

The complaint

Mrs M and Mr M complain Santander UK Plc declined their application to port their mortgage to a new property.

What happened

Mrs M and Mr M had a mortgage with Santander that was secured over their residential property. They benefited from a seven-year fixed interest rate product taken out in early 2022.

In March Mrs M asked Santander about transferring their existing mortgage to a new property and borrowing an additional amount. They had no firm plans to move at the time. But they'd seen a property they were thinking about bidding for at auction and wanted to understand what they might be able to afford.

Mrs M didn't have all Mr M's financial information to hand to complete her enquiry. So, Mr M called back in early April. Santander gathered some basic financial information about Mrs M and Mr M's circumstances from him. Based on that, Santander said they'd be able to lend them the £300,000 Mrs M and Mr M thought they'd need to borrow and issued a decision in principle (DIP).

In May Mrs M and Mr M completed on the purchase of the property they'd bought at auction using a bridging loan (the new property). The sale of their existing property hadn't gone through.

In mid-June Santander extended the DIP after Mrs M rang to discuss their situation. And in mid-July Mrs M rang back to discuss next steps. Santander told her then they couldn't port their existing mortgage since they'd already bought the property they wanted to borrow against.

In August Mrs M and Mr M complained to Santander and asked for copies of the recordings of the calls they'd had with them and other information. They got a mortgage offer from another lender on the new property to repay the bridging loan.

Santander responded to their complaint in early September. They said they were right in telling Mrs M and Mr M they couldn't port their existing mortgage but acknowledged they should have let them know in June. When Mrs M and Mr M disagreed, Santander confirmed in early November their outcome was right on porting. But they paid Mrs M and Mr M compensation of £75 for failing to tell them in June and extending the DIP.

Mrs M and Mr M remained unhappy. They also complained about the time it took Santander to respond to their requests for information. Santander paid them an additional amount of £40 to apologise for that.

Since Mrs M and Mr M didn't accept Santander's outcome, they brought their complaint to the Financial Ombudsman Service. They said, in summary:

- They wouldn't have bought the new property if they'd known from the beginning they couldn't port.
- They were significantly affected financially by Santander's mistakes since they'd had to pay a high ERC when they later sold their existing property and paid back the Santander mortgage; Santander delayed in telling them they couldn't port the mortgage at a time when mortgage interest rates were increasing rapidly, which led to them having a mortgage at double the rate they'd budgeted for; and the financial impact would be ongoing.
- It had taken Santander too long to provide copies of the calls they'd had with them, and Mrs M had had to chase the information in November and December 2022; those they got in January 2023 were incomplete; and they were awaiting further files when they complained to us.
- Their emotional and mental wellbeing had been affected.
- The compensation Santander had paid wasn't enough.

To put things right Mrs M and Mr M wanted Santander to refund the ERC, meet the additional monthly cost of their new mortgage and compensate them for their distress and inconvenience.

Our investigator thought Santander ought to have let Mrs M and Mr M know when they spoke to them in early April 2022 they couldn't port the mortgage. But he felt, based on their evidence, Mrs M and Mr M would have gone ahead and bought the new property anyway. He thought Santander should pay them additional compensation as failing to tell them the position on porting in June caused them a loss of expectation and additional stress. He thought a total of £250, including the sums they'd already paid, was fair.

Mrs M and Mr M didn't agree. They didn't accept our investigator's conclusion they would have bought the new property even if they'd known they would be unable to port their existing mortgage. They explained they'd worked out their finances carefully. They said Santander's failure to tell them they couldn't port the mortgage sooner had led to costs they didn't foresee, namely the ERC of around £8,000 and six years of higher monthly mortgage costs than they'd anticipated. And they were unhappy our investigator hadn't mentioned their concerns about the way in which Santander had dealt with their requests for information.

Since the complaint hadn't been resolved, it was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

“What I've provisionally 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'm sorry to hear of the stress Mrs M and Mr M have been under and I note their strength of feeling about what happened. I've thought carefully about everything they and Santander have told us and I've listened to the available calls. I may not mention here everything the parties have told us. I don't mean to be discourteous. It simply reflects the informal nature of the service we provide. I've taken everything they've said into account in coming to my view. I'll focus on what I consider key.

Whilst I understand Mrs M and Mr M will be disappointed, I've come to the same outcome as our investigator. Since my reasons are different in part, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.

We expect lenders to provide information to their customers in a way that is clear, fair and not misleading in line with Financial Conduct Authority principles. The mortgage offer Mrs M and Mr M received in 2022 made clear they could transfer the mortgage to a new property if, at the time of their application, they met the conditions relating to “Transferring your loan to a new mortgage” - (porting) - as well as Santander’s lending criteria and affordability requirements. It explained an ERC was payable if they paid the mortgage back within the seven-year term and set out how much the ERC would be.

