

## **complaint**

Mr and Mrs B complain about the refusal of a mortgage application they made to Santander UK Plc.

## **background**

Mr and Mrs B own a flat in a block on a shared ownership basis. They have a mortgage with another lender, and when they came to the end of a fixed rate decided to shop around with a view to borrowing more to increase their share (known as “staircasing”). They applied to re-mortgage to Santander.

Mr and Mrs B started the process of applying for their mortgage in late 2017, having agreed a staircasing valuation with their shared ownership provider. A mortgage valuation was carried out in January 2018, and the valuer noted that the property was of concrete frame with aluminium panelling. The valuer said the property was acceptable for mortgage purposes.

Santander issued a mortgage offer in January 2018. A solicitor was instructed to act for both Mr and Mrs B and for Santander. The solicitor realised that they had acted in another mortgage for a different client in the same block. In the course of that mortgage, it had come to light that there might be a problem with the fire safety of the cladding material on the outside of the block. The solicitor said that this had led to a retention being added to the other mortgage.

In February 2018 the solicitor told Mr and Mrs B about the other client’s mortgage. The solicitor said that as they were acting for both Mr and Mrs B and Santander, they had a duty to tell Santander about this. Or, alternatively, they could stop acting altogether and Mr and Mrs B would need to find another solicitor. Mr and Mrs B agreed that the solicitor could tell Santander about the issue on the other mortgage. The solicitor told Santander that the block owner had identified a potential problem with the building cladding and that inspection work would begin shortly. Santander then began to make further enquiries.

Santander asked the valuer to take another look. Santander also asked Mr and Mrs B for more information about the property and the cladding issue. Mr and Mrs B provided various reports and correspondence from the building owner. These were all passed to the valuer. In April 2018 the valuer revised his report to say that the property was not acceptable because of the risk presented by the cladding and the absence of a scheduled replacement.

Although he didn’t visit the property again, he concluded that the property wasn’t suitable for mortgage lending purposes. Mr and Mrs B say this isn’t fair.

Santander withdrew the mortgage offer following the revised valuation. There was some confusion from this point about what Santander’s position actually was.

Mr and Mrs B complained when the offer was withdrawn. Santander’s complaints department told them that it couldn’t proceed with the mortgage. It said that notwithstanding the issue with the cladding, it couldn’t go ahead with an application because of another issue – which it called “concentration risk”.

In other words, if it lent to Mr and Mrs B their mortgage, in combination with other mortgages for existing customers, would lead to Santander having lending secured over too large a

proportion of the block as a whole. As well as the risk of each individual mortgage, the overall concentration of lending in a block creates its own risk. Adding Mr and Mrs B's mortgage to those it already had would take Santander over the level it felt comfortable with.

But separately to this, Mr and Mrs B and their solicitor were speaking to a Santander mortgage adviser – who told them that their mortgage application could potentially be re-considered.

The adviser encouraged Mr and Mrs B to get further information from the building owner about the position with the cladding and any possible remediation. These discussions with the adviser continued for several months after the initial mortgage offer had been withdrawn. And the adviser suggested the stumbling block was the cladding – he made no mention of the concentration risk issue.

In June 2018, the freeholder told residents in the block that remediation work would be undertaken. Mr and Mrs B sent a copy of the notification to Santander.

Mr and Mrs B continued to chase the adviser for a decision on their application. Santander's adviser passed on information from the building owner to the valuer. The valuer said that it wasn't sufficient to show that the cladding on this block didn't present a risk.

Mr and Mrs B got further information from the building owner and passed it to Santander's adviser. But he said their mortgage offer had now expired, so it couldn't be considered any further. In fact, this wasn't right – the mortgage offer hadn't expired, it had been withdrawn several months before. The adviser said Mr and Mrs B would need to re-apply – but there was no guarantee that Santander would agree a new mortgage offer. Even at this stage he still hadn't told them about the concentration risk problem the complaints department had referred to.

It was only towards the end of 2018 that Santander's adviser finally told Mr and Mrs B that there wouldn't be any point in them providing further information about the building and the cladding – but, in fact, Santander had already decided to withdraw the offer in April, and had already decided that, regardless of the cladding issue, the offer wouldn't be reinstated or a new application considered because of the concentration risk.

Mr and Mrs B renewed their complaint. They said they were aware that Santander had agreed to lend to one of their neighbours around the same time – so they didn't think it was fair that it was prepared to lend to others but not to them. They said Santander had accepted mortgage applications from other residents in the block to their certain knowledge, including people who had applied after them. They said that at least one of their neighbours had had a mortgage application accepted – even though in that case the valuation had also identified a cladding risk.

