

The complaint

Mr C has complained that he had to pay an early repayment charge (ERC) because Santander UK Plc declined his request to port (transfer) his mortgage interest rate product onto a new mortgage on another property.

To settle the complaint, Mr C wants Santander to allow him to transfer the mortgage, and put it into joint names with his wife. Mr C would also like Santander to refund the ERC.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr C being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr C had a mortgage with Santander taken out in 2020 on the advice of Mr C's mortgage broker. He borrowed £121,999 on a capital repayment basis, over a term of 8 years, with the interest rate fixed at 1.44% until 2 November 2025. If the mortgage was repaid before that date, an ERC would apply of 5% of the amount repaid.

The mortgage offer said:

"Moving Home

You have the right to transfer this loan to another property. You must meet conditions set out in the mortgage conditions under 'Transferring your loan to a new mortgage'. You must also meet our lending criteria and pass our affordability assessment at the time."

In its "Straightforward guide to your mortgage" Santander states "We can't port your existing rate if you already own your new home."

The mortgage Terms and Conditions state:

"19 Transferring your loan to a new mortgage

19.1 This condition applies if you notify us that you wish:

- a) to pay off the money you owe us on completing a sale of the property; and*
- b) at the same time, to complete a mortgage with us under which we will lend*

- you money on the security of another property that you wish to buy.*
- 19.2 *In this condition and condition 20:*
- a) *'new property' means the property which you wish to buy.'*

Condition 20 states that if a new mortgage is taken out within three months of the date on which the existing mortgage is repaid, the bank may refund all or some of any ERC.

In December 2022 Mr C decided to sell his property. He had recently married and his wife (Mrs C) also owned a house (which I will refer to as Property 2).

The plan was that the title to Property 2 would be transferred from the sole name of Mrs C into the joint names of Mr and Mrs C, and that Mr C would pay her 50% of the value of Property 2, which Mr C says was worth about £850,000. There would be a new mortgage with Santander, in the joint names of Mr and Mrs C, with the interest rate product on Mr C's existing mortgage being transferred over. The mortgage would be for the same amount, with the same end date, as the original product.

Mr C obtained an online Decision in Principle (DiP) which said he could borrow the amount needed for a new mortgage. However, when Mr C approached Santander about this, the bank explained that he couldn't port the interest rate product, because it was outside the bank's lending criteria. This was because this wasn't a new property purchase; rather, it was a transfer of equity of a property already owned by one of the potential applicants, Mrs C.

Mr C sold his property on 16 June 2023, repaying his Santander mortgage and incurring the ERC. He complained to Santander, but the complaint wasn't upheld, with Santander reiterating that the request to transfer the mortgage interest rate product didn't meet its lending criteria.

Dissatisfied with Santander's response, Mr C brought his complaint to our service, where an Investigator gave his opinion on it. The Investigator was satisfied Santander hadn't acted unfairly. He explained that Santander was entitled to set its lending criteria, and in this case, Mr C's request to port his mortgage didn't meet this.

Mr C disagreed. He said there is no mention anywhere in the terms and conditions that a mortgage can't be transferred onto a property that is owned by a relative.

Mr C also said that, although he and Mrs C were married and he stayed at Property 2, this was as a guest, with his old property remaining his main residence and that this was his *"formal address"* until that property was sold.

In addition, Mr C argued that Santander's lending criteria and policy were not acceptable reasons to decline his request. Because he wasn't aware of Santander's internal lending policies at the time he took out the mortgage, these cannot be used to support the bank's decision not to allow him to port his mortgage interest rate product.

Mr C also said that the Investigator had made no mention of the financial benefit to Santander of cancelling the mortgage, which was on a low fixed interest rate.

Because the matter remains unresolved, it falls to me to issue a decision.

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 will begin by explaining that a mortgage consists of two parts: there is the money loaned under the mortgage agreement, and, separately, the interest rate product which is applied to it. When a mortgage interest rate is ported, this does not mean that the mortgage itself is transferred onto a new property. It means that the existing mortgage loan is repaid, an application is made for a new mortgage loan and, if that application is successful, the interest rate product that applied to the previous mortgage will apply to any relevant qualifying part of the new mortgage loan.

In order for an interest rate product to be ported, the mortgage application has to meet Santander's lending criteria. In this case it did not.

Santander is entitled to set its own lending criteria. Decisions that Santander makes in respect of what those criteria are, its attitude to risk involved in this particular lending assessment, and whether it should lend and if so, on what terms are clearly discretionary matters for Santander's own commercial judgement that I would not interfere with.

I will clarify here that a DiP isn't a mortgage offer, notwithstanding that Mr C describes it as an "*offer*" in his email to us of 12 September 2023. The DiP is clear that the amount Santander will lend is subject to a full mortgage application.

Mr C says that there is nothing in the documentation he received at the time he took out the mortgage in 2020 which said that he couldn't port the interest rate onto a new mortgage on a property already owned by a relative, in this case, his wife. But as I've set out above, Mr C would have been aware from the documentation he received in 2020 that the mortgage interest rate couldn't be ported onto a property that the borrower already owned. Santander isn't required to set out every potential scenario where an application might, or might not, meet its lending criteria, as these are both non-exhaustive and subject to change.

Santander has provided information about its lending criteria and about what was taken into account in its consideration of Mr C's request. The criteria are clear that a mortgage interest rate product cannot be ported onto a property that the borrower already owns.

Mr C's argument is that *he* didn't own Property 2, his wife did, and so this wasn't a property he already owned. However, the intention was that Property 2 was to be transferred from the sole name of Mrs C into the joint names of Mr and Mrs C, and at the same time they would take out a new mortgage in their joint names, with the interest rate product being transferred from Mr C's previous mortgage. It wasn't, therefore, a purchase of a new property, but a transfer of equity. At the point where the new mortgage would be taken out, Mrs C would be one of the borrowers, and as she already owned Property 2, this would mean it fell outside Santander's lending criteria for a port of the interest rate product.

It's irrelevant whether Mr C already lived at Property 2, or was just a "guest", as he claims. That's because the other potential applicant for the mortgage, Mrs C, already owned and lived in Property 2, and therefore it wasn't possible for the mortgage interest rate product on Mr C's previous property to be transferred into her name as part of a new mortgage application.

I've noted what Mr C has said about the benefit to Santander of this mortgage being redeemed. The inference is that Santander deliberately looked for a way of exiting this mortgage, due to it being on such a low interest rate. I can understand why Mr C might think that, because mortgage interest rates have increased, particularly since the mini-budget in September 2022.

However, the reason why he couldn't port had nothing to do with the interest rate. It was because the plan for a transfer of equity and a new joint mortgage on a property already owned by one of the potential applicants didn't meet Santander's lending criteria for a port of the interest rate product.

In the circumstances, I'm satisfied Santander was entitled to apply the ERC when the mortgage was redeemed. There is also no basis on which I could fairly order Santander to reinstate Mr C's mortgage interest rate product on a new mortgage in his and Mrs C's joint names secured on Property 2, as this is outside Santander's lending criteria.

I know this isn't the outcome Mr C was hoping for. However, after careful consideration of all the evidence, I'm unable to find Santander has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 April 2024.

Jan O'Leary
Ombudsman