

The complaint

Mr and Mrs B complain that Santander UK plc withdrew a mortgage offer it had made to them and didn't give a reason.

What happened

Mr and Mrs B had an existing mortgage of just over £280,000 with Santander, on a fixed interest rate which was due to end in January 2024. They wanted to move to a larger property, and in 2023 they took advice from a mortgage broker.

Through their broker, Mr and Mrs B applied for a new mortgage of £580,000 with Santander. On 30 June 2023, Santander issued an agreement in principle to lend that amount and the application went ahead. Following underwriting, Santander reduced the amount it said it may be prepared to lend to £346,000 plus fees, and said that was on the basis that Mr B repaid outstanding car finance of around £15,000.

Mr and Mrs B repaid the car finance and on 3 August 2023 Santander issued a mortgage offer for £346,999, at a fixed interest rate of 5.24% until 2 October 2028.

On 5 August 2023, Santander decided it wasn't willing to lend after all. On 7 August 2023, it told Mr and Mrs B's broker and solicitors that it had reviewed the application and it was withdrawing its mortgage offer.

Mr and Mrs B appealed, and Santander asked for some further information including P60s. It received those on 8 August 2023, and on 16 August 2023 it said it wouldn't change its mind and it wouldn't proceed with the mortgage.

Mr and Mrs B complained and then applied to another lender. They were ultimately able to buy the property they wanted, but their mortgage is on a higher interest rate than the rate Santander had offered them. They also complained that they had to pay additional costs because of the way Santander had treated them, and suffered considerable distress and upset.

Santander didn't think it had done anything wrong and didn't offer Mr and Mrs B any compensation, so they referred their complaint to the Financial Ombudsman Service.

Our Investigator recommended that the complaint should be upheld. She said that Santander had issued a binding mortgage offer and should have carried out proper checks before doing so. She said that Santander should remove the credit searches for the mortgage application from Mr and Mrs B's credit files, pay Mr and Mrs B the extra interest they would pay on the higher interest rate with their new lender, pay £250 compensation, and write to Mr and Mrs B with an apology.

Neither Santander nor Mr and Mrs B accepted that conclusion. Santander still thought it was entitled to withdraw the mortgage offer, and Mr and Mrs B thought they should also receive a refund of the early repayment charge (ERC) they had to pay Santander when they repaid their previous mortgage.

My provisional decision

The complaint was referred to me. I reached a different conclusion to the Investigator, so I issued a provisional decision. I said:

“When a lender issues a regulated residential mortgage offer, as Santander did here, the offer is binding. This means that the offer can’t be withdrawn, unless certain conditions are met which must be set out in the offer.

Santander says that it relied on one of those conditions in withdrawing the offer it had made to Mr and Mrs B, although it hasn’t specified which one. It says it carried out further checks after it had issued the offer and then made a justifiable decision not to lend.

As our Investigator pointed out, no new information came to light which Santander didn’t already have available to it between the offer being issued on 3 August and it changing its mind on 5 August. Santander has argued that it’s entitled to review applications and carry out additional checks where it sees fit. I agree that it can – and should – carry out relevant checks before deciding whether or not it will grant a mortgage. But the time for review and underwriting is before a mortgage offer, which is binding on the lender, is issued, not after. I don’t think Santander has provided any good reasons for not completing its checks before it issued a mortgage offer to Mr and Mrs B.

I don’t think it was fair for Santander to withdraw a binding offer in these circumstances, when nothing had changed since it issued the offer and it changed its mind on the basis of information it already had.

I don’t, however, think I can fairly conclude that this means Santander should fairly compensate Mr and Mrs B for the difference between the interest rate on the offer it made and withdrew and the interest rate they got on the mortgage they took out with their new lender. This is because I think it’s clear that Santander wasn’t prepared to lend Mr and Mrs B the mortgage they wanted.