Mr and Mrs B said that since the offer was withdrawn in April 2018 further issues with the cladding on the block had come to light and significant remedial work needed to be done. Now this further information has come to light, it means no other lender would consider them for a re-mortgage either. Mr and Mrs B say they might have been able to go elsewhere earlier in the process, before this was known, and have an application accepted. But because Santander's adviser encouraged them to keep trying with Santander instead, they lost that chance.

This means they now can't staircase, and are also stuck paying a higher interest rate to their old lender. They say that Santander should have considered their application fairly, and not withdrawn the offer – like it did with their neighbours. It's not fair it will deal with other customers and not with them. And not only did it make an offer only to withdraw it, it kept them engaged even when it knew there was no chance of changing its mind – stopping them going elsewhere.

Santander said it couldn't comment on what mortgages it may or may not have with other individual customers, or the reasons why it had accepted applications from them – if it had. It was entitled to withdraw the offer, and said it would not be able to reconsider because of the concentration risk. Overall, it didn't think it had treated them unfairly. But it accepted that it had caused delay and not explained things well, and offered £250 compensation.

Mr and Mrs B brought their complaint to us. Once our investigator got involved, Santander recognised that it shouldn't have kept asking Mr and Mrs B and their solicitor for more information after withdrawing the offer. It offered to pay any solicitors' fees Mr and Mrs B had incurred after 26 April 2018.

Our investigator thought the refund of solicitors' fees was fair. And she said Santander should have told Mr and Mrs B it couldn't lend to them much earlier. She thought it should offer a further £300 compensation, in addition to the £250 it had already paid.

Santander accepted that. But Mr and Mrs B didn't. They said that the crucial point was that Santander was prepared to lend to their neighbours – but not to them. Santander agreed to the neighbour's request for a second visit to the property by the valuer, but didn't do the same for them. So they hadn't been fairly treated.

### **my findings**

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

#### *Mr and Mrs B's application*

Mr and Mrs B's application was made in January 2018. I've said above that there was confusion about what happened once the cladding risk came to light.

Santander's adviser led Mr and Mrs B to believe that their application was being considered, or re-considered. In fact, I'm satisfied this was wrong. It wasn't the case, and the adviser should have made that clear.

It's clear that Santander had in fact withdrawn the mortgage offer in April 2018. And so their application wasn't still under consideration. Once the offer had been withdrawn, a whole new application was needed, starting again from the beginning. I don't think the adviser made that clear to Mr and Mrs B.

There were two separate risks that Santander was concerned about, and they led to Mr and Mrs B being told different things at different times. These were the cladding risk, and the concentration risk. I'll say more shortly about what those two risks were, and whether it was reasonable for Santander to be concerned about them. But before I do that, I'll set out my findings on what I think Santander decided.

I've set out something of the chronology above. Having looked at Santander's notes, its decisions and the history of the contact it had with Mr and Mrs B, this is what I think happened.

Mr and Mrs B applied for their mortgage. Santander received a satisfactory valuation and made them an offer.

Then the solicitor told Santander that, in fact, there was an issue with the cladding on the building. Santander asked the valuer to look again, and the valuer decided the property wasn't good security.

Santander therefore withdrew the mortgage offer. This decision was based on the cladding risk only. Following the revised valuation, Santander no longer considered the property good security for its mortgage. As a result it was no longer prepared to lend, and withdrew the offer.

Withdrawing the offer meant that, if Mr and Mrs B still wanted Santander to lend to them, they would have to start again with a fresh application which would have to be considered all over again.

The adviser led Mr and Mrs B to believe that the offer could be reinstated if Santander could be reassured about the cladding risk, perhaps by seeing further information about the building, its construction and remediation plans.

In fact, that wasn't the case. They would have to apply again from scratch, as new applicants.

When the mortgage offer was issued in January, Santander hadn't reached its concentration threshold for the development. Therefore – as long as the property was good security and Mr and Mrs B met normal lending criteria – it was prepared to lend to them.

However, in between their offer being issued in January and the withdrawal in April, Santander's concentration risk threshold had been reached, and it was no longer willing to consider any new applications for mortgages on that development.

A new application after April from Mr and Mrs B would need to be a new application. Therefore, even if they were able to satisfy Santander about the cladding risk, by this time Santander wouldn't consider lending to them because its concentration risk threshold had been reached. It wouldn't consider any further new applications for mortgages on this new development – including from Mr and Mrs B.

Therefore, when the adviser encouraged Mr and Mrs B to get further information about the cladding risk and re-apply, that was in fact bound to fail. That's because even if Santander could be reassured about the cladding risk, it would now refuse any new application because of the concentration risk.