The mortgage conditions allowed porting where Mrs M and Mr M wished to pay off their mortgage on selling their existing property and “at the same time” take out a new mortgage secured on a property they wished to buy. They said the ERC might be refunded if a new mortgage was taken out with Santander within three months of the date on which the existing mortgage had been paid off. But there was no provision for porting the mortgage to a property Mrs M and Mr M already owned, as here.

I’d expect Mrs M and Mr M to have read the mortgage conditions when they took out the fixed rate deal with Santander given their importance and the significant loan they were committing to. If they had, I think they ought reasonably to have understood porting was unlikely to be possible if they weren’t buying and selling at the same time.

Even if it were reasonable for Mrs M and Mr M not to have been aware of that, and to have relied on what Santander told them later, on balance I don’t think Santander acted unreasonably or treated Mrs M and Mr M unfairly, as I’ll explain.

During their conversation with Mr M in early April 2022 Santander explained, amongst other things, it was the interest rate product they’d be able to port, not the mortgage itself; it would be necessary for a survey to be carried out on the property they wanted to buy before Santander would agree to lend on it; a full mortgage application would be needed; and the application process would start once offers had been received and accepted on the properties they were buying and selling. When Mr M told Santander the property they were planning to buy was being sold at auction, they advised him to be careful as they couldn’t guarantee they’d be able to release monies in time for completion within the period an auction requires.

Santander could have let Mr M know then that porting wouldn’t be possible if they bought the new property first. But, on balance, I don’t think it’s unreasonable that they didn’t. Santander had no reason to think from what Mr M told them that he and Mrs M would go ahead and buy the new property before the steps Santander had explained were necessary for porting to happen had been carried out. And given Santander’s explanation, I don’t think it was reasonable for Mr M to think a formal application to port was guaranteed to succeed.

The DIP Santander issued later in April was an indication of the amount Santander would be willing to lend Mrs M and Mr M based on initial financial information they provided. It wasn’t a formal offer. The DIP confirmed some of what they’d told Mr M over the phone earlier in the month – it made clear Santander might be able to lend to them subject to a full application, a property valuation and their lending criteria at the time being met.

Bearing the above in mind, even though Mrs M and Mr M may not have understood Santander wouldn’t allow them to port to a property they already owned, it wasn’t reasonable for them to think their porting application would definitely succeed. And Santander had made clear the steps they’d need to go through to apply for a mortgage. It’s possible their application would have failed for other reasons. And Santander told them there might not be enough time to arrange for porting if they bought at auction. They went ahead with their purchase knowing the risks. In all the circumstances, it’s not fair to hold Santander responsible for the costs they incurred as a result.

I note Mrs M and Mr M's point that if Santander had told them sooner they couldn't port, they could have secured a lower interest rate since interest rates had gone up a lot by July. I agree Santander should have let them know in June. But I don't think the additional mortgage costs flow directly from Santander's mistake. It wouldn't be reasonable to hold Santander responsible for rises in interest rates caused by economic factors outside their control. And I can't be certain Mrs M and Mr M would have got a more favourable deal even if they'd applied sooner. So, I don't think it's fair to ask Santander to compensate Mrs M and Mr M for their higher mortgage payments.

However, I can understand it was upsetting to find out in July that Santander had made a mistake in extending the DIP in June when they knew Mrs M and Mr M had already bought the new property. Santander acknowledged they'd made a mistake then – but didn't admit to other mistakes as Mrs M has suggested - and paid compensation for that. I appreciate Mrs M and Mr M's concerns about the time it took Santander to send them the information they asked for in August 2022. Mrs M's told us she chased several times; it took until January 2023 for Santander to respond; and some of the calls were incomplete. I think it was fair for Santander to compensate Mrs M and Mr M for these issues.

I can understand Mrs M's concerns about the overall situation and her personal circumstances at the time will have made what happened particularly upsetting for her and Mr M. Bearing that in mind, and also that I don't think Santander acted unfairly in relation to porting, I think the £250 compensation our investigator proposed is fair and reasonable in all the circumstances.

My provisional decision

I intend to uphold this complaint and direct Santander UK Plc to pay Mrs M and Mr M £250 compensation for distress and inconvenience. Since they've already paid £115, they will need to pay the balance of £135."

Developments

Mrs M and Mr M said they had nothing to add in response to my provisional decision. Santander made no comments. So, I'll go on to give my 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.

Since neither party has provided any further information for me to consider, I haven't changed my view. I uphold the complaint for the reasons I explained in my provisional decision.

Putting things right

Santander UK Plc should pay Mrs M and Mr M £250 compensation inclusive of the amount they've already paid.

My final decision

I uphold this complaint and direct Santander UK Plc to pay Mrs M and Mr M £250 compensation for distress and inconvenience net of the £115 they have already paid being a balance of £135.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 9 March 2024.

Julia Wilkinson
Ombudsman