Santander wasn’t obliged to lend to Mr and Mrs B. It was entitled to carry out various checks before making its decision, and if it declined their application it wasn’t obliged to explain why – although it was obliged to consider their application fairly. Santander’s mistake in this case was not completing its underwriting and other checks before issuing the offer. Had it completed those checks earlier, the offer would never have been issued in the first place. Mr and Mrs B would then have needed to arrange a mortgage elsewhere – which is what they ultimately did. They haven’t, therefore, lost out financially as a result of what happened in terms of the mortgage deal they got.

Mr and Mrs B have said that they lost around £24,000 because of what happened. Around £15,000 of that sum is the car finance they repaid, and around £8,000 is the ERC they paid on redeeming their previous Santander mortgage.

The application Mr and Mrs B made to Santander in June 2023 was for a new mortgage product. It wasn’t an application to transfer their existing interest rate product to the new mortgage – so they would always have had to pay the ERC, even if the new Santander mortgage they applied for had gone ahead.

Santander required Mr and Mrs B to settle their car finance agreement before it would agree a new mortgage. However, Mr and Mrs B’s completed mortgage application said they would be settling that agreement, and Santander was clear at an early stage that it expected them to do that if they wanted to go ahead with the proposed new mortgage. I

also don't consider that this is a loss they incurred – it was a debt that would need to be repaid at some point, and they will no longer be paying interest on it.

I haven't seen evidence of additional costs Mr and Mrs B incurred because Santander issued the offer and then withdrew it. They went on to buy the property they wanted with another lender, there was a period of only a few days between the offer being issued and withdrawn, and I don't find that Santander took an unreasonable length of time in dealing with the application between 30 June and 3 August 2023, or in reviewing the application again between 8 and 16 August 2023.

I do, however, think Mr and Mrs B should fairly receive some compensation for the distress and upset they were caused as a result of Santander withdrawing their mortgage offer a few days after it had been issued. I consider that £250 is a fair award in all the circumstances."

I invited Mr and Mrs B and Santander to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Mr and Mrs B didn't accept my provisional decision and asked me to reconsider. They thought £250 was insulting, and asked how I had reached the conclusion I had when I had found that Santander broke a legally binding contract. They said I hadn't considered the impact Santander's decision to revoke their mortgage offer had on them, and Santander should never have issued an offer if it wasn't prepared to lend – but it did issue an offer and it should be bound by that.

Santander didn't say whether or not it accepted my provisional decision, but it had nothing more to add.

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.

Having done so, I've come to the same conclusion I reached in my provisional decision.

I agree with Mr and Mrs B that Santander treated them poorly and it shouldn't have issued a mortgage offer if it wasn't going to stand by that offer. I didn't, however, find in my provisional decision that the offer was a legally binding contract. It was an offer, not a contract, and binding because of the rules of mortgage regulation, not in law.

Although I find that Santander got things wrong, I can only fairly require it to compensate Mr and Mrs B for the impact – financial and non-financial – of its mistakes. I've carefully considered Mr and Mrs B's further comments, and I remain of the view that they haven't lost out financially because of what happened.

This is because Santander wasn't prepared to lend Mr and Mrs B the mortgage they wanted. Its mistake was not in telling Mr and Mrs B that it wouldn't grant the mortgage. Its mistake was in issuing a mortgage offer before first completing its various checks on the application. Had it not made that mistake, Mr and Mrs B would have needed to arrange a mortgage elsewhere. This is what they did, and it is what they would always have needed to do if they wanted to go ahead with buying their new home.

They would, therefore, always have needed to agree new terms with a new lender, and they would always have needed to pay an ERC when they repaid their Santander mortgage. The ERC was part of the mortgage deal Mr and Mrs B signed up to on the fixed rate product that

ended in January 2024. Santander was entitled to ask them to pay the ERC, and I think it was fair in doing so.

There was only a short period of time between Santander issuing and withdrawing the mortgage offer, and I remain of the view that £250 is a fair award in all the circumstances to reflect the upset, disappointment and inconvenience caused to Mr and Mrs B.

My final decision

My final decision is that I uphold this complaint and Santander UK plc should pay Mr and Mrs B £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 27 May 2024.

Janet Millington
Ombudsman