

complaint

Mr and Mrs E complain about problems they had trying to transfer (“port”) their Santander UK Plc mortgage product to a new loan on a different property.

background

I issued my provisional decision in September 2016. A copy of my provisional findings is attached to this final decision and forms part of it. In my provisional decision I explained why I was minded to uphold Mr and Mrs E’s complaint in so far as I considered the offer made by Santander was fair. I invited both parties to let me have any further submissions before I reached a final decision.

Santander accepted my provisional decision. Mr and Mrs E didn’t agree.

my findings

I’ve reviewed everything carefully, and considered the case afresh, but my decision hasn’t changed. Firstly, for completeness, I’ve not commented on the various internet links sent to us by Mr and Mrs E as they’re general information. I’m dealing with a specific complaint about Mr and Mrs E’s individual mortgage taking into account the relevant laws, rules and regulations. It’s not my role to comment on media pieces, instead I concentrate on the details of this specific complaint.

Mr and Mrs E are unhappy my provisional decision pointed out discrepancies in the information they provided. They said they’d always answered our questions truthfully and in best faith. I don’t doubt their intentions, but the wider evidence I’ve seen doesn’t support what they’ve said.

They’ve said their broker might have recorded information incorrectly on their previous application about their repayment vehicle, and questioned why Santander didn’t chase them up when they didn’t switch to repayment.

I’m only looking at a complaint about Santander so I can’t comment on what their broker may or may not have done. But Santander agreed the application on the basis of the application form Mr and Mrs E signed – that was they’d sell the house, use the equity to reduce the mortgage and switch to repayment. But that didn’t happen – the house wasn’t sold for many years, only part of the sale proceeds was put to the Santander mortgage, and they didn’t switch to repayment.

Perhaps Santander should have chased Mr and Mrs E about it, but at the time there was no regulatory requirement for it to do so. The onus was on Mr and Mrs E to do what they said they’d do on the mortgage application they signed (or, alternatively, to correct the information on the application form if they thought their broker had misunderstood their intentions).

Mr and Mrs E reiterated what they’d previously said about the mortgage with N only being a back-up and that they would have contacted N and said they didn’t need it had Santander agreed to the port. They’ve said they never intended to use it. But that’s not supported by the facts. Mr and Mrs E’s solicitors had already requested the funds from N to complete the purchase the *day before* Mr and Mrs E even made contact with Santander.

They also said they delayed speaking to Santander as they thought it would be a very quick and simple process. They previously told us they thought it would take a month but they only made contact with Santander eleven days before the non-negotiable completion date. So a Santander mortgage could never have been put in place in time.

Mr and Mrs E have said the question "*Will anyone not live in the property that contributed to the deposit?*" asked by Santander was ambiguous, and irrelevant anyway as it doesn't matter where they get the funds from. It's difficult to see how a question asking if anyone else has contributed to the deposit is ambiguous, and Mr E could have asked for clarification of what was meant. Instead he simply asked for the question to be repeated and then replied "*no, there's not, it's from our own funds.*"

From that answer it seems Mr E did understand the question as the answer he gave was clear. But whilst it may have been clear, it wasn't true. In fact nearly £200,000 was being contributed to the deposit by a third party.

Whilst Mr and Mrs E may feel it doesn't matter where the deposit was coming from, many mortgage lenders don't agree. It matters quite a lot as the provision of funds towards a property purchase by someone not named on the mortgage – especially a substantial sum as in this case – could affect the lender's security and cause problems if that third party went on to make a claim over the property.

Mr and Mrs E may say that wouldn't have happened, but that's not the point. The decision is the lender's to make whether it is willing to take that risk and, if it is willing to accept the risk, what steps it might take to ensure its security was protected. In that context, the lender needs to rely on accurate information when making its decision. That means applicants have a duty to answer questions correctly. Here, that didn't happen.

I understand Mr and Mrs E hadn't been looking for a home in the time the complaint was with our adjudicator. They said this was because they didn't know that they'd be able to get the Santander mortgage back. But Santander said in June 2016 that it would grant a further 90 days from the time the complaint was closed with us, so at that time Mr and Mrs E knew they could start house hunting. In fact the sooner they did so the longer they would have as, as I've said, the 90 days wouldn't start until we close the complaint. I would hope they started looking upon receipt of my provisional decision as I confirmed then that Santander had said it would stand by its offer, so they've had a further two months since then.

