

The complaint

Mr G and Miss M have complained about a declined porting application they made with Santander UK Plc.

What happened

Mr G and Miss M had an existing mortgage with Santander and on 26 May 2023 they applied to port it to a property they wanted to buy. The application notes from the Santander adviser say that Mr G and Miss M were buying the property from Miss M's father at an undervalue as he had inherited the property when another relative had passed away. The notes say the value of the property was £315,000 and they were buying it for £240,000.

Mr G and Miss M paid a £180 valuation fee and the valuation was instructed.

On 30 May Mr G and Miss M paid £900 to their solicitor to commence the legal work for the sale and purchase.

On 31 May the underwriter reviewed the application and asked whether Miss M's father was the sole beneficiary of the property, and if not who the other parties are.

The notes indicate the adviser was going to call Mr G and Miss M to check, and then a note appears to have been added on 1 June to say there was a second beneficiary, Miss M's aunt.

On 12 June the underwriter reviewed the application again and said the application fell outside Santander's lending policy as it didn't allow a sale at such a significant undervalue outside of certain familial relationships, and an aunt/niece relationship didn't meet its criteria for that.

There were discussions between the parties over the next few days, with the option of increasing the purchase price to within 20% of the market value being discussed (as that level of undervalue was allowed under Santander's lending policy). The adviser was also chasing up a copy of the valuation report. A complaint was raised.

Santander responded to the complaint on 27 June. It said the application fell outside Santander's lending policy and so it couldn't proceed with the application. It apologised for the communication issues around the valuation, and it paid £100 compensation to Mr G and Miss M for that.

In the meantime Mr G and Miss M had notified the solicitor that the sale and purchase were no longer proceeding, and on 28 June the solicitor provided an invoice to them. This showed that £600 would be refunded, but £300 would be kept for works undertaken.

Mr G and Miss M referred the complaint to the Financial Ombudsman Service and when Santander provided its submissions it said it was also willing to refund the £180 valuation fee to Mr G and Miss M. Our Investigator put that offer to Mr G and Miss M and they didn't accept it.

Our Investigator considered the complaint and said Santander's offer to pay £280 in total was fair. She said Mr G and Miss M instructed the solicitor to start work at their own risk as there was no guarantee their application would be successful. She said whilst it wasn't unreasonable to instruct a solicitor at an early stage, she didn't think it was Santander's fault Mr G and Miss M had paid the solicitor to actually commence the legal work before they'd received a formal mortgage offer.

Mr G and Miss M didn't agree with our Investigator's findings, saying they should have been told in the initial mortgage interview at the end of May that they couldn't proceed and, had that happened, then they wouldn't have paid the money to their solicitor.

As an agreement wasn't reached the case was passed to me to decide.

What I've decided – and why

I issued a provisional decision in March 2024, the findings of which said:

"Mr G and Miss M have been clear throughout this complaint that they told Santander they were buying the property from Miss M's father and her aunt, not just her father. They've also shown us that they only paid the fees to their solicitor after the application was submitted, which was after they say they'd told the adviser that one of the vendors was Miss M's aunt.

Whilst the original application notes indicate the vendor was Miss M's father, I find Mr G and Miss M's testimony on this point plausible. It seems unlikely, if questioned about who the vendors were, that they would have only mentioned Miss M's father and not her aunt, especially if the implications of the familial relationship had been made clear to them.

I acknowledge this is a niche area of lending policy, however it seems the adviser knew enough to mention the vendor was Miss M's father and even if he wasn't completely sure himself, then it would have been best practice to caution Mr G and Miss M that the application would need to be reviewed by an underwriter specifically in relation to the undervalue issue. I think if that had happened Mr G and Miss M would have waited a little longer before they instructed their solicitor to commence work.

It is always a risk to instruct a solicitor to commence work before a formal mortgage offer has been issued, and often in other cases where an application is later declined, I agree that was a risk the customers took so the cost shouldn't be covered by the lender.

But this is a more unusual case as not only was the reason for decline something I think – on balance – Santander was aware of before the application was submitted, I also think there was little risk to this application being declined for other reasons. I say this as it was a like-for-like porting application, so an affordability assessment wasn't required under the rules of mortgage regulation. And Mr G and Miss M knew the property well as it was family owned and looking at the application form they'd lived in the property up until about 18 months before this application, so it is likely they would have been aware of any potential reasons why it wouldn't be considered suitable security for a mortgage.

Having considered everything very carefully, I think – based on the evidence I currently hold - that Santander had information in its possession before this application was submitted (and before Mr G and Miss M paid money to their solicitor) that showed the application would never have met Santander's lending policy. It follows that had Mr G and Miss M been told that at the time the application was made, they wouldn't have paid the money to their solicitor to commence the legal work, and so they wouldn't have incurred that loss.

I'm currently minded to uphold this complaint and order Santander to pay the £280 it has already offered (£100 in compensation and a refund of the £180 valuation fee) and to also cover the £300 costs Mr G and Miss M incurred with their solicitor for the failed transactions."

Mr G and Miss M accepted my provisional decision, and Santander didn't respond.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having consider the full file afresh, I see no reason to depart from the findings I reached in my provisional decision.

My final decision

I uphold this complaint and order Santander UK Plc to pay a total of £580 to Mr G and Miss M (less any amounts already paid). For clarity, this is:

- £100 compensation,
- £180 refund of the valuation fee, and
- £300 to cover the abortive legal costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Miss M to accept or reject my decision before 14 May 2024.

Julia Meadows
Ombudsman