Those are my findings about what I think actually happened. What I now need to decide is, based on those findings, whether it was fair and reasonable for Santander to be concerned about the cladding and concentration risks, and whether it handled Mr and Mrs B's application, the withdrawal of the offer and what happened thereafter fairly. I'll deal first with the risk issues in turn, and then the process followed by Santander and what this meant for the handling of Mr and Mrs B's application.

*the cladding risk*

The Grenfell Tower tragedy, in the summer of 2017, led to widespread concern about the construction of many buildings throughout the country – mainly, but not exclusively, blocks of flats especially those above six stories high.

In early 2018, at the time of this application, understanding of the issues was still developing. Various guidance documents from government, the Royal Institution of Chartered Surveyors and the banking industry, including on standards for property surveys and valuations as well as lending decisions, had yet to be issued. But it was becoming increasingly clear that there was a significant problem with combustible cladding on certain buildings.

Mr and Mrs B's building was clad with aluminium composite material (ACM) cladding. This is one of the cladding materials that are regarded as combustible and presents a potential fire risk. Prior to their application to Santander, the building owner had carried out a risk assessment and identified that there needed to be remediation of the cladding. While it had combustible cladding, there were other fire protection measures in place and residents continued to live in the building. But the building owner commissioned works to replace the cladding with non-combustible material. No costs of works were to be passed on to the leaseholders.

At the time of the application, Mr and Mrs B shared with Santander a notification from the building owner that the works would begin in June 2019 and take around 45 weeks. But Mr B has since told us that there were various delays, including because of the coronavirus pandemic, and work was only completed in November 2020.

When lending a mortgage, a lender takes security over the property. In essence this means that if anything goes wrong – such as the mortgage not being paid – the lender is entitled to take possession of the property and sell it to recover the debt.

This means that a property is only good security – acceptable for a mortgage – if the lender can be satisfied that it will be able to recover the debt through sale if it needs to. It needs to be confident that it will both be able to sell the property, and sell it for enough to recover the debt.

There are various concerns with buildings affected by combustible cladding and other fire safety concerns, from the point of view of a mortgage lender. These include a greater risk of damage, and more severe damage, in the event of a fire. And a risk that the property couldn't be sold, or only be sold at reduced value, in the future.

If buyers are unlikely to want to buy it while there's a fire risk, or while there's a risk of remediation costs being added to the service charge, or a risk that buyers won't be able to get a mortgage, that means that there's a risk the lender wouldn't be able to sell the property – either at all, or for enough to recover debt.

I'll say more below about whether these risks led Santander to treat Mr and Mrs B fairly in their individual circumstances. But in my view, it wasn't unreasonable for Santander to have concerns about lending money secured on this property once it knew that it was affected by combustible ACM cladding which hadn't yet been replaced – bearing in mind that Mr and Mrs B were prospective new customers, and this wasn't a risk Santander was already exposed to.

*the concentration risk*

As I've explained, a mortgage involves a debt secured on a property. And that means that the lender has to be satisfied that – if it has to repossess and sell the property – it would be able to recover the debt.

It's common for lenders to want to spread their risk to minimise it. If a lender lends on too many similar properties in the same area at once, it's more exposed in the event of something going wrong. If (to take an example for purposes of illustration, which isn't relevant to this case but illustrates the general principle) a lender lends on a lot of properties in one area, a major local employer closes and many of its borrowers experience financial difficulty at the same time, it could find itself having to repossess and sell several properties at once. And having several properties on the market at the same time is likely to delay the sale of any one of them, and depress the prices. So having mortgages over too many properties in a particular area increases – concentrates – the risk to the lender.

And therefore it's common for mortgage lenders to have limits – not to lend on more than a certain number or percentage of properties in the same area, or to keep overall mortgage lending in an area below a certain value.

In this case, the evidence suggests Santander realised in early 2018 that it had a number of existing mortgages on properties in the development which included Mr and Mrs B's property. Its threshold for overall lending was reached, and from April 2018 it put a block on further lending in that area. And that's why Santander told Mr and Mrs B, in its letter of 26 April 2018, that it needed to follow the advice of the valuer that the property wasn't suitable security because of cladding and had withdrawn the offer. But even if Mr and Mrs B were to get further evidence that would lead the valuer to change his mind about that point, Santander still wouldn't lend because of the concentration risk.

Again, I'll say more below about whether this led Santander to treat Mr and Mrs B fairly in their particular circumstances. But it's not unreasonable for Santander to include concentration risk in its lending decisions. And I'm satisfied that the threshold for new lending in this development had been reached by April 2018.