I see no reason to extend the period over 90 days as had the information Santander gave in February 2016 been correct Mr and Mrs E would have had that period, and no longer. In fact there should have been no allowable time period, but as it told Mr and Mrs E erroneously that they had a 90-day period Santander has stood by this. That phone call was on 22 February 2016, three days after Mr and Mrs E's solicitors had requested a redemption statement from Santander and four days before they redeemed the mortgage.

Mr and Mrs E redeemed their mortgage on the strength of that information; that is, knowing they'd only have 90 days to complete the new mortgage. The complaint came about when they phoned to say they'd found a property to buy and they were told they information was wrong (that is, they had no 90-day grace period). As it realised it had given them wrong information Santander agreed to honour the 90-day period, but the process collapsed for various reasons. Had it not collapsed Mr and Mrs E would have had the 90 days they were willing to accept when they thought the information was correct, and I see no reason to believe that wouldn't have been met.

Just because the process collapsed doesn't mean Mr and Mrs E should now get a longer period. I understand their circumstances have changed but that's not Santander's fault.

I understand Mr and Mrs E asked our adjudicator during the process whether they could port the mortgage to their current home (which they bought using the mortgage from N). But Mr E also told us at a different time that they needed to sell that home because it was too expensive and his father-in-law was helping them out. In response to a question about whether they intended to keep their current home if the downsizing application went through they said *"Unless we come into a considerable amount of money which is unlikely we would have to sell it yes."* But in response to my provisional decision Mr and Mrs E asked why it needed to be a condition of the application that the sale of their current home was completed simultaneously (or before) the purchase of their new home if they could afford both. As they've already told us they can't afford both (unless they've since come into an unlikely and considerable sum of money) this seems a moot point.

In any event I explained in my provisional decision why: *"I also understand Santander has doubts about whether Mr and Mrs E will sell their current home and move into a new property, bearing in mind the last property they said they wanted to buy involved considerable downsizing, and the fact Mr and Mrs E have previously retained a property after saying they'd sell it. So, taking into account those quite understandable concerns, as part of the agreement it would be perfectly acceptable for Santander to insist on the simultaneous sale of property C and the purchase on the new (as yet unfound) property D. Otherwise, property C could be sold before property D is bought if Mr and Mrs E prefer."*

I understand Mr and Mrs E are upset about my comment that another way to meet the "simultaneous" requirement is that they could sell their home before buying another, saying that was insulting and I needed to consider their family situation. Having reviewed my provisional decision I can't see anywhere that I've recommended or suggested Mr and Mrs E should do so, I simply listed it as another potential way of completing the house move they want. If Mr and Mrs E don't wish to consider it then they don't need to do so, but it remains an option open to them.

Finally, Mr and Mrs E have said they have never asked for more than £500 compensation and I was mistaken if I thought that. Again, my provisional decision doesn't say that. The statement *"Santander has also offered £500 for any trouble and upset Mr and Mrs E experienced. I understand Mr and Mrs E think Santander should go further than this offer"* relates to the offer in general. And Mr and Mrs E did ask Santander to go further than the offer it'd made, as they want longer than the 90-day grace period offered by Santander.

my final decision

My final decision is that I uphold this complaint in part, but only as far as I consider the offer made by Santander is fair. So I order Santander UK Plc to:

- Consider an application from Mr and Mrs E upon receipt of a full porting application. Mr and Mrs E will need to provide all the information that's requested (including information about their income and expenditure),
- Allow Mr and Mrs E a 90-day window from the date my final decision is accepted to complete on this purchase through Santander (if the application is successful), upon

the meeting of which the flexible mortgage product will be allocated to the mortgage account (but for no more than the original 2006 mortgage amount of £185,295),

- Pay £500 to Mr and Mrs E.

