

The complaint

Mrs G and Mr M complain that Santander UK Plc discriminated against Mrs G in how it handled their application for a mortgage.

What happened

Mrs G and Mr M applied for a mortgage with Santander in June 2022. They'd already got a mortgage with another lender, and as they were coming to the end of a fixed interest rate they consulted a broker about re-mortgaging. The broker recommended a mortgage with Santander and submitted an application on their behalf.

Mrs G says she has a disability which impacts her ability to work from time to time. She had had some time off sick in the months before the application to Santander. Separately, she had moved to a new role, with a different salary, though remaining with her current employer. Santander requested additional payslips and a copy of her new employment contract.

Santander didn't accept the additional evidence Mrs G provided. It said it would only accept a copy of an employment contract as evidence of salary in preference to payslips where the contract was printed on the employer's headed notepaper and counter-signed by a member of the employer's staff.

Mrs G explained that her employer did not issue contracts of employment in this format – as a large employer, it has explained this to mortgage lenders (including Santander) in the past and this had been accepted. She asked that Santander contact her employer to confirm her employment. But Santander said it couldn't do this.

Mrs G and Mr M complained. They said that Santander hadn't considered their application fairly. It had made repeated requests for information and hadn't accepted what they had said. They said that Santander had asked for more information about Mrs G and her income than about Mr M and his income. They were concerned that Santander hadn't treated Mrs G fairly, and had discriminated against her, because of her disability. They said that although Santander had agreed to lend in the end, the problems with the application had caused delay and increased stress and upset which had impacted Mrs G's condition.

Separately, Mrs G and Mr M also complained about the broker. They said that the broker had also discriminated against them – both of itself, and in not challenging Santander's requests. Another ombudsman didn't uphold that complaint. So in this complaint I will be focusing solely on Santander's actions.

In respect of this complaint, our investigator didn't think that Santander had acted unfairly. So Mrs G and Mr M asked for their complaint to be reviewed by an ombudsman. I came to the same conclusion as the investigator. But as my reasons were more detailed, I issued a provisional decision so the parties could comment on my thoughts on the case before I made a final decision.

My provisional decision

In my provisional decision I said:

“In considering complaints, the rules of the Financial Ombudsman Service require me to decide what is fair and reasonable in all the circumstances. In doing so, I take into account relevant law and regulations; relevant regulators’ rules guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. But it’s important to note that while I take into account all those factors, ultimately I am deciding what I consider to be fair and reasonable in all the circumstances.

In this particular case, Mrs G and Mr M have placed particular weight on the Equality Act 2010 as a relevant consideration for me to take into account. The Financial Ombudsman Service is an alternative to the courts, and ultimately it is for the courts to decide on matters of law – including whether there has been a formal breach of the Equality Act – but the Act is relevant law for me to take into account.

Disability is one of the protected characteristics covered by the Act. Where a person has a disability, a service provider (such as Santander) should not directly or indirectly discriminate against them on grounds of disability, should not treat them less favourably because of a matter arising from their disability, and should – where appropriate – make reasonable adjustments to allow them to access the service provided without disadvantage.

Direct discrimination is treating a person less favourably than someone who does not have the relevant protected characteristic. Indirect discrimination is the application of a provision, criterion or practice to both those who have and those who do not have a disability, where doing so puts the person with a disability at a particular disadvantage.

Both indirect discrimination and discrimination arising from a disability would not be unlawful if the service provider can show that the treatment in question is a proportionate means of achieving a legitimate aim.

Finally, the duty to make reasonable adjustments – so far as is relevant to this case – is a duty to take such steps as are reasonable to remove the disadvantage arising from the application of a broader provision, criterion or practice, or to provide an alternative means of providing the service. There are two parts to the duty; a service provider has a general anticipatory duty to take steps to avoid disadvantage to disabled persons, and a specific duty to make adjustments to assist a particular individual with a disability. But it only applies to such steps as it is reasonable to take in the circumstances.

A disability is defined as a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities, subject to regulations which prescribe specific conditions as amounting to a disability. Long-term means that the impact has lasted, or is likely to last, for at least 12 months.

