

The complaint

Mr W and Ms S' complaint relates to the consequences of an omission made when their mortgage with Santander UK Plc was granted in 2021. This relates to planning permission being in place from 2020 to build another dwelling in their garden, which means the property falls outside Santander's lending criteria. However, the mortgage was approved, but when Mr W and Ms S wanted to borrow more money, Santander required them to split the property title before it would accept the application. The time this process took meant that the interest rate products available when the further borrowing was approved had higher interest rates attached to them, and Santander wouldn't give them the product from the time of the original application. Mr W and Ms S also want the costs of splitting the title to be reimbursed by Santander.

What happened

In the autumn of 2021 Mr W and Ms S' mortgage with Santander started. It was for £395,000 over a term of 33 years. Attached to the mortgage was a five-year fixed interest rate product of 0.99%.

When the property was bought there was planning permission for a separate dwelling to be built in the grounds of their home. Not long after the purchase Mr W and Ms S enquired with Santander about borrowing more money against their home in order to build the separate dwelling. Initially they were told this would be possible, but shortly after were told it would not be something Santander would lend them money for, but it would likely lend them money for home improvements.

In February 2022 Mr W and Ms S applied to borrow an additional £350,000 over the remaining term of their existing borrowing for home improvements. They applied for a two-year fixed interest rate product to be attached to the mortgage of 1.74%. When the property was valued, the surveyor flagged that there was planning permission for a separate dwelling to be built in the garden of the property. This placed the property outside of Santander's criteria for acceptable security, so the application was declined.

Mr W and Ms S were informed of this and told Santander that the planning permission had been in place when they bought the property, and it granted the original mortgage. They complained about the valuation done at the time of the original mortgage application. Santander upheld the complaint and offered Mr W and Ms S £500 compensation and offered to waive the early repayment charge on their mortgage so they could move to another provider that could facilitate their needs.

Mr W and Ms S were unhappy with this proposal due to the costs they believed they would incur moving to a new lender and the time it would take. As such, they asked that they be allowed to split the property title, to separate the portion of the grounds that had the planning permission for a separate dwelling associated with it.

Santander decided that it would make an exception to its policy regarding the planning permission due to the oversight in 2021. Santander said it would look at allowing the additional borrowing, but Mr W and Ms S would need to provide the plans of the proposed

works to the existing property and an estimate of costs, along with the planning permission they'd obtained. It would then consider lending them the money they wanted, but on a phased basis with a surveyor checking the progress of the build before each tranche of money was released. Once the build had been completed, Santander would then agree the split of the property title to separate the area with planning permission for a new dwelling. Once the title was split, Santander said any future applications for borrowing would be subject to the usual application and consideration.

At this point, Mr W and Ms S didn't have planning permission for the alterations to their home and had been told it would take some time to obtain it. As such, they decided not to take up this option. Instead, they asked Santander to agree to allow them to simply split the property title, without applying for the additional borrowing for home improvement purposes. Santander confirmed orally that it would allow them to apply to do that in a telephone call of 16 June 2022 and followed it up with a letter of 17 June 2022, which said it would, as an exception, consider allowing the title to be split. This would, if it happened, then allow Mr W and Ms S to apply again for further borrowing against their home.

A few days later, Mr W had another conversation with Santander about future borrowing as he'd been told by his solicitors splitting the title might take up to three months. He was concerned about interest rate rises and wanted to know if there was a way for them to secure an interest rate product before the title was split and an application for further borrowing was made. Santander reminded Mr W that it had said that when they applied for further borrowing, it would consider whether it would be appropriate for it to give them the product applied for in February 2022, but that this was not something that could be decided on at that point. It would have to wait until an application was made.

Mr W and Ms S started the process of splitting the title and raised another complaint during that process in August 2022. This was because they believed that the split had already been agreed, but Santander wanted information and to assess the application. Santander apologised for any confusion in communications and paid an additional £50 compensation. The application progressed and a further complaint was raised in September 2022 as Mr W and Ms S were unhappy with the fees payable to Santander associated with the process of splitting the title. Santander waived the fees as a gesture of goodwill.

The property title was split in February 2023. Mr W and Ms S asked Santander to pay the costs of this being done, but it declined to do so. When Mr W and Ms S spoke to Santander about additional borrowing, it informed them that the application would need to be made for a then current interest rate product and it would not give them the one they had applied for in February 2022. They complained again. Santander didn't uphold the complaint. It didn't consider it had done anything wrong.

Mr W and Ms S were not satisfied with Santander's responses and referred their complaint to this Service. After they did so, they confirmed they hadn't pursued a further advance with Santander. Instead, they decided in the summer of 2022 to borrow commercially to build the dwelling they had planning permission for. They were intending to refinance the borrowing on that property to finance the renovations on their home.

