

complaint

Mr and Mrs M complain that Santander UK Plc unfairly declined their application to transfer or port their mortgage to a new property. As a result, they've had to pay an early repayment charge.

background

Mr and Mrs M held a two year fixed rate mortgage with Santander. They wanted to port their mortgage to a new property to avoid an early repayment charge (ERC) and to increase their borrowing. Santander said the new mortgage was unaffordable.

Mr and Mrs M say Santander then told them if they repaid some debts then they could progress to the next stage of an application. But when they did so, it still declined their application. They consider that Santander hasn't treated them fairly – and they point out that they only had a few months left to go on the fixed rate.

Our investigator didn't think the complaint should be upheld. She said that she didn't think Santander had given Mr and Mrs M incorrect information about what would happen if they repaid their debts – and she was satisfied the ERC had been applied fairly in the circumstances.

Mr and Mrs M didn't accept what the investigator said. They made a number of points, including:

- They were told they wouldn't be allowed to start an application until the debts had been paid and the mortgage was affordable. They don't think this is correct as it led them to repaying the debt on the understanding it was the only way that Santander would look properly at their application.
- Their financial adviser has told them that they would have been better off increasing their deposit rather than repay existing debt – and that the affordability measures used by Santander were unfair in their particular circumstances.
- The ERC was unfair and out of proportion to the benefit they received from the fixed rate product.
- The ERC was applied with only three months left on the fixed term.
- They were told that they wouldn't have to pay the ERC if they stayed with Santander. This was "biased towards customers it wants to lend to".
- The application was declined at credit score stage. The credit score is unique to Santander – but they were approved easily with another lender.
- There was no benefit in taking the two year fixed rate mortgage. It has ended up costing them money.
- The interest rate was higher than agreed and that they only agreed to reluctantly after a number of errors which Santander agreed it had made.

my findings

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

what I can look at

Mr and Mrs M have raised some points during this complaint that refer to the sale of the interest product by Santander to them in 2016. I don't have the power to consider that complaint as it was referred to us more than six months after Santander issued its final response. That includes the complaint about the fixed rate they agreed with Santander and any errors that Mr and Mrs M say led to that.

debt repayment

I've listened to the recordings of the phone calls we have that Mr M had with Santander around porting his mortgage.

Mr M spoke to Santander and set out his plans to port the mortgage to a new property and to borrow an additional amount. He also said that he was going to receive money from an inheritance and planned to repay some debt. Santander took basic details of Mr and Mrs M's income and outgoings and told Mr M that based on the information he'd given the amount of borrowing was unaffordable.

There was then a discussion about how much debt Mr M would need to repay to make the borrowing affordable. But I can't see that Santander gave any guarantee that an application would be approved if the debt was repaid. In fact, it said during the phone call, "*the calculator isn't a guarantee...consider very carefully paying off a debt to just get the mortgage because it still might not work for whatever reason.*" I think it set out the correct position in a clear and fair way.

In any event, I'm satisfied that Mr M set out during the initial call that he was intending to use his inheritance to reduce his debts anyway. So it's difficult for me to say that he wouldn't have done so even if he hadn't spoken to Santander.

declined application

There are rules that allow lenders not to apply affordability checks where an existing borrower is porting their mortgage. But that only applies if the amount of borrowing is not increasing. As Mr and Mrs M were increasing their borrowing then Santander was entitled to carry out affordability and other checks.

Most lenders carry out a credit scoring exercise when assessing an application from potential borrowers. It usually takes into account a number of factors such as personal information and credit history. But each lender will have their own system and put different weight on each factor. It doesn't mean that Santander made an error just because another lender approved Mr and Mrs M's application.

Looking at the information we have I can't see any mistake by Santander in assessing Mr and Mrs M's application and I don't consider its decision was made unfairly. It has assessed Mr and Mrs M's application as it would for any other borrower. In view of that, it isn't for me

to interfere in the decision that Santander made – it is entitled to make its own decisions about who to lend to and how much to lend.

ERC

The ERC was set out clearly and prominently on the mortgage offer. As the mortgage was repaid before the end of the fixed rate period, Santander was entitled to apply the ERC – even if there was only a few months left until it expired.

The purpose of the ERC is to cover the costs that a lender might incur when a mortgage is repaid earlier than expected. There is no reason for it to be proportionate to any perceived benefit from the fixed rate. I can't say that the ERC was unfair because Mr and Mrs M don't think they got the benefit they expected from the fixed rate.

It is in line with normal banking practice for lenders to waive an ERC if a borrower ports their mortgage to a new property. This is because the funds are re-lent rather than being repaid. So the lender wouldn't incur the costs associated with repaying the funds that the ERC represents.

I don't consider that Santander has applied the ERC unfairly here. It made a legitimate decision to decline Mr and Mrs M's application. As the funds were repaid, Santander is entitled to apply the ERC in line with the agreement it had with Mr and Mrs M.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 21 September 2018.

Ken Rose
ombudsman