

The complaint

Mr and Mrs S complain that when they asked Santander UK Plc to port their Buy To Let ("BTL") mortgage to a new property, it initially agreed, but then reduced the amount it would lend at a late stage. Mr and Mrs S said that meant the purchase fell through.

What happened

Whilst this complaint is brought by both Mr and Mrs S, as the mortgage is in both their names, our dealings have been with Mr S. So I'll mainly refer to him in this decision.

Mr S said he'd repaid a BTL mortgage with Santander on 27 October, and he then wanted to port that lending to another property. Mr S put in another lending application on 31 October.

Mr S said this porting application, to buy a new BTL property, only failed because Santander didn't know its own rules. He said the bank allowed 90 days for a porting application, but in the second half of that period, it reduced its loan amount by around £20,000, leaving him only 38 days to find and complete a purchase on any alternative property.

Mr S said Santander had confirmed the maximum amount it would lend on the property he was trying to buy, on 9 November and again on 13 November. His broker had contacted Santander then to check if a lower predicted rental income (as provided on Santander's valuation) would affect the lending. And Santander twice confirmed it wouldn't. But on 27 December, Santander realised it had made a mistake, because it had been working out if Mr and Mrs S could afford the property based on a five year fixed rate, and they didn't have five years left on the mortgage deal they were porting over. This reduced Mr S's lending from £100,600 to £79,900. Mr S said that meant he had to pull his existing offer, and he had no time to find a different property.

Mr S's broker got in touch with Santander right away, and asked it either to honour the previous lending amount, or to allow Mr S some extra time for his porting application, so he could find a different property. But Santander's formal response to this complaint said it didn't agree about the mistake made here, and it wouldn't do that. It said it had told Mr S how much it could lend him on 22 December, and it accepted it had made a mistake then. But that mistake was noticed on 27 December, and corrected with the broker right away, so Santander thought it had put things right quickly.

Santander said it wasn't responsible for Mr S understanding earlier that a larger loan amount would be granted. It said that would have been worked out by his broker. It had paid £80 in compensation, and felt that was fair.

It took some time for the full picture to emerge in this case, and a number of views were issued, but our investigator eventually said that Mr S's broker had rung Santander on 9 and 13 November, and the amount of maximum lending confirmed then was wrong. He understood that Mr S's broker could have confirmed lending amounts online, but he felt the stronger argument was that the broker had checked this with Santander, and ought to have been able to rely on the answers Santander gave then. So he thought Santander had given wrong information in early November 2023.

Our investigator also concluded, after some thought, that Mr and Mrs S weren't necessarily too late to buy a different property then. He said the overarching point was that because Santander didn't confirm the correct maximum lend earlier on, this had created a loss of opportunity. The core problem here was that there's no way of knowing if Mr and Mrs S would have found a suitable cheaper property, or if Santander would have lent the amount needed to buy it. And that was because of the loss of opportunity created by Santander. So our investigator said it didn't feel fair for Mr and Mrs S to have been charged an ERC, when they weren't given any reasonable prospect of avoiding it, based on Santander's handling of their subsequent mortgage application.

Our investigator said Santander should pay back the ERC it had charged on £79,900 of its lending, which is the revised amount Santander would have lent on the property Mr and Mrs S were trying to purchase, with 8% simple interest from the date the ERC was charged, until the date of settlement of this complaint. And he thought it should also pay £400 to recognise the loss of opportunity, including the loss of a very advantageous fixed interest rate on their lending, which was the reason they then decided to invest their money elsewhere.

Santander didn't agree. It still thought Mr and Mrs S couldn't have found a property for nearly 19% less, but with an adequate rental income, within the 90 day window. And Santander said because Mr and Mrs S redeemed their old mortgage without starting a new application, they took the risk that they may not be able to port. Santander said it would pay the £400 in compensation that our investigator suggested, but it wouldn't repay some of the ERC that was charged.

Mr S said he would accept compensation of £400 plus a partial ERC refund to settle this case, but he thought that should be based on the sum of £100,600 that Santander initially offered.

Because no agreement was reached, this case came to me for a 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.

I've reached the same overall conclusion on this complaint as our investigator.

I appreciate that Mr and Mrs S redeemed their old BTL mortgage before any fresh lending application was approved, so there was always a risk that they would not have managed to port their mortgage. But I don't think that means a fair outcome here, would be for Santander to be insulated from the effect of any mistakes it makes, if the reason that this porting application failed was because of something it did.

Like our investigator, I think that Mr S's broker asked Santander on 9 and 13 November, to confirm its maximum lending wasn't affected by the lower rental income that the valuation had produced. And Santander confirmed it wasn't. I don't know who originally made the mistake of thinking that Mr and Mrs S could borrow around £100,000, but I think this mistake should have been spotted by Santander then, and it was not. I do think that, as this broker had twice rung Santander to get a maximum lending figure, and Santander twice confirmed the same figure, the broker, and in turn Mr and Mrs S, should be able to rely on that figure.

We now know this figure was wrong, and Santander wouldn't lend Mr and Mrs S that much, on this property. Mr S's argument is that he only found this out when he was over halfway through the porting period, and if he'd known sooner, he could have looked for another property.

Santander doesn't agree, it doesn't think Mr S could have found somewhere else, and bought it, in time. Like our investigator, I don't think there's any way to be sure here. But I note three things which I do think are important here.

Firstly, Mr and Mrs S weren't looking for a home for themselves. They didn't have to find somewhere they would be happy living for years to come, rather they were just looking for a good investment property. And if Santander had corrected the mistake about the lending amount at the start of the process, they may well have simply been able to fall back on their second choice. I also think it's reasonable to expect they would have chosen a property without a chain, which could be purchased quickly.

Secondly, Santander also said it didn't think they could have found somewhere cheaper with a better rental return, but Santander will presumably be aware that rental return as a percentage of the property's purchase price does vary considerably between different areas.

Thirdly, Santander was given the option to simply extend the porting window here. Mr S's broker asked for that almost immediately the mistake was discovered. And he pointed out then that when this complaint was made, Santander's own agent said the mistake should have been discovered in early November. So Santander was not unaware at the time, of the basis on which this complaint was ultimately upheld. But Santander turned the request down.

For the above reasons, I do think it's unfair in all the circumstances of this case for Mr and Mrs S to pay the full ERC on the lending they redeemed in on 27 October 2023. And I think the suggestion our investigator made, that Santander should repay the ERC it charged on £79,900 of that lending (plus 8% simple interest from the date the ERC was paid to the date this partial refund is made) and £400 in compensation, does represent a fair and reasonable outcome to this complaint.

My final decision

My final decision is that Santander UK Plc must calculate the Early Repayment Charge that would have been paid by Mr and Mrs S if they had ported £79,900 of the mortgage they redeemed on 27 October 2023. Santander UK Plc should then refund the difference between the Early Repayment Charge that Mr and Mrs S paid then, and the Early Repayment Charge they would have paid, if Mr and Mrs S had been able to port £79,900 of their mortgage to a new property.

Santander UK Plc must also pay 8% simple interest on that refund, from the date the Early Repayment Charge was paid to the date this refund is made. HM Revenue and Customs requires Santander UK to take off tax from this interest. Santander UK must give Mr and Mrs S a certificate showing how much tax it's taken off if they ask for one.

Santander UK Plc must also pay £400 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 4 November 2024.

Esther Absalom-Gough
Ombudsman