One of our Investigators considered the complaint. He explained that we were unable to consider the complaint issues covered by the March and June 2022 final response letters, as Mr W and Ms S had not referred the complaint within six months of the final response letters. However, he would bear in mind what had happened for context for what had been complained about later. As such, he only considered the issues of whether Santander should pay the costs of splitting the property title and whether it should have offered Mr W and Ms S the interest rate product they had applied for in February 2022 in the event they applied for

further lending. The Investigator didn't recommend either of these complaint issues be upheld.

Mr W and Ms S didn't accept the Investigator's conclusions. In relation to the scope of the complaint that had been considered, they thought the June 2022 complaint resolution should be considered as it formed the background and context for the subsequent events – it had led to the splitting of the title and the costs incurred. As for the matter of the interest rate, Mr W and Ms S accepted that no explicit guarantee was given, but they considered there was a reasonable expectation that it would be, given the content of the conversations with the complaint handler in June 2022.

In relation to the costs of splitting the title, Mr W and Ms S said the decision to build the separate dwelling was influenced by the discussions with Santander and they had not, when they bought the house, intended to do so. They said they were led to believe that Santander would be willing to review and potentially cover the legal expenses, as they were willing to cover professional fees relating to them re-mortgaging to a different lender. So while Santander had not explicitly agreed to cover these costs as part of the initial complaint resolution, as the need to split the title arose as a direct result of Santander's original valuation oversight and subsequent discussions, it should be made to pay them. Mr W and Ms S also commented that they had not received compensation for the substantial time, effort, and thousands of pounds in personal costs incurred to rectify the situation, and they should be. They asked for an Ombudsman's decision on their 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 I confirmed in my decision of 26 April 2024, I am only able to consider the complaint issues Mr W and Ms S raised after the final response letter of June 2022 as the previous complaint issues fall outside of our jurisdiction. Therefore, this decision only considers whether Santander should have paid the costs Mr W and Ms S incurred in splitting the property title and whether it should have offered them borrowing after this was done with the interest rate product they had requested in their February 2022 application.

Mr W and Ms S have said they were influenced to build the separate dwelling on their property by the discussions with Santander following the further advance application being declined. I accept that what happened and the conversations they had following their application being rejected may well have had an influence on what they decided to do and when. However, when Mr W and Ms S first contacted Santander about borrowing it was to borrow the funds to build the separate dwelling. Mr W confirmed this in one of the earlier conversations with Santander on 13 June 2022 - that was their original plan - but when they discovered Santander would not lend for this purpose they decided to complete the renovations to their home first. He also indicated that they might still build the separate dwelling in the future, but they were not 100% certain they would. A short time later, as part of the correspondence with Santander about splitting the title, Mr W and Ms S' solicitors confirmed that they were building the dwelling and would be selling it and the portion of the title it sat on after it was split.

So while Mr W and Ms S have recently told us they had no intention of building the separate dwelling when they bought the property, it is clear they changed their mind about doing so within a matter of months of owning the property. While Mr W said in June 2022 they were not 100% certain they would subsequently build it, I think there is a high likelihood they would, and indeed, they reverted to their original plan to do so only a short time later. In the circumstances, I am in agreement with the Investigator that the costs Mr W and Ms S

incurred in splitting the property title are costs they would always have incurred at some point. I also don't believe there was any implication in the conversations Mr W had with Santander that it would consider paying the costs associated with splitting the property title.

As for the matter of the interest rate product Mr W and Ms S applied for in February 2022, they have said there was a 'reasonable expectation' that it would be given, based on the content of the conversations with the complaint handler in June 2022. I have listened to those calls and throughout Santander said it would consider whether to give Mr W and Ms S that rate, but a decision would be made at the time a further advance application was made. I also note that in calls on 16 and 22 June 2022 Mr W indicated that he didn't expect that product to be given to them once they were in a position to borrow. I say this as Mr W said in both calls that they needed/wanted to start their application as soon as possible to secure a rate because interest rates were rising. I am also satisfied that Santander made it clear throughout that it would only consider whether to give them the earlier product, and that consideration would not happen until an application had been submitted. However, as Mr W and Ms S decided to fund the renovations to their home through an alternative source, this complaint point is moot, as no application for new borrowing was ever made.

Mr W and Ms S have asked that they be compensated for the time and effort it took to rectify the situation. I would firstly remind Mr W and Ms S I can't consider the issues that were dealt with before June 2022 and that would include any non-financial losses caused by those issues. I would also confirm that in general we do not compensate consumers for any time taken having to deal with a complaint situation. However, having considered the events following the 15 June 2022 final response letter, Mr W and Ms S' alternative proposal for resolving the situation was agreed quickly. The remainder of the time and the effort they were put to related to splitting the property title, which they had decided they wanted to do. In the circumstances, I don't consider that is something Santander can reasonably be required to compensate them for.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W and Ms S to accept or reject my decision before 28 May 2024.

Derry Baxter
Ombudsman