

The complaint

Mr J complains about the way Santander UK Plc handled his application to port his mortgage to a new property, which it ultimately declined.

What happened

In 2021, Mr J took out an interest only mortgage with Santander over a five year term. The mortgage was taken on a fixed rate of 1.29% until 2 June 2026. The mortgage offer said that in the event the mortgage was repaid before 2 June 2026, an Early Repayment Charge (ERC) of 5% would apply. The offer also said Mr J had the right to transfer the mortgage to a new property, subject to him meeting Santander's lending criteria and passing its affordability assessment at the time.

In 2023, Mr J was looking to downsize his property and move for his work, as well as for personal reasons. He says he called Santander in July 2023 and was assured he'd be able to move his mortgage over to the new property.

Mr J agreed the sale of his property which was due to complete on 31 October 2023 and found a new property he wanted to purchase. He called Santander on 17 October 2023 to discuss moving his mortgage as he was worried he wouldn't be able to complete the sale and purchase on the same day. Santander explained that if the porting application was approved, he would have three months to complete on the new mortgage in order to get a refund of any ERC that will be applied upon redemption of his existing mortgage. Mr J said he hadn't made an application and so Santander started this for him on the call.

Mr J initially said he wanted to port the mortgage on the same terms as it was currently to the new property. He was selling his property for £400,000 and purchasing his new property for £187,000. The mortgage balance at the time was around £185,000. Santander asked how Mr J intended to repay the mortgage at the end of the term, and Mr J said he would use his savings. Santander said it couldn't accept savings as a repayment vehicle under its policy, and there wouldn't be enough equity in the new property for it to meet its criteria. It said as a result, it could only progress the application on the basis that the mortgage was switched to capital repayment, which Mr J agreed to. After the adviser took details of Mr J's income, she explained the maximum Santander could lend him was around £106,000. Mr J said that was fine and was happy for the application to go ahead on that basis.

On 23 October Santander told Mr J the application had been declined because of his existing credit commitments. Mr J had around £100,000 outstanding on credit cards and loans. He told Santander he would be paying off all his other debts when his property sold. Santander said it could re-consider the application once it received evidence that all the debts had been repaid.

On 31 October 2023 Mr J sold his property and redeemed the mortgage, paying an ERC of around £9,300.

On 15 December 2023 Mr J called Santander and told it that all his debts had been repaid and his credit file had been updated. Santander re-considered Mr J's application, but it was

still declined. It said Mr J had a lot of missed payments recorded on his credit file over the last 12 months, and the application still failed on affordability.

Mr J complained. He was unhappy that Santander had declined his application when he said it had previously assured him that porting the mortgage wouldn't be a problem. He said he'd now been forced into rented accommodation.

Santander didn't uphold the complaint. It said it had followed the correct processes and policy whilst reviewing Mr J's mortgage application and unfortunately it was unable to go ahead. It said Santander had the right to decline an application in the interests of both the company and the customer if it does not pass its testing.

Mr J referred his complaint to our service. He also complained that Santander had been rude to him, and it hadn't sent him the call recordings of the conversations he'd had with staff members which he'd wanted to support his complaint. One of our Investigators looked into things, and didn't think the complaint should be upheld. Mr J disagreed, and so the complaint was passed to me to issue a decision.

My provisional decision

I issued a provisional decision which said the following:

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

Did Santander mislead Mr J about the application process?

Mr J says that he was assured by Santander that he would be able to port his mortgage over to his new property without any problems. He says he was initially told this in July 2023, and received more assurances over several phone calls afterwards. Santander only has records of Mr J contacting it in September 2023 and October 2023. That doesn't mean the earlier conversations Mr J has referred to didn't happen, but where evidence is contradictory, as it is here, I have to decide what is most likely to have happened on the balance of probabilities.

I have listened to the call recordings Santander has provided of the September and October phone conversations. On 19 September Mr J called Santander and explained that he was looking to move home and wanted to transfer his mortgage over to the new property. He asked how he did that. Santander explained that porting applications were dealt with by a specific team, and gave Mr J the phone number that he'd need to call to discuss an application.

The next call recording Santander has provided is from 17 October. Near the start of that call, Mr J explained that it was his first time calling Santander about this application. The call handler then began the application process. In neither the September nor October call did Mr J refer back to any previous conversations he'd had with Santander about the porting process. During the call from September, it sounded to me like Mr J was asking about what the process would involve for the first time. And that's when he was given the relevant phone number to contact. In the October call, Mr J confirmed to Santander that he hadn't had any previous conversations about the application.