Mrs G and Mr M say that Mrs G has a disability which brings her within the scope of the Equality Act. They haven’t given us any information about her condition so I don’t have any evidence that Mrs G does have an impairment which has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. However, I’m prepared to accept for the purposes of this decision that Mrs G does have a condition which amounts to a disability as defined by the Act – which makes the Act a relevant consideration for me to take into account. But, for reasons I’ll

explain, even if I accept that Mrs G has a disability within the meaning of the Act, I don't think that Santander treated them unfairly.

In dealing with Mrs G and Mr M's application, Santander was providing a service to them – the service of mortgage lending. In doing so, it has to have regard not just to the law (including the Equality Act) but also – because mortgage lending is a regulated financial service – to the rules of mortgage regulation.

The rules of mortgage regulation require (in summary) a lender considering an application for a mortgage to carry out a full affordability assessment to ensure that the mortgage is affordable for the applicants – not just at point of application but throughout the term. The rules require a lender to obtain satisfactory evidence of income; it's not enough to rely on what it's told without evidence.

These rules are an important safeguard as part of the consumer protection provided by financial services regulation. It's important that mortgages are only lent where there's good grounds, supported by evidence, for concluding that the lending is affordable and responsible. To put this in the terms used in the Equality Act, ensuring that it only lends where satisfied that doing so is affordable and responsible is a legitimate aim for Santander to have.

The key thing Mrs G and Mr M are concerned about in this case is the nature and volume of requests Santander made to satisfy itself about Mrs G's income – it required much more information about Mrs G than it did about Mr M, and they believe this is evidence of discrimination.

However, I'm not persuaded Santander acted unfairly here. I think, in the particular circumstances of this case, that its requests were reasonable and proportionate. I don't think they put Mrs G at a particular disadvantage. Ultimately she was able to provide evidence that was acceptable to Santander, and which led it to offer them a mortgage – and while the nature of the requests was more onerous for her than it was for Mr M, and more than it might have been for other applicants, I don't think it was unfair or unreasonable in her particular circumstances.

Mr M's income was straightforward. He was in full time employment, with no change of circumstances anticipated. Therefore Santander was satisfied by the payslips submitted with the application.

The position for Mrs G was different in two respects. Firstly, her recent payslips showed a period of reduced pay because of sick leave. And secondly, she was changing jobs – although she was remaining with the same ultimate employer, she was changing department, salary, and contract. This change was to take effect at the same time as the mortgage application. For both those reasons, Santander couldn't rely on Mrs G's most recent payslips alone.

Because of the sick leave, Santander wanted confirmation that she was now back working normally and receiving her regular salary, so it asked for more recent payslips to show this.

I think this was a fair and reasonable request. As I've said, Santander is required by the rules of mortgage regulation to ensure that the mortgage is affordable at the time of the application and into the future. If an applicant has a recent period of reduced salary because of sick leave, it's fair and reasonable for a lender to want to know more about that. For example, if the sick leave is continuing while the application is made there might be reasonable concerns about whether the applicant will be

returning to work or be able to receive their full salary once the mortgage completes.

I'm therefore satisfied that it was fair for Santander to ask for updated payslips showing that Mrs G had since returned to full working hours and was receiving her full salary, to demonstrate that her income would be sustainable once the mortgage completed.

In saying that, I've taken into account the Equality Act. I've said that I accept that Mrs G has a disability, but there's no evidence she made Santander aware of that at the time of the application. Santander can't take into account something it isn't aware of – and it wouldn't be reasonable to expect it to assume that Mrs G had or might have had a disability; I've set out the definition of a disability in the Act above. I don't think it would be reasonable to expect Santander to conclude Mrs G had a disability within the meaning of the Act merely because she'd had a period of recent sick leave, without further information.

And even if Santander was aware of Mrs G's disability, I don't think that would – or should – have prevented it asking for more information about the sustainability of her income. The Equality Act doesn't prevent Santander from taking Mrs G's disability, or matters arising from it, into account at all. To the extent that it may impact her income, it's clearly relevant to the affordability of the mortgage. Asking for further evidence to confirm whether her income would be sustainable into the future is likely to be, in my view, proportionate to the requirement to only lend where the mortgage can be evidenced to be affordable.

