

## **complaint**

Mr and Mrs C are unhappy with the way Santander UK Plc handled their application to transfer their mortgage to a new property.

## **background**

Mr and Mrs C held a mortgage with Santander. It was made up of three parts:

- An interest only element, charged interest at a fixed rate of 6.09% until July 2018;
- A repayment element, also charged interest at a fixed rate of 6.09% until July 2018; and
- A second repayment element, charged interest at Santander's standard variable rate (SVR) of 4.74%.

Mrs C's father sadly passed away last June. So Mr and Mrs C decided to buy a bigger property, so that Mrs C's mother could move in with them. They wanted to transfer their existing mortgage across to their new property (a process known as 'porting'). And they intended for Mrs C's mother to contribute to the new purchase with some of the proceeds of the sale of her property.

Mr and Mrs C began making enquiries about the porting process with Santander in August 2017. When offers were accepted in respect of both their sale and purchase in December, they contacted Santander to progress their porting application. But during that call, Santander said it wasn't something they'd be able to agree. It explained that this was because Mrs C's mother would be contributing to the deposit, but she wasn't going to be named on the title deeds (as a co-owner) or on the mortgage.

Mr and Mrs C complained. They were unhappy that this issue had only come to light now, given that they'd discussed their circumstances with Santander on a number of occasions previously. As they couldn't port their mortgage, if they wanted to go ahead with their plans they'd have to pay an early repayment charge (ERC) of around £3,000 – which they wanted Santander to waive.

Santander said its decision had been correct, and that there was no other way to proceed as Mrs C's mother exceeded its maximum age limit to be named on the mortgage. But it apologised for the incorrect information it had given Mr and Mrs C during the process – and sent them a goodwill gesture of £250.

Mr and Mrs C remained unhappy, and referred the complaint to us. Santander then offered to pay Mr and Mrs C a further £250, noting that it had consistently failed to give them correct information about what it could or couldn't agree over a period of several months.

Our investigator didn't think Santander needed to do anything further. He said Santander couldn't agree Mr and Mrs C's application, due to the contribution from Mrs C's mother and also because Mr and Mrs C were intending to pay off the mortgage once the fixed rate period ended in July 2018. So he didn't think Santander needed to waive the ERC, as Mr and Mrs C were always going to be required to pay it in completing their move. And he thought the £500 it had already offered was fair compensation for the trouble and upset it had caused Mr and Mrs C by giving them incorrect information.

Mr and Mrs C responded to say that they'd never been looking to pay off the whole mortgage once the fixed rate ended – only the interest only part, once their endowment policy matured. And they said that having to repay the mortgage would leave them short on funds for the planned extension to the new property. So they still thought Santander should waive the ERC. They were also unhappy that our investigator had factored in the initial £250 when deciding fair compensation, as Santander had paid that as a goodwill gesture rather than compensation.

As Mr and Mrs C didn't accept our investigator's view, their complaint was passed to me to decide. They've since paid off their mortgage with Santander – incurring the disputed ERC – and moved into their new home.

### **my provisional decision**

I issued a provisional decision on Mr and Mrs C's complaint last month, explaining why I thought Santander's offer to pay a further £250, making £500 in total, was a fair way to put things right. I said:

Porting a mortgage is commonly subject to an application process – and this is set out in Mr and Mrs C's mortgage offer and associated terms and conditions. The application will then need to meet the lender's criteria, where things like the affordability of the mortgage and valuation of the new property are considered before the lender decides whether to issue a new mortgage offer or not.

In Mr and Mrs C's case, their request to port was never going to meet Santander's criteria. This is because Mrs C's mother was contributing to the deposit, but she wasn't going to be named on the title deeds or on the mortgage. It isn't uncommon for a lender to reject applications where contributions to the purchase are made by third parties who aren't named on the title, given the rights this can confer on them and the possible implications this can have on the property (as the lender's security for the mortgage).

While in some cases it may be possible to resolve this by adding the third party to the title deeds and the mortgage, that wasn't what Mr and Mrs C were looking to do. In any event, given the age limits within Santander's lending criteria it doesn't seem it would've been viable to add Mrs C's mother as a joint borrower, even if that had been explored.

Santander accepts that given all of this, in light of what Mrs C told it about her and Mr C's plans, it should've informed her much earlier that their application to port wouldn't be successful. I've listened to recordings of the phone conversations between Mrs C and Santander in which the plans are discussed. And I agree that it should've picked up on the fact that Mr and Mrs C weren't looking to carry out a straightforward transfer of their mortgage from one property to another. It was notified as early as 4 September 2017 that they were looking to purchase the new property jointly with their mother.