Mr J has been very clear that he was given assurances about the porting process before he put his house on the market for sale. I do think it's possible he called Santander and asked whether it would be possible for him to move his mortgage if he

moved house. But as those calls haven't been noted down on Mr J's account notes, and he hasn't referred back to them in the subsequent conversations he did have with Santander that have been recorded, I think it's likely that those conversations were more general queries about the possibility of porting rather than Santander providing any specific assurances based on Mr J's individual circumstances. Having considered the facts, and what I think is most likely to have happened, I'm not persuaded Santander assured Mr J that any application he made to port his mortgage would be successful.

Did Santander consider Mr J's porting application fairly?

When Mr J took this mortgage out in 2021, it was over a five year term and he agreed that he would sell the property to repay the mortgage in 2026. But Mr J decided to move home earlier than that, for both work and personal reasons. He had significant equity in his property, and debts that had built up to high levels in recent years. His circumstances had changed since Santander agreed to the mortgage in 2021.

When Mr J applied to port the mortgage over to his new property, he initially wanted to keep the borrowing the same. He said he would repay the mortgage in 2026 using his savings. Santander didn't accept that, as it didn't meet its lending criteria, and so that's why the application was then changed to a capital repayment mortgage, and a full affordability assessment was carried out.

There are strict rules set by the regulator that lenders must follow when agreeing to lend a mortgage in order to ensure it is affordable. These can be found in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) in chapter 11. However, MCOB 11.6.3 says that when considering an application to vary or replace an existing mortgage contract, if there is no additional borrowing, and there are no changes being made that are likely to be material to affordability, the strict affordability rules don't apply. That means that if Santander had considered Mr J's porting application on the basis he initially wanted to apply – on an interest only basis with no additional borrowing or other changes, then Santander could have accepted that application under the relevant rules without completing a detailed affordability assessment.

However, the regulator has also issued clear guidance to lenders that they must work with and support interest only mortgage borrowers to ensure they are able to repay their mortgage at the end of the term. In Mr J's case, Santander had agreed to lend him an interest only mortgage on the basis that he would have sufficient equity in his property to sell it, redeem the mortgage, and be able to purchase another property at the end of the term in 2026. In 2023, Mr J was looking to sell his property but didn't want to repay his mortgage at the time. So I'm satisfied it was reasonable for Santander to discuss with Mr J how he would repay the mortgage in 2026, as the original plan had now changed. And as the new property was going to be worth much less than his previous one, he wouldn't have been able to sell that property, redeem the mortgage, and still have enough money to buy a new property when the term came to an end in 2026.

When Santander explained it could only lend Mr J £106,000 on a capital repayment basis based on his income, he was happy with that. I don't think Santander ought to have agreed to consider an application to port the mortgage on an interest only basis at the existing level of borrowing – as that would have resulted in a loan to value on the new property of almost 100%. But if Santander had said it could consider porting the interest only mortgage to a level that would maintain the existing loan to value (at

around 46%) I think Mr J would have accepted that on the basis he had already made clear he was willing to reduce the borrowing to £106,000. That would have reduced the borrowing to around £90,000. And I'm satisfied from having listened to the relevant calls that he was keen to limit his liability to pay an ERC by as much as possible.

In 2023 Mr J had around £285,000 worth of debts, including his mortgage, and was selling his house for £400,000. If he cleared all his debts (as he ended up doing) he would have had around £115,000 left in cash after the house sale (£105,000 after the ERC was applied). It's likely some of that cash was also needed for legal fees, moving costs etc in relation to his house sale.

If Santander had agreed to accept Mr J's application to port his mortgage on a like for like interest only basis – with him keeping around £90,000 of borrowing in place, he would have had around £200,000 in cash following the sale after clearing his other debts. He still would have paid an ERC on the mortgage amount redeemed, but that would have almost halved what he did actually pay to around £4,750. Santander didn't discuss this level of detail with Mr J during the application process, but I think acting as a responsible lender, and balancing its obligations to treat customers such as Mr J fairly, it ought to have done.