That means that while concentration risk wasn't an issue for Santander when it issued their mortgage offer, once the offer was withdrawn – for other reasons – it then became relevant to whether Santander would consider a new application.

*the withdrawal of Mr and Mrs B's mortgage offer*

Mr and Mrs B applied for their mortgage in late 2017, a satisfactory valuation was carried out, and in early January Santander issued Mr and Mrs B with a mortgage offer.

The mortgage offer was dated 12 January 2018. It was issued subject to various conditions. One of the conditions was

*“We may withdraw this offer if any of the following circumstances apply and, had we been aware of the true circumstances, we would not have provided the offer to you, or we would have provided an offer of a lower amount or on different terms:*

...

*d) there is a change to the condition value or title to the property or we revalue the property after the date of this offer and such change or the revaluation has a material impact on the suitability of the property as security for the loan”*

As well as the terms of the offer, another relevant consideration is the regulator’s mortgage rules, known as MCOB. The rules around mortgage offers which are relevant to this case are to be found in MCOB 6A.3. In MCOB, the suffix R denotes a rule which a firm must follow. And G denotes guidance on the application of the rules.

MCOB 6A.3.1 R says

*If a firm offers to enter into an MCD regulated mortgage contract with a consumer, it must provide the consumer with a binding offer set out in an offer document.*

MCOB 6A.3.3 G says

- (1) MCOB 6A.3.1 R does not prevent a binding offer from being subject to lawful conditions, including conditions which make the binding offer subject to one or more of the matters listed below:
  - (a) There being no material change to the facts and circumstances relating to the binding offer which occurs after the date on which the binding offer is made;*
  - (b) The fact that the consumer has not knowingly provided incomplete or inaccurate information for the purposes of the assessment of affordability, and has not knowingly falsified or withheld the information provided for the purpose of that assessment;**
- (2) The material changes referred to in (1)(a) include a material change:
  - (a) Affecting the condition, value or title to the property;*
  - (b) In the borrower’s circumstances (such as loss of employment or further secured borrowing taken out after the borrower’s application for an MCD regulated mortgage contract) which is likely to have a material impact on the borrower’s ability to afford the loan.**
- (3) However, the lender cannot use conditions in binding offers as a means of avoiding the requirement to undertake a proper affordability assessment under MCOB 11 before the binding offer is made.*

In this case, Santander says it was entitled to withdraw the offer. It says it had revalued the property after the date of the offer, and the revaluation had a material impact on the suitability of the property as security for the loan.

There was a valuation in January 2018, which said the property was good security. On the strength of that, Santander issued an offer. In February, the solicitor – who was acting for both Mr and Mrs B and Santander – highlighted that there was an issue with combustible ACM cladding on the block.

This led Santander to make further enquiries and then ask the valuer to review the valuation. In April the valuer said that on further consideration the property was not good security for the loan.

So Santander, relying on the condition I've quoted above, withdrew the offer. The offer said if Santander revalued the property and the revaluation had a material impact on whether the property was good security, the offer could be withdrawn.

I'm satisfied that it was reasonable for Santander to rely on the professional opinion of a qualified surveyor valuing the property.

It was only when the solicitor highlighted it that Santander became aware of the cladding issue, and only following the revaluation that it became aware that the property might not be good security.

As a result, I'm satisfied it was reasonable for Santander to conclude that there had been a material change in circumstances since the offer was made, which led to revaluation of the property with a material impact on whether the property was good security for the loan. And I'm satisfied it was reasonable for Santander, relying on the lawful condition included in the offer which I've quoted above, to withdraw the offer.

*were Mr and Mrs B treated fairly in comparison to their neighbours?*

Mr and Mrs B have pointed to other residents, including at least two of their neighbours, who had applications with Santander accepted. And, they say, it can't be fair that Santander was prepared to lend to their neighbours but not to them.

It's important to note that I'm dealing with this complaint only, and I must determine it on its own individual merits. I'm satisfied, for the reasons I've set out above, that Santander didn't treat Mr and Mrs B unfairly when it withdrew their mortgage offer. And that other residents were able to obtain mortgages from Santander doesn't alter that conclusion.

Santander has explained to us what happened in some of the cases Mr and Mrs B referred to. It's not appropriate for me to set out full details here. However, I'm satisfied that in one case the circumstances were materially different, since the customers were existing customers of Santander, and so it wasn't taking on any new risk as it already had a mortgage on the property. And I understand that in another case, unlike here, the cladding issue wasn't highlighted to Santander before the mortgage completed and so there was no reason to ask the valuer to reconsider. It wouldn't in my view be fair or reasonable to expect Santander to agree to lend in this case on the basis of other, materially different, cases.