More generally, it seems to me that Santander's level of service fell below what Mrs C was entitled to expect when calling to enquire about the process. Mrs C was evidently anxious to ensure that she had everything in order before embarking on any of their desired transactions, not least to ensure that they had access to the funds they required for their planned purchase. While Santander did provide some relevant

information, I don't think it took the time to fully understand Mrs C's plans (or enquiries) – therefore it only ever gave her information about the process in a piecemeal way.

I think there's been some confusion over whether Mr and Mrs C intended to pay the whole mortgage off in a couple of years' time anyway. Santander thinks that was their plan – which wouldn't have met their criteria either, as it'd be classified as short-term lending – and so would've been another reason why the port couldn't have proceeded. From speaking with Mr and Mrs C, I don't think that was their intention; they have different parts to their mortgage and I think they intended to pay *some* of the outstanding balance down but not necessarily all of it. In any event, given the port was never going to be approved because of the issue with the contribution from Mrs C's mother, I don't think this has much of a bearing on what happened here.

As I think Santander made errors in the information it gave (or failed to give) Mr and Mrs C, I've thought about the impact this had on them. Santander says it can't see how things would be any different if it had provided the correct information. Mr and Mrs C, on the other hand, say that wouldn't have gone ahead with their transactions – and instead delayed their move until the end of the fixed rate period so that they could avoid the ERC and utilise the mortgage funds.

Having carefully considered things – and from what I've seen so far – I think it's more likely than not that Mr and Mrs C would've ended up in the same position. So I don't think they've lost out financially as a result of Santander's actions. I'll explain why.

When speaking to Santander in September 2017, Mr and Mrs C had already chosen the property they wanted to buy. It's reasonable to assume they'd already carried out a fairly detailed search for a suitable property to accommodate Mrs C's mother, and had settled on this particular one. And they were evidently keen to move at that particular time.

To avoid the ERC, which is what they say they would've done, Mr and Mrs C would've needed to wait a further 10 months until their fixed rate ended – taking them until July 2018. That's a considerable amount of time to delay a move – particularly bearing in mind they wanted to move Mrs C's mother in with them following the loss of Mrs C's father – given that they'd already found the property they wanted.

Also, while I appreciate that Mr and Mrs C would've been motivated to avoid the ERC – which would've been around £3,500 at that time – they would've had to weigh that benefit up against the cost of maintaining the mortgage for a further 10 months. With their monthly payment of around £430, this would've meant paying out a further £4,300 or so just to avoid the ERC of £3,500. The vast majority of their payments only covered interest too (as most of the mortgage operated on an interest only basis). So there would've been little financial sense in retaining the mortgage, just for the sake of avoiding the ERC.

On top of this, after Santander correctly explained in December 2017 that they couldn't port as they'd hoped, Mr and Mrs C still chose to proceed with their sale and purchase. Both transactions were still at quite an early stage – they weren't committed to either transaction as they'd not yet exchanged contracts. I appreciate that this would still have been a difficult decision to make – they'd already invested a fair amount of time and energy in getting to that stage, and they would've been reluctant to start all over

again. But had the incentive of avoiding the ERC and need for the mortgage finance been great enough to them, they could've pulled out if they'd wished.

So given all of this, I think it's most likely that they'd have ended up in exactly the same position – that is, repaying the mortgage when they did and incurring the ERC. So I don't think it would be fair to direct Santander to refund it to them now.

It is right, however, that Mr and Mrs C are compensated for the upset caused by Santander's errors at the outset of their enquiries.

As I've set out above, Mrs C was evidently anxious to ensure she and Mr C had everything in place at an early stage – prior to embarking on an important and time-consuming set of transactions. Despite her best efforts, Santander failed to give her clear information – leading her and Mr C to think they'd be able to port their mortgage for three months until they were belatedly told they couldn't.

This also meant they'd been working on the assumption that they'd have the mortgage funds to rely on in completing their house extension and that they'd avoid the £3,000 ERC. So I can see how disappointing it would've been for them to realise that wasn't the case – and the significant changes they'd have to make to their plans and budget. This was all against the backdrop of losing Mrs C's father while also caring for her mother. They also had the hassle of further calls about the application when it should already have been established that it wasn't a viable proposition.