Had Mr J been able to port his mortgage to a new, cheaper property (in the region of the value of the properties he was looking at), on the basis that the loan to value remained the same (and so reducing the borrowing), Mr J would have had sufficient money in the bank to redeem his mortgage at the end of the term (based on how things stood in 2023). He would have continued to have to pay his mortgage until June 2026 – but he was on a very competitive interest rate, and his costs would have been fixed until the end of the term. His monthly payments at the time were just under £200, which would have reduced considerably if the balance was reduced to £90,000. Whereas instead, Mr J has had to rent a property as he was unable to find a suitable property that he could have afforded without a mortgage, and as Santander found, he had some recent missed payments on his credit file preventing him from obtaining a new mortgage. He was also 65 at the time of the application, which would have limited his options. I think it's likely his rental payments would be higher than £200 per month.

But I'm also not persuaded we've been given a full picture of Mr J's circumstances. I say that because when our service asked Mr J about what happened to the proceeds of sale of his property, and what savings he now has – he's told us he only has £7,500 left in savings. The rest has been spent repaying debts and on his temporary accommodation. So I've found it difficult to decide whether, had Santander considered Mr J's application in the way the rules allow it to, and acting fairly and reasonably as I think it ought to have done, Mr J would have been any better off than he is now.

On the one hand Mr J has had to repay more of his mortgage at an earlier point than he otherwise would have done, and incurred a significant ERC. The monthly cost of his temporary accommodation is likely to be more than he would have had to pay on the mortgage until June 2026. So it does seem that Mr J has suffered a financial loss.

But on the other hand, if Mr J was planning to use his savings to repay the mortgage in 2026, those savings have seemingly already been spent. Based on the other debts Mr J has accumulated in recent years (including a second charge mortgage taken out in March 2023), and the fact he has missed payments on his credit file, I think it's likely he was struggling to afford his outgoings based on his existing income. And

that's resulted in the proceeds of the house sale being eroded within a year. So it is possible that had Mr J kept some of his mortgage in place and moved it over to a new property in 2023, he would have had to sell the new property in 2026 to repay the mortgage, and ended up in much the same position he's found himself in now.

But having carefully considered all the circumstances of this case, and the fact that it is my remit to determine what is fair and reasonable having done so, I think it's likely Mr J has suffered losses that he otherwise wouldn't have done if Santander had agreed to port around £90,000 of his existing interest only mortgage to another property. Had it done so, it wouldn't have needed to have completed a full affordability assessment, and so the application wouldn't have been declined for the reasons that it was.

However, in line with Santander's other policies and criteria, in order to avoid paying an ERC on the full mortgage amount, Mr J would have had to have completed on his new property purchase within three months of the sale of his house. And the new property Mr J wanted to buy would have had to meet Santander's criteria.

Mr J's house was sold on 31 October 2023, and he hadn't started this application until 17 October, so it was always going to be a tight window for him to have found a suitable property, and for the purchase to complete before 31 January 2024 in order to receive a refund of the ERC. But that's not to say it wouldn't have been do-able.

I'm also aware the property Mr J initially wanted to purchase was a retirement flat. Santander wasn't willing to accept that type of property as suitable security, so Mr J would have had to have found another property quickly that would have been acceptable to Santander in order to receive a refund of the ERC. Again, it's not implausible that Mr J would have been able to do that.

Other issues complained about

Mr J has also complained that Santander staff members were rude to him during the application process. I'm sorry to hear that Mr J felt that way, but having listened to the call recordings of the phone conversations he had with Santander during the application process, I'm not persuaded they were rude to him.

Mr J also complains about delays in Santander sending him the call recordings he asked for to support his complaint. Mr J complained about this issue after this complaint had been referred to our service, as he wanted to submit the calls to us as evidence so we could consider them when reaching our outcome. As the investigator explained, I'm not satisfied this part of Mr J's complaint falls within our remit. Mr J only wanted the call recordings to support his version of events when our service considered his complaint. This part of his complaint isn't about anything Santander did directly in relation to his mortgage account. As such, I'm not satisfied Mr J's complaint about the delay in providing the call recordings is about a regulated activity our service has the power to consider. So I haven't considered this matter any further. Nevertheless, Santander sent our service the relevant call recordings, so it hasn't impacted our ability to consider the key aspects of his complaint.

Putting things right

I've explained above that I'm satisfied Santander should have considered porting some of Mr J's mortgage to a new property when he applied in October 2023. So I've thought carefully about what it should now do to put things right.

There are a lot of variables in this case, which make it difficult to identify clear financial loss. It's also not clear that even if Santander had given Mr J's application fair consideration, it would have been successful, and would have completed in time for him to have been eligible for a partial refund of the ERC.