I can understand why Mr and Mrs B would feel that they've been unfairly treated when they see their neighbours' applications being granted. But every application has to be considered on its own merits, based on its own specific circumstances. And ultimately I'm satisfied that it wasn't unfair that Santander wasn't prepared to lend to Mr and Mrs B once it knew about the cladding issue and the valuer had confirmed to Santander that as a result the property wasn't good security for the loan.

*conclusion*

Taking everything into account, I don't think Santander acted unfairly in withdrawing the offer.

However, I do think there were problems with how Santander communicated with Mr and Mrs B, especially once the offer had been withdrawn.

Santander didn't at any point give Mr and Mrs B a clear explanation of what was happening and what their situation was. The complaints department told them the issue was the concentration risk – although that was the reason Santander wouldn't consider a new application, it wasn't the reason the offer was withdrawn.

And while the adviser did correctly tell Mr and Mrs B that the cladding was the issue behind the problem with their mortgage offer, he didn't tell them clearly that the offer had been withdrawn and a new application would be required – and that an application would fail now the concentration threshold had been reached.

Instead, the adviser encouraged Mr and Mrs B to continue pursuing a mortgage with Santander even though he ought to have known it was hopeless to do so. And he suggested the offer could be reinstated if the valuer reconsidered – when in fact Mr and Mrs B would have to make a fresh application which would fail on concentration risk.

The result of this was that Mr and Mrs B spent several months pursuing a new mortgage application that was never going to be granted. As their solicitor was still involved, they incurred extra legal costs. And they themselves went to considerable trouble over it. I don't think this was fair, and to that extent I uphold their complaint.

*putting matters right*

Although Santander did offer Mr and Mrs B a mortgage in January 2018, I don't think it would be fair to require Santander to lend to them.

Rather, it is in my view fair and reasonable to require Santander to compensate Mr and Mrs B for the service failings, and additional costs they were put to, as a result of the poor communication I've set out above.

Mr and Mrs B say that the consequences of this were substantial. It meant they focussed all their attention on Santander – and, as lending appetite towards buildings like theirs tightened across the industry, lost the opportunity to apply to other lenders instead. This means they lost the chance to re-mortgage, and to staircase their ownership. They're now paying more interest to their existing lender than they otherwise would. And when they are able to staircase in the future, rising property prices mean it will be more expensive to do so. As a result, they say they've suffered significant financial loss.

I've thought very carefully about this. But I'm not persuaded there are significant financial losses. That's because I don't think there's any degree of certainty that – had Mr and Mrs B had the chance to look at other lenders sooner than they did – they would have been able to get a mortgage elsewhere either.

I'm aware that it's very difficult for residents in buildings affected by fire safety concerns to get mortgages – whether as re-mortgages or as new buyers. And that was also the case at

the time of Mr and Mrs B's application to Santander. Since then, there has been guidance issued, and a new process for testing for safety concerns and assessing applications which wasn't in place at this time. But lenders were concerned about fire risk following the Grenfell Tower tragedy and the realisation that many other developments were potentially affected. I think it's likely that any other lender would have had the same concerns about lending on this property that Santander did.

On that basis, I'm not persuaded it's more likely than not they would have been able to borrow the extra money they needed to staircase.

However, I do agree that Santander should have been much clearer with Mr and Mrs B. Once the offer was withdrawn, Santander should have made clear to Mr and Mrs B that there was no point proceeding because of the concentration risk – rather than allowing them to submit further evidence and argument about the cladding risk. I think its offer to pay the additional legal fees that resulted is fair, when those costs were incurred because Santander appeared to be willing to reconsider the cladding issue even though the concentration risk threshold had been reached.

And I'm satisfied this caused Mr and Mrs B considerable trouble and upset. Santander has already paid them £250 compensation. But given this went on for several months, I agree that it's fair to require it to pay a further £300.

### **my final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Santander UK Plc to:

- Pay Mr and Mrs B's solicitors' fees for all work done after 26 April 2018, subject to Mr and Mrs B providing evidence of the costs incurred and the date of the work. It should add simple annual interest of 8%\* from the date Mr and Mrs B paid the solicitor to the date it pays Mr and Mrs B;
- Pay Mr and Mrs B £300 compensation in addition to the £250 already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 1 July 2021.

Simon Pugh  
**ombudsman**

*\* If Santander considers it should deduct income tax from the 8% interest element of my award it may do so, but should give Mr and Mrs B confirmation of this, if they ask for it, so they can reclaim the tax from HMRC if they're eligible to do so.*