

The complaint

Mr and Mrs C complain that Santander UK Plc unfairly declined their application to port or transfer their mortgage to a new property. As a result they had to pay an early repayment charge (ERC) along with a higher interest rate on their new mortgage.

What happened

In 2022, Mr and Mrs C took a mortgage with Santander. It had a fixed rate of 2.34% until 2 June 2027. If the mortgage was repaid on or before that date an ERC would apply. The offer said the mortgage was portable subject to meeting conditions, meeting Santander's lending criteria and passing its affordability assessment.

In 2024, Mr and Mrs C applied to port the mortgage to a new property. But Santander declined the application. It said that Mr and Mrs C wanted to port the full balance of their existing mortgage to the new property – but the new property had a lower value. Therefore, the loan to value had increased and it therefore needed to assess affordability.

Santander said that Mr C was self-employed and was unable to provide the evidence it required to support the mortgage was affordable. It considered the application using only Mrs C's income and that did not support that the mortgage was affordable, so it declined the porting application.

Mr and Mrs C repaid the mortgage incurring an ERC of over £14,000. They took out a new mortgage with a fixed rate of 4.74% until 28 February 2030.

Mr and Mrs C complain that:

- Santander unfairly declined their porting application. It should have accepted Mr C's self-employed income. He'd been stably employed in the same field for many years.
- By porting the mortgage to a lower value property they were reducing Santander's risk.
- Santander did not show any flexibility or explore any other options.
- The ERC was unfair. It was excessive and not clearly explained. They were not told how they could avoid the ERC.
- They've had to take a mortgage with a higher interest rate than they paid to Santander – costing them over £18,000.
- The refusal to port the mortgage has caused them hardship. They had to sell their home and live apart.
- Santander's complaint handling was unfair and biased. It did not investigate all of their concerns. In particular, it refused to consider other ways to verify Mr C's income despite the clear evidence of financial stability and did not address the impact of this matter on them. Mr and Mrs C said that Santander applied rigid policies rather than looking at

things on a case-by-case basis.

Mr and Mrs C want Santander to refund the ERC and pay the difference in interest.

The investigator did not think the complaint should be upheld.

Mr and Mrs C did not accept what the investigator said. They responded to make a number of points, including:

- The investigator had not placed sufficient weight on the FCA's Principles for Businesses or the consumer duty and in particular the requirement to avoid foreseeable harm and to act in good faith.
- Santander could have applied the discretion it had under its "loyal mover" scheme and MCOB 11.6.3 not to carry out an affordability assessment.
- When Santander knew that the appeal hinged on an upload and it knew the urgency of their situation it should have recognised they were vulnerable and done more to offer appropriate support. They referred to the FCA's guidance on the treatment of vulnerable customers FG21/1.
- The application of the ERC and extra interest flowed directly from Santander's refusal to exercise flexibility in respect of its affordability policy. That goes against the consumer duty to avoid foreseeable harm.
- Santander did not take account of their vulnerability – they were going to be separated and there was some urgency around the need to move and schooling arrangements.
- The point about the documents not being uploaded should not determine the outcome of the complaint. That was a barrier that arose because Santander imposed an unnecessary affordability assessment. It should have helped them overcome that hurdle – especially bearing in mind the financial cost against the administrative effort needed to follow up with a phone call or email. It was unfair to reward firms that created complex processes which vulnerable consumer can't navigate.

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.

In considering what is fair and reasonable in all the circumstances of the case, I will take into account the regulator's rules, guidance and standards (amongst other things). That includes MCOB, the FCA's Principles for Businesses, the consumer duty and the FCA's guidance on vulnerability.

I have thought about and taken account of all of the various rules and regulations that Mr and Mrs C have highlighted. While I have taken into account the relevant rules and regulations in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint, it is not for me to determine if there has been a breach of any of those rules and regulations.

Porting application

The mortgage offer said, as relevant:

Moving Home

You have the right to transfer this loan to another property. You must meet the conditions set out in the mortgage conditions under “Transferring your loan to a new mortgage”. You must also meet our lending criteria and pass our affordability assessment at the time.