Because of that, my proposed redress to put things right is as follows:

- Mr J should be able to submit an interest only mortgage application to Santander for £90,000 on the same terms and interest rate as his previous mortgage.
- Santander should consider that application as if it were a porting application, and not a fresh application from a new borrower. That means it should not complete the full affordability assessment and background checks it normally would for a new borrower application. But I do consider it reasonable for it to check the new mortgage payments would be affordable for Mr J, given his circumstances are likely to have changed since it last reviewed those in 2023.
- Subject to Mr J's proposed new property meeting Santander's criteria, and the mortgage remaining around the same loan to value bracket as the previous mortgage (46%), Santander should accept Mr J's application.
- Should the purchase complete within three months from the date of the application, Santander should refund the portion of the ERC that would have been refunded under the terms of Mr J's previous mortgage – accounting for the fact that some of the ERC would always have been payable if Mr J was reducing his borrowing.
- If a partial refund of the ERC is made, Santander should pay 8% simple interest* on the refunded amount calculated from the date Mr J paid it on 31 October 2023, to the date of the refund.

Should the new mortgage be approved, I'm also satisfied Santander should cover the additional monthly cost Mr J has had to pay to rent a property, over and above what he would have been paying on his mortgage each month. Mr J will need to provide evidence of those costs, and Santander should pay them from three months from the date Mr J had to move into rented accommodation, until the date the new property purchase completes. I've said three months from the date Mr J moved into rented accommodation, because I think he always would have had to rent for a short period whilst Santander considered his application. He had already agreed the sale of his house before he applied to port his mortgage, and as he had three months for the purchase of his new property to complete in order to receive a refund of the ERC, I think that's a reasonable time period to adopt here in calculating the relevant financial losses Mr J incurred.

I'm also satisfied Mr J has suffered distress and inconvenience as a result of Santander's actions. Whilst it cannot be guaranteed that his mortgage application would have been successful, even if Santander had considered it fairly at the time, Santander asked Mr J to provide lots of information and evidence during the affordability assessment that I'm not satisfied was necessary. Those conversations went on for two months with Mr J having to make several calls and send in various documents in response to Santander's requests. It's clear Mr J was worried about the outcome of the application and was having to make decisions about his future accommodation at the time. As such, I'm persuaded Santander should pay Mr J £400 for the distress and inconvenience that caused.

This decision is provisional, so I welcome comments from the parties on my proposed redress and will consider what's provided before I make my final decision."

Responses to my provisional decision

Mr J said he was settled in his rented accommodation now and didn't need a new mortgage. But he would still like compensation for the fact he is no longer a homeowner and has lost a considerable amount of money over the last year. He said the situation has taken a significant toll on his physical and mental wellbeing. He would like a refund of the ERC that he paid when he redeemed his mortgage, and reasonable financial compensation.

Mr J also said he was still unhappy that Santander hadn't provided him with call recordings that would have helped him make his complaint. He said he had to try and recall conversations during a very difficult period.

Santander disagreed with my provisional decision. In summary it said:

- Mr J's application did not meet its policy in relation to the 'equity buffer' it required for interest only mortgages. It said it would have looked at an exception to the policy and considered the application if Mr J was keeping the same amount of equity that he had in his existing property, as that would have left the same amount of equity left for him when he sold his property. But that wasn't the case here.
- If an application for £90,000 had been approved, Mr J would not have had sufficient equity to purchase another property after repaying the mortgage at the end of the term. He was also looking to purchase a retirement property which implies he was not looking to sell the property again, in which case it's unclear how he'd be able to repay the mortgage at the end of the term.
- It was not aware of any other repayment vehicles Mr J had in place that would repay £90,000 in 2026. It could not see how providing him with a new mortgage on an interest only basis would have been in Mr J's best interests. It is not clear how this would not be causing Mr J foreseeable harm in the future.
- Its underwriters had confirmed that the retirement property Mr J wanted to purchase would not have been suitable security for the mortgage.

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.

That includes the additional comments made by both parties in response to my provisional decision. Having done so, my decision remains unchanged.

I appreciate Mr J would like a refund of the ERC and additional compensation for the fact he is no longer a homeowner and has had to pay for rent for longer than he feels he should. I can also understand why he no longer wants a mortgage if he is settled in his rented accommodation. That's a decision that is his to make. But for me to instruct Santander to refund Mr J the ERC that he paid when he redeemed his mortgage, I'd need to be persuaded on balance that he would have made a successful porting application, and completed on his new purchase within the three month window that Santander's policy allowed. Having reviewed the timeline of events, and the fact that the original property Mr J wanted to purchase wouldn't have met Santander's criteria, I'm not persuaded on balance that any new purchase Mr J wanted to make would have completed in time. And given Mr J

hadn't started his porting application until he was about to complete on the sale of his property, I don't think I can reasonably hold Santander responsible for that.

