

## The complaint

Mr and Mrs B complain that Santander UK Plc had told them they wouldn't need to pay an Early Repayment Charge ("ERC") when they ported their existing mortgage to a new property. But they said Santander then charged them. They wanted the money back.

## What happened

Whilst this complaint is brought by both Mr and Mrs B, as the mortgage is in both their names, many of our dealings have been with Mr B, and many of the key telephone conversations with Santander, which this case turns on, have been conducted by Mr B. I should stress that I mean no disrespect to Mrs B, where I refer to Mr B alone in this decision.

Mr and Mrs B said they had moved house. They ported their existing mortgage, but they were also downsizing and using part of the money generated from the sale of their old home to pay off part of their mortgage with Santander.

Mr B said he spoke to Santander on 15 June 2023, asking for clarity on the ERC. Mr B said Santander confirmed that would be waived. So Mr B said he and Mrs B were then shocked to find, after completion, that Santander said they still owed money on the mortgage, and the sale of the property couldn't be completed until that was resolved.

Mr B said Santander accepted that he was wrongly advised on 15 June, but it said he'd been given the right information at the start of the process. Mr B said that might be right, he couldn't remember, but he'd then rung Santander again three months later, and was specifically told the ERC would be waived. Mr B said he had based all his budgeting on this most recent information from Santander, so now he and Mrs B had a funding shortfall, and he didn't think that was his fault.

Mr B said Santander had offered £100, but that was a tiny fraction of what it had charged. He wanted Santander to waive the ERC, as it had said it would.

Santander did accept that its agent gave Mr B wrong advice on 15 June. It said it was sorry about that. But it said when Mr B made his application for this mortgage, it had made clear an ERC would be payable, and told him how the ERC would be worked out. So Santander said that it wouldn't just waive the ERC. But it did say it felt it could have done a better job of dealing with the call he had on 15 June, so it had arranged for Mr B to receive a cheque for £100, as an apology for that.

Our investigator asked Mr and Mrs B about the earlier conversation Mr B had with Santander about this, and they said Mr B had only been told a fee "*may*" be payable. They also said it was important that the last and clear communication was the conversation Mr B had in June. Mr and Mrs B also said they hadn't received the documentation Santander claimed it had sent after their application was done in March.

Our investigator didn't think this complaint should be upheld. She said the pre-existing mortgage documents did say Mr and Mrs B would need to pay an ERC if they repaid all or a

substantial part of their mortgage before 2 March 2024. So Mr and Mrs B were aware of this term of their existing mortgage.

Our investigator said she'd then listened to the call Mr B had with Santander in March 2023, and she was satisfied Santander did inform Mr B that in these circumstances a partial ERC would be applicable, and would be payable at the time of completion of the new mortgage. The advisor explained all the terms of porting and how the new mortgage would work, to Mr B, so that he and Mrs B could make an informed decision.

Santander then sent Mr and Mrs B the recommendation documents. If Mr and Mrs B didn't get those, or needed clarifications, our investigator said she would have expected them to raise their concerns with Santander.

Our investigator said she had also listened to the call of 15 June 2023, where Mr B was told that the ERC would be waived. But she said the agent also said that their solicitor would advise on the next steps. There was no indication elsewhere that the ERC would be waived.

Our investigator said Mr and Mrs B were always aware that a partial ERC would be applicable. And she thought they had made their plans on that basis. So, she thought compensation of £100 was fair and proportionate to the error Santander made. She said she wouldn't ask it to pay more.

Mr and Mrs B replied, to disagree. They said her view didn't reflect the gross error which Santander had acknowledged. Mr and Mrs B felt it was unreasonable for our investigator to refer to the terms of their previous mortgage, because this was a complex document that she was referring back to, some three years after it was signed. They wanted to stress they had sought clarification of the ERC in June 2023, and were told there would be no charge.

Mr and Mrs B said it was reasonable to rely on the latest information they received, and unreasonable to suggest they should look back to any advice given before this. They said our investigator hadn't acknowledged that they didn't receive any documentation after their application was done.

Mr and Mrs B felt our investigator was biased in favour of Santander. They said they thought she had been trying to support Santander's position from the outset, minimising what happened on 15 June. They felt Santander should honour the incorrect advice it gave, and that any information given in March 2023 was negated by the later information it gave.

Our investigator didn't change her mind. She said that by June 2023, Mr and Mrs B had already submitted the porting application and were in the process of selling the property. She didn't think things would have been different, if Santander hadn't made a mistake on a call in June 2023. She said if Santander had informed them of the ERC amount in June 2023, she didn't think Mr and Mrs B would have withdrawn their porting application. She didn't feel she could ask Santander to refund the ERC just because it provided incorrect information when the transaction had almost reached the completion stage.

Mr and Mrs B wanted their complaint to be considered by an ombudsman, so it came to me for a final 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've reached the same overall conclusion on this complaint as our investigator.