The mortgage conditions say:

19 Transferring your loan to a new mortgage

19.1 This condition applies if you notify us that you wish:

(a) to pay off the money you owe us on completing a sale of property; and

(b) at the same time, to complete a mortgage with us under which we will lend you money on the security of another property that you wish to buy.

...

19.3 Where this condition applies:

(a) We will accept your application for the transfer balance to be transferred to the new mortgage unless we reasonably think that:

1. In all the circumstances (including your Financial Circumstances), the risk of you being unable to meet your commitments under the new mortgage would be significantly greater than the risk of you failing to meet your commitments under this mortgage;

2. You could not afford to repay the transfer balance with interest by the end of the repayment period which would apply under the remortgage; or

3. The risk that we would suffer a loss if we realised our security would be significantly greater under the new mortgage than it is this mortgage

I consider that Santander set out in a clear, fair and not misleading way that the mortgage was portable but that was subject to certain conditions. That included that the mortgage remained affordable and if the risk it might suffer a loss was greater if it had to realise its security. Santander gave Mr and Mrs C enough information to know that porting their mortgage was not guaranteed it was subject to those conditions being met.

I accept that MCOB 11.6.3 means that Santander was not required to carry out an affordability assessment where there was no additional borrowing or any change that was likely to be material to its affordability as in this case. Santander operates what it calls a “loyal mover” scheme that is intended to mirror the provisions of MCOB 11.6.3. But that did not prevent Santander from carrying out an affordability assessment. If after having done so it considered that porting the mortgage was not affordable, then we may think that it ought to have exercised the discretion it had under MCOB 11.6.3 – but that will depend on the individual circumstances of each case.

In any event, the reason Santander carried out the affordability assessment in this case was that although Mr and Mrs C’s borrowing was remaining the same, the value of the property they wanted to buy was lower than their existing property. Their loan to value when they took out the mortgage was 88.9% and the loan to value on the proposed new property was over 90%. That is relevant because when Mr and Mrs C took out the mortgage they took an interest rate product that had a maximum loan to value of 90% - and that was stated on the

mortgage offer. So if they ported the mortgage to the new property the loan to value would be over the loan to value threshold for the product they had on the mortgage.

I accept the difference in loan to value might be marginal, but Santander would have taken into account the risk to it of the loan to value exceeding a certain percentage when setting the interest rate originally. So it was reasonable for Santander to consider there was a change to its risk when it received the porting application from Mr and Mrs C. Therefore, in the circumstances here, I do not consider it was unreasonable for it to place more weight on the affordability assessment when considering the porting application than it would on a like for like application where the loan to value was the same or less than originally agreed.

MCOB 11.6.3 does not prevent a lender carrying out an affordability assessment when its risk has changed. In this case the risk to Santander had increased because the loan amount stayed the same and the value of the property was lower. That meant if there was a change in house prices it could make it less likely that it could recoup the amount it lent. I am satisfied that it has followed its policy in this case and that is not unfair or unreasonable in the individual circumstances of this case.

Santander was prepared to consider a porting application from Mr and Mrs C, but Mr C was unable to provide the evidence Santander needed to accept his income because he'd become self-employed – even though his income came from the same source as before. The mortgage was unaffordable based on Mrs C's income alone. It was reasonable, as a first step, for Santander to apply its usual lending policy and decline the application. But Santander did not decline the application outright. Rather it said that Mr and Mrs C could appeal the decision and it set up a portal for them to provide additional information. But they did not provide all of the information that was requested.

I am satisfied that Santander took reasonable steps to tell Mr and Mrs C what information was needed and what they needed to do to progress the appeal. It sent emails and messages confirming what it told them. Santander has given us evidence that following that the portal was accessed by Mrs C. It follows that Mr and Mrs C must have known that further action was required for the application to progress.

The attempted upload to the portal by Mr and Mrs C did not work. But Santander sent Mr and Mrs C each a text message and an email to tell them the upload had failed. But they did not take any further action.

In the circumstances, I consider that Santander took reasonable steps to tell Mr and Mrs C what they needed to do. It was clear Mr and Mrs C understood they needed to take further action and they had not received any confirmation that Santander had the information to consider the appeal, that their appeal had been considered or that Santander had made a final decision.

While I accept that Mr and Mrs C's circumstances *could* reflect characteristics of vulnerability – equally they might not. What they were proposing was not necessarily unusual or would lead a responsible lender to conclude they were particularly susceptible to harm because they were vulnerable.