However, whether or not Mr J would have been able to make a successful application and complete on a new property purchase within the three-month time limit can't be known. And that's why I said it would be fair and reasonable for Santander to consider a new application now. And, if successful within the relevant period, refund the relevant costs and losses to Mr J. I appreciate why Mr J doesn't want to go through that process now. But for the reasons I've explained above I can't fairly ask Santander to refund the ERC, when, if all things happened as I believe they should have done, Mr J might not have been due a refund in any event.

I've also thought carefully about what Santander has said. The comments it has made about Mr J's lack of repayment strategy were what I agreed with in my provisional decision and why I felt reaching a fair outcome on this complaint was not straightforward. Santander has not provided any new information about this, and so the reasoning I set out in my last decision still applies. Whilst Mr J may have ended up in the same position as he is now in 2026 – having to live in rented accommodation as he hasn't been able to purchase a new property without the help of a mortgage – I'm persuaded he has incurred a financial loss as the mortgage payments from 2023 until the mortgage was due to end in 2026 would have been much lower than the rent he is now paying. The amount of ERC he had to pay Santander in 2023 would also have been roughly halved.

So whilst Mr J may have had to sell his property again in 2026, had his porting application been approved in 2023 and based on the information I have available to me, I'm persuaded he still would have been financially better off than he is now. But as I've said, this all turns on Mr J's porting application being approved and the purchase completing within the relevant time frame. In the absence of us knowing the outcome of that, I don't think I can reasonably require Santander to cover those financial losses as they may have been payable by Mr J regardless of Santander's actions.

I've also taken on board what Mr J has said about Santander sending him the call recordings. I said in my provisional decision I couldn't consider that part of the complaint. I'm still satisfied that's the case.

Putting things right

If Mr J changes his mind about submitting a new mortgage application, I still think he should be able to do that. Although he will need to do so within one month of this decision being issued in the interest of all parties.

- Mr J should be able to submit an interest only mortgage application to Santander for £90,000 on the same terms and interest rate as his previous mortgage.
- Santander should consider that application as if it were a porting application, and not a fresh application from a new borrower. That means it should not complete the full affordability assessment and background checks it normally would for a new borrower application. But I do consider it reasonable for it to check the new mortgage payments would be affordable for Mr J, given his circumstances are likely to have changed since it last reviewed those in 2023.
- Subject to Mr J's proposed new property meeting Santander's criteria, and the mortgage remaining around the same loan to value bracket as the previous mortgage (46%), Santander should accept Mr J's application.

- Should the purchase complete within three months from the date of the application, Santander should refund the portion of the ERC that would have been refunded under the terms of Mr J's previous mortgage – accounting for the fact that some of the ERC would always have been payable if Mr J was reducing his borrowing.
- If a partial refund of the ERC is made, Santander should pay 8% simple interest* on the refunded amount calculated from the date Mr J paid it on 31 October 2023, to the date of the refund.

Should the new mortgage be approved, I'm also satisfied Santander should cover the additional monthly cost Mr J has had to pay to rent a property, over and above what he would have been paying on his mortgage each month. Mr J will need to provide evidence of those costs, and Santander should pay them from three months from the date Mr J had to move into rented accommodation, until the date the new property purchase completes. I've said three months from the date Mr J moved into rented accommodation, because I think he always would have had to rent for a short period whilst Santander considered his application. He had already agreed the sale of his house before he applied to port his mortgage, and as he had three months for the purchase of his new property to complete in order to receive a refund of the ERC, I think that's a reasonable time period to adopt here in calculating the relevant financial losses Mr J incurred.

Regardless of the outcome of the above, I'm still satisfied Mr J has suffered distress and inconvenience as a result of Santander's actions. Whilst it cannot be guaranteed that his mortgage application would have been successful, even if Santander had considered it fairly at the time, Santander asked Mr J to provide lots of information and evidence during the affordability assessment that I'm not satisfied was necessary. Those conversations went on for two months with Mr J having to make several calls and send in various documents in response to Santander's requests. It's clear Mr J was worried about the outcome of the application and was having to make decisions about his future accommodation at the time. As such, Santander should pay Mr J £400 for the distress and inconvenience that caused.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 January 2025.

Kathryn Billings
Ombudsman