And nor would I expect Santander to set aside the regulatory requirement to evidence affordability by way of a reasonable adjustment. I accept that Mrs G found Santander's requests for further evidence onerous and stressful. But there is always some stress and inconvenience to be expected when making a mortgage application. A mortgage is a substantial commitment, not to be granted without careful consideration of affordability. I can't see that it was impossible or unduly difficult for Mrs G to provide the evidence Santander asked for.

I'm therefore satisfied that Santander's request for further information about, and evidence of, Mrs G's income showing her return to work and the end of her sick leave was fair and reasonable in all the circumstances.

The second issue was that Mrs G was changing jobs. She was moving to a different role on a different contract at a different salary, albeit with the same ultimate employer. Again, this is clearly relevant to the affordability of the mortgage. In light of this, her past payslips are evidence that she has returned to work – but they're not evidence of her future income. The rules of mortgage regulation require evidence of income, and so it was fair and reasonable for Santander to ask for evidence of her new role and salary. As she hadn't started yet, it asked for her contract of employment; payslips wouldn't show the new salary.

I don't think this request was in any way related to Mrs G's disability. Santander wanted evidence of her new role and salary because her income would be changing between the time of the mortgage application and completion – or around that time – and its request for confirmation of her new role and salary was to satisfy the requirement to prove affordability.

There were some difficulties here. Santander wanted Mrs G's new contract to satisfy particular requirements before it would accept it, including that it was printed on her employer's headed notepaper and that it was counter-signed in wet ink by a

representative of the employer. Mrs G's contract didn't satisfy these requirements. She's explained that her employer – a very large organisation – doesn't produce contracts in this way as its employment systems operate digitally. And her employer has said that it's aware of its employees having made very many mortgage applications, and that lenders have always accepted the evidence it's provided.

Mrs G's situation was slightly unusual, however. Most employees would be in a role at the time of an application, not leaving one role and moving to another – and so in those cases a contract is less important because, for example, existing payslips are adequate evidence of income. In Mrs G's case her existing payslips showed her old income, not the new income which would be in place once the mortgage completed. So Santander needed evidence of her new, increased, income.

I do think its initial request for a contract in a particular format – which Mrs G's employer didn't use – wasn't sufficiently flexible and didn't recognise that many employers now operate in this way. However, Santander then agreed to accept an employer's reference instead, and based on that accepted their application and issued a mortgage offer.

Overall, and while I accept Mrs G and Mr M found the process frustrating and felt it took too long, I don't think Santander acted unreasonably. It asked legitimate questions in order to satisfy itself that the mortgage would be affordable – as required by the regulator's rules – and once it was satisfied of that it issued a mortgage offer. Mrs G and Mr M accepted the offer and their mortgage completed.

The nature of mortgage regulation and the requirement to evidence affordability (which is an important consumer protection) does sometimes mean that a lender has to ask intrusive questions, or request extensive information. It's reasonable (indeed, it's a requirement) for Santander to have policies about what sort of evidence it does and doesn't accept. But in this case it set aside its policy and accepted alternative evidence when what it initially asked for turned out not to be available.

I've taken into account everything Mrs G and Mr M have said. But I'm not persuaded that their mortgage application took an unreasonably long time or – especially in view of Mrs G's relatively unusual circumstances – that Santander's requests for evidence and information were unfair or disproportionate. Some administrative inconvenience is to be expected when dealing with a commitment as large and important as a mortgage. I'm mindful that in the end Mrs G and Mr M got the mortgage they wanted. And I don't think Santander treated them unfairly in the process it put them through."

Neither party had any further comment to make in response to my provisional 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 also thought again about the conclusions I reached in my provisional decision. Having done so, and noted that there were no further matters raised for me to consider, I see no reason to change my mind.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr M to accept or reject my decision before 7 March 2024.

Simon Pugh
Ombudsman