

The complaint

Mr B and Miss D complain that Santander UK Plc treated them unfairly regarding their mortgage after they separated. Mr B has dealt with the complaint.

Mr B says Santander forced them to sell the property as it didn't agree to transfer the mortgage into his sole name with additional borrowing so that he could buy out Miss D. He says Santander is in breach by not agreeing to port the mortgage and should waive the early repayment charge (ERC) and pay compensation.

What happened

Mr B and Miss D took out a mortgage with Santander in early 2022 with the help of a broker. They chose fixed interest rate products with ERCs.

Mr B and Miss D separated. In early 2023 Mr B applied to Santander to transfer the mortgage into his sole name and take out additional borrowing. This was to pay Miss D her share of the equity. A problem with the property title at the Land Registry came to light which delayed the application. Mr B's employment ended in April 2023. Santander said it couldn't continue with the application as Mr B couldn't evidence income that met its affordability criteria.

Later in 2023, Mr B told Santander a court order has been issued for the property to be sold. He said while he had cash funds to buy a new property, he wanted to port the mortgage to avoid paying the ERC. Santander didn't offer assurances that it would port the mortgage. Mr B says it would be unfair for Santander to apply the ERC.

Our investigator said Santander had to assess affordability and was entitled to apply its lending criteria to Mr B's applications. Our investigator said he couldn't reasonably require Santander to guarantee approval of a future porting application or waive the ERC.

Mr B explained why he didn't agree and asked that an ombudsman reconsider the matter.

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.

Santander issued a mortgage offer to Mr B and Miss D in late 2021. They took out two fixed interest rate products, both of which have an ERC which is payable if the mortgage is repaid during the product term. The first product expires in late 2026.

If the mortgage is repaid while the products are in place, Santander is entitled under the mortgage terms and conditions to apply an ERC. I could require Santander to waive the ERC if I thought this was fair and reasonable in the circumstances. I don't think that's the case here.

The amount of the ERC and when it is payable is clearly set out in the mortgage offer. Mr B and Miss D agreed to this when they accepted the mortgage offer.

Rules on mortgage regulation require Santander to assess affordability before agreeing to offer or vary a mortgage. Mr B asked Santander to vary the mortgage by transferring it into his sole name. He also asked for additional borrowing. Santander had to assess whether this was affordable.

Mr B's employment ended in April 2023. He decided to set up his own business. While Mr B expects his business to do well he couldn't provide evidence of his income that met Santander's lending criteria. I don't think it was unfair or unreasonable for Santander to decline Mr B's application.

Mr B says he has savings and potential financial resources (such as the bank of mum and dad and an inheritance). He doesn't agree that the mortgage isn't affordable. While I appreciate Mr B's frustration, Santander is entitled to apply its own lending criteria and affordability assessment. It doesn't have to provide copies of its criteria and internal policies to Mr B.

It took some months for the issue with the property title to be sorted out. But I don't think this made any difference to the outcome here. Santander would still have declined Mr B's application due to affordability issues.

Santander told Mr B that a porting application would likely have the same issues with affordability. I don't think it was unfair or unreasonable for Santander to say this. Santander reviewed Mr B's porting request in late 2023 and said it remained unaffordable.

The mortgage offer says the loan can be transferred to another property, subject to meeting Santander's mortgage conditions, lending criteria and passing its affordability assessment at the time. Santander said it would consider whether a porting application from Mr B met affordability and other criteria but couldn't guarantee an outcome. I think that's fair and reasonable and consistent with the information provided to Mr B and Miss D when it offered the mortgage.

Mr B says he's vulnerable due to his employment ending in circumstances that affected his mental health, his relationship break up, a relative dying and setting up a new business. He quoted guidance from the regulator regarding tailored support for customers struggling with their payments.

While I appreciate that Mr B and Miss D's personal circumstances are difficult, I don't think this makes it fair and reasonable to require Santander to port the mortgage or waive all or part of the ERC. Mr B told Santander he has financial resources and can buy a new property with cash. It seems unlikely then that paying the ERC will cause Mr B financial hardship.

Mr B says Santander should waive the ERC as it has chosen to break the contract. I don't think that's reasonable. I think Mr B and Miss D had to sell the property (and therefore repay the mortgage) as a result of their relationship ending and the agreement they reached as to how their assets would be divided. Mr B didn't meet affordability criteria to transfer or port the mortgage into his sole name.

Mr B says Santander is in breach of contract. He says Santander can't require them to pay the ERC as its terms regarding the ERC, porting and affordability are too vague. Whether a contract is enforceable and/or breached is for a court to determine. If Mr B and Miss D don't accept my decision, they will be free to take the matter to court if they wish to do so.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss D to accept or reject my decision before 29 May 2024.

Ruth Stevenson
Ombudsman