. There are many variables in any such transaction, and porting the mortgage would also have been subject to valuation of the new property, for example. Our Investigator asked Miss W for invoices for any costs she paid in connection with her application to Santander, and she has provided some solicitors' invoices. They are, however, for costs involved in a lease extension, and therefore seem likely to be payable in any event when Miss W sells her property or extending the lease may have increased the value of her property – and I don't find that I can fairly require Santander to reimburse these costs, since they don't appear to have arisen as a result of anything it did wrong.

However, if Miss W did incur costs which she wouldn't otherwise have incurred and which she has been unable to recover or from which she hasn't benefited because Santander declined her application to port the mortgage, I consider that Santander should fairly reimburse her for those, plus interest as set out below, subject to Miss W providing Santander with relevant invoices and proof of payment.

Finally, should Miss W make a fresh application to port her mortgage in future, I would expect Santander to give it proper consideration, bearing in mind MCOB 11.6.3 R.

Putting things right

To settle this complaint, Santander should:

- pay Miss W £300 compensation; and
- subject to invoices and proof of payment by Miss W, pay Miss W any costs she has incurred as a result of her declined porting application which she wouldn't otherwise have had to pay and from which she hasn't benefited, plus simple annual interest of 8% running from the date she paid those costs to the date of settlement.

If the 8% interest element of my award is payable and Santander considers that it's required by HM Revenue & Customs to deduct income tax from that element it may do so. But it should tell Miss W how much it has deducted and give her a tax deduction certificate if requested, so that she can reclaim the tax if she's entitled to do so.

My final decision

My final decision is that I uphold this complaint and I require Santander UK plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 21 November 2023.

Janet Millington
Ombudsman