Firstly, I should say that I've seen the documentation for the mortgage Mr and Mrs B took out with Santander in late 2020. That does say that an ERC is payable if Mr and Mrs B pay off the whole or a substantial part of the mortgage before 2 March 2024.

Mr and Mrs B said that it was not reasonable to cite a complex document, some three years after the event. But I think it is important to note that, when Mr and Mrs B took out their pre-existing mortgage in 2020, they had then agreed that an ERC would apply.

I don't think Mr B then needed to recall this position, around two and a half years later when he applied to port this mortgage, because I think Santander provided a clear reminder about the ERC when Mr B had a call with it to make that application in March 2023. I've listened to that call, and I think on that call, Mr B was given clear and well explained advice on the amount of ERC he would need to pay, if he went ahead with his existing plans.

Although Mr B said this ERC was never quantified by Santander, I can hear that on this call Santander's agent explained to him how the ERC was worked out, that he would be charged 3% of the overall reduction in his mortgage. The agent also covered the result that would produce if he went ahead with the plans he had then, to reduce his borrowings from £305,995 to £75,000. The agent said that was a reduction of just under £231,000, he'd pay 3% of that, so he should anticipate an ERC of around £6,930.

I can also hear that Mr B later asked again, to clarify the amount of the ERC he would be charged, and the agent set out again for him how this would work. So I think Mr B was alive to the fact that he would need to pay a partial ERC when porting but also reducing his mortgage borrowing. And Mr B was also aware of how this would be calculated. The charge was based on a percentage of the debt they were clearing at the time.

I also note that Mr B said he was keeping a very careful eye on costs at that time, and had a spreadsheet detailing all the funds coming in and going out. I would expect that Mr B would have included the ERC, discussed on that call, in this detailed financial planning.

At that time, Mr and Mrs B had an interest only mortgage, so the amount of their debt didn't change between the time that Santander offered this advice, in March 2023, and when Mr B rang back just before his sale completed, in June 2023. That means the ERC discussed then was also unlikely to change.

Mr B then spoke to Santander again on 15 June. He rang a number of times. I think two of those calls are important. The first one is important, because on that call Mr B said that he had already exchanged on the new property. At this point, Mr and Mrs B were legally committed to going ahead with their purchase.

The third call is also important, because Mr B wanted to check how much he needed to pay. I can hear there was some confusion on this call, and Mr B spent some time on hold.

Mr B asked specifically what the ERC would be, and the agent started to explain as follows - *"...so you've got an early repayment charge of £9,179.85. so what I got advised was that early repayment charge on that account, once you complete, and the other one starts on the same day, that would then be issued as a refund."*

Mr B then replied *"What, the whole amount, or part of it?"* And the agent said *"I've just got told the ERC amount so the £9,179. It could be a percentage I'm not too sure the way it works out the calculations."*

Mr B moved on then to asking how the refund would be done, and how quickly it would be repaid. The advice then was again very unclear, but when Mr B asked the agent to confirm that the £9,000 would not be charged, the agent did say “*yeah, it’ll be waived.*” That was clearly wrong.

I do think this was very unsatisfactory advice for Mr B. I think it ought to have been possible to provide Mr B with a reminder of the amount that he was due to pay as an ERC on this call.

However, I think it’s important to bear in mind that Mr B had told Santander earlier the same day that he had already exchanged on the new property. So I don’t think Mr and Mrs B decided what to do about selling their house, on the basis of what Santander’s agent said on this third call in June. I think it’s most likely that they’d made their decisions, and carried out their own financial planning, on the basis of the information provided to them back in March, which we do know was very considerably more detailed, and was correct.

I also note that when Santander’s agent said there would be a refund for the ERC, Mr B queried whether this would be for the whole amount or part of it. So I think it’s likely that Mr B had recalled the advice he was given in March 2023, which made clear that he and Mrs B would only receive a partial refund on their ERC.

So, although I can hear that Mr B was given wrong information on a call he had with Santander on 15 June, I don’t think it’s likely that this is the basis on which Mr B did his detailed financial planning for the move to this new home. I don’t think it’s likely that Mr and Mrs B relied on the information given on that call, when making decisions about the move. So, whilst I understand that Mr and Mrs B would have been disappointed that the mistake Santander made on 15 June was then corrected, and they were charged the amounts discussed in March, I don’t think Santander has to do more here than pay compensation for the poor service it provided on the June call.

I think the payment of £100 that Santander has already offered, does provide a fair and reasonable outcome to this complaint. I’ll ask Santander to reissue the payment now, if its previous cheque hasn’t been cashed and is no longer valid. I know Mr and Mrs B will be disappointed, but I don’t think Santander has to do more than that.

**My final decision**

My final decision is that Santander UK Plc must pay Mr and Mrs B the sum of £100 which it previously offered for this complaint, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms B to accept or reject my decision before 23 April 2024

Esther Absalom-Gough

**Ombudsman**