Taking all this into account, I agree that £250 wasn't a fair reflection of the trouble and upset caused. And Santander's referral to this as a goodwill gesture was a little misleading – as it had evidently accepted that it had done something wrong and was therefore paying compensation for this error. But I do think that the total amount of £500 Santander has since offered is fair compensation and in line with what I would otherwise have awarded. As I understand it's already paid Mr and Mrs C £250, I intend to require it to pay them a further £250.

Mr and Mrs C didn't accept my provisional decision. They replied to say, in summary, that:

- They'd never intended to repay the mortgage in full – only the interest only element once their endowment policy matured. That would've left them with a mortgage balance of around £25,000, which is what they needed for the work they were doing on their new property. And they felt they'd really lost out on the £25,000 – they'd chosen not to complain about this as they didn't feel they'd get anywhere and had opted instead to focus their complaint on the ERC.
- They'd followed Santander's instructions and it was the bank's errors that had put them in this devastating position. And though they'd originally expected to pay an ERC, Santander had led them to believe there'd be a way around that.
- They maintained that if they'd been told at the outset that they couldn't get the mortgage they wanted with Santander, they would've looked for a more affordable property. While they put their houses on the market in September, their chosen property didn't go on the market until October. And they only went ahead with an offer on that on the basis of what Santander had told them up to that point.
- There wasn't any time to change their mind on their transactions once they'd been told that they couldn't get the mortgage with Santander as they'd hoped. Selling their own house and that belonging to Mrs C's mother was too complex and draining a

process, it had been difficult enough to find a suitable property and they didn't have the energy to start all over again.

- So they thought fair compensation would be £28,250, representing the mortgage amount they'd budgeted on having (and needed to complete their extension) and a refund of the ERC.

Santander confirmed receipt of my provisional decision, but had nothing further to add.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including Mr and Mrs C's further comments. But having done so – and while I'm sorry to disappoint Mr and Mrs C as I know how strongly they feel about this matter – I've still reached the same conclusion as set out in my provisional decision. I'll explain why.

The error here is that Santander ought to have told Mr and Mrs C sooner that they wouldn't be able to keep their mortgage. In my provisional decision, I explained that I'd looked at what position Mr and Mrs C would've been in if they'd been given the correct information back in September 2017. And I didn't think things would be any different – I thought they'd still have chosen to go ahead with their transactions. In part, this was because I thought they'd already chosen the property they wanted – so they wouldn't have been inclined to give up on it.

In their reply to my provisional decision, Mr and Mrs C outline that they hadn't actually chosen their new property in September – this only happened in October. So had they been told they wouldn't be able to retain their mortgage in September, they'd have selected a cheaper property as a result. So they argue that they're now £25,000 out of pocket – tied into extending a property but without the financial resources to do so, as well as having to pay the £3,000 ERC that they would otherwise have avoided.

But while I accept in light of this information that Mr and Mrs C may well have gone on to select a different (cheaper) property had things gone as they ought to have done, I don't think it follows that Santander is responsible for them proceeding with the transactions as they did.

In this respect, I think the crucial issue is that Santander corrected its error in time for Mr and Mrs C to change their plans. In short, if they didn't want to proceed with their purchase given that they weren't going to be able to port their mortgage, they could've pulled out. As I said in my provisional decision, I appreciate that would've been a difficult decision to make and they would've been reluctant to start all over again. But when they were given the correct information in early December 2017, they were at a very early stage of all three transactions. They'd not exchanged contracts (in fact this only happened in March 2018) and so they weren't committed to any of them.

So if Mr and Mrs C didn't feel they had the sufficient funds to complete any necessary renovation to their new property, or if they didn't want to incur the ERC, they could've withdrawn from the sale and purchase transactions and searched for a property that was within their adjusted budget.

Instead, Mr and Mrs C chose to go ahead – knowing that they would have to do so without the mortgage funds and that they'd incur an ERC in the process. While Santander had given them some incorrect information in the past, it was then a matter for them to decide how to proceed. I don't think it would be reasonable to hold Santander responsible for any losses they feel they suffered as a result of going ahead with their property transactions.

As a result, I still think it's only a matter of Santander compensating Mr and Mrs C for the trouble and upset its misinformation caused them. And I think £500 – requiring a further £250 on top of the £250 that's already been paid – represents a fair amount in this respect.

### **my final decision**

I uphold Mr and Mrs C's complaint and require Santander UK Plc to pay them £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 3 November 2018.

Ben Jennings  
**ombudsman**