Looking carefully at what Santander knew I don't think the approach it took was unfair or unreasonable. Looking at all of the information Santander had, I don't think it had any reason to believe that Mr and Mrs C had low literacy or were digitally excluded and/or that they required additional support. There was nothing in what Mr and Mrs C said or did that would lead a lender to reach that conclusion. And in any event, I think the evidence we have supports that Mr and Mrs C knew they needed to take further action to progress the appeal but did not do so.

In respect of the consumer duty, I can't see that anything Santander did here would indicate that it was not acting in good faith. It took into account Mr and Mrs C's interests when it allowed them to appeal its decision and that gave Mr and Mrs C a potential avenue to avoid any detriment, they were free to progress the appeal if they wished.

Mr and Mrs C are correct that Santander had a duty to avoid foreseeable harm. But the consumer duty says that avoiding foreseeable harm does not mean that a firm has responsibility to prevent all harm. It gives the example that a product might have inherent risks, but where a firm reasonably believe a customer has understood and accepted those risks it will not breach the consumer duty rules. Whether such a belief is reasonable will depend on a number of factors including the communication and customer service.

In this case, I've found that in the mortgage offer Santander set out that porting was conditional on a number of factors and that an ERC would apply if the mortgage was repaid. Mr and Mrs C accepted those terms when they took out the mortgage. I consider it was reasonable for Santander to understand that Mr and Mrs C had accepted the inherent risk that porting was not guaranteed and that they would have to pay an ERC if they decided to repay the mortgage. And I have already found that Santander considered the porting application fairly and set out what Mr and Mrs C could do to appeal the decision,

I understand why Mr and Mrs C are unhappy that they've had to pay an ERC and have ended up on a higher rate with a different lender. I do not doubt anything they've told us about the impact of this matter on them and I was sorry to hear what they'd been through. But I don't consider Santander treated them unfairly or unreasonably. Santander was prepared to reconsider its decision to decline the porting application. So I could not say that it did not exercise a reasonable degree of flexibility. I can't ask it do to anything else.

It won't be much comfort to Mr and Mrs C, but even if the application had been approved, the evidence does not support that they would have been able to avoid the ERC. I say that because they had a three month window to repay the mortgage and then port it to a new property. While Mr and Mrs C had a firm offer to buy their home, they did not buy the property they were intending to buy when they spoke to Santander. The mortgage was repaid on 7 June 2024. But they did not receive a mortgage offer for the property they ended up buying until 1 December 2024. So it was unlikely they could have ported the mortgage within the three month window available to them.

ERC

As a starting point, I am satisfied that the ERC was set out in a clear, fair and not misleading way in the mortgage offer in line with the requirements in MCOB. It gave Mr and Mrs C enough information about when an ERC would be applied and how much the ERC would be for them to make an informed choice whether to accept the mortgage or not.

Mr and Mrs C accepted the terms of the mortgage, including the ERC. So when they repaid the mortgage Santander was entitled to apply the ERC.

Under MCOB the ERC should be able to be expressed as a cash value and be a reasonable pre-estimate of the costs as a result of the mortgage being repaid early. The ERC is set out as a cash value in the mortgage offer. The amount of the ERC is 5% of the amount being repaid. In my experience that is not out of line with the ERC applied by many lenders for similar products. I am aware of how Santander sets its ERC and it takes into account a number of different factors that reflect the costs it might incur if the mortgage was repaid early. I think the ERC is likely to be a reasonable pre-estimate of the cost to it of it being repaid early. Overall, I don't consider the amount of the ERC was excessive or unfair.

I've already found that Santander did not treat Mr and Mrs C unfairly when it considered their porting application. It follows that it was entitled to apply the ERC when the mortgage was repaid. I don't consider there was anything about their individual circumstances that meant it was unfair for Santander to apply the ERC.

I'm not sure there was a requirement for Santander to go further than it did to help Mr and Mrs C to avoid the ERC. The only way they could avoid the ERC was by not repaying the mortgage or porting it to a new property. Ultimately it was their decision to repay the mortgage and not to progress the porting application.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 12 November 2025.

Ken Rose
Ombudsman