I remind both sides of what I said in my provisional decision about the new application:

- Santander should assess it in line with its lending policy - particularly keeping in mind everything it knows about our stance on considering such applications - ensuring it's in Mr and Mrs E's best interests to proceed.
- If Mr and Mrs E feel they've been treated unfairly if that application is declined (or accepted on different terms) then that's a new complaint for them to make at the time.
- To warn both sides in advance, this shouldn't be used by Mr and Mrs E as a tool to extend the time allowed for the port, nor should it be used by Santander as a way to "time-out" Mr and Mrs E on the 90 days allowed.
- I see no reason, on the face of it, to limit Mr and Mrs E to a mortgage of only 75% LTV as has been previously mentioned as their original mortgage was for about 85% LTV.
- I understand Santander is now willing to consider an interest-only mortgage.
- It's acceptable for Santander to insist on the simultaneous sale of property C and the purchase on the new (as yet unfound) property D. Otherwise, property C could be sold before property D is bought if Mr and Mrs E prefer.

Santander has confirmed Mr and Mrs E need to make a full application with details of their income and expenditure. It also said that if Mr and Mrs E wish it can arrange for a member of its specialist team to speak to them to understand their requirements and obtain the information from them that it should need. I would remind Santander that it should request all the information it needs at the earliest possible stage and not unduly delay the application. I'm aware sometimes things come to light that mean further information is needed at a later date, and would not look to interfere with that, but where that doesn't happen I would expect all the information to be requested as soon as possible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 23 January 2017.

Julia Chapman
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs E complain about problems they had trying to transfer (“port”) their Santander UK Plc mortgage product to a new loan on a different property.

background

In 2006 Mr and Mrs E took a flexible mortgage with Santander (previously Abbey) to buy a new house. I’ll call this property B. They already had an existing mortgage with another lender on their current home at the time, which I’ll call property A. They applied to Santander for a mortgage to allow them to move from property A to property B.

Their new Santander mortgage for property B was on an interest-only basis, with the application form stating *“Although the current property is to be sold, the applicants wish to be able to complete the purchase of the new property without it being a condition of having to redeem the current mortgage at or by completion of the purchase. Upon the sale of the current property, the equity will be used to reduce the Abbey mortgage and then switch to repayment.”*

Seven years later, in July 2013, they sold property A paying just under £17,000 off their Santander mortgage (of the over £50,000 they should have received from the sale once the mortgage was repaid based on the information declared in 2006). They didn’t switch to repayment as they’d previously promised.

On 3 March 2015 Mr and Mrs E received a mortgage offer from another lender (that I’ll call N) to buy a new house, property C. Mr and Mrs E have told us that the original completion date was due to be in April 2015, and was later put back to the summer of 2015 and then finally the end of August 2015. This was because the property was being newly built.

On 17 August 2015 Mr and Mrs E’s solicitors sent a request to N for the mortgage funds to be released for completion on property C on 28 August 2015. On that same day Mr E phoned Santander to ask about porting their existing mortgage product from property B to property C. He didn’t mention in that call that the property purchase was due to complete in just eleven days using a mortgage from N.

The next day Mr E phoned Santander to say they’d lost their buyers for property B so the porting application should be put on hold.

The mortgage with N completed on 28 August 2015 and Mr and Mrs E moved into their new home, property C.

Property B remained on the market, and on 1 December 2015 Mr E contacted Santander to say they’d found a new buyer so wanted to start the porting process. At this time it came to light that Mr and Mrs E had already bought property C (using a mortgage from N). When Santander told Mr E that it doesn’t allow porting to a property that is already owned Mr E raised a complaint as he said he wasn’t told that previously. He said, if he had been told that, he would have continued with the porting application in August and found another source of income to repay the mortgage on property B.

On 19 February 2016 Mr and Mrs E’s solicitors requested a redemption statement for the mortgage on property B as the sale was close to completion.

On 22 February 2016 Mr E contacted Santander to ask again about porting their mortgage product and was told they had a 90-day window to do so from when they repaid the mortgage.

The sale of property B completed on 26 February 2016 and the Santander mortgage was repaid. This left Mr and Mrs E just owning property C on which they held a mortgage with N.

On 1 March 2016 Mr E phoned Santander as they'd found a new property they wished to buy, and they wanted to port their mortgage product within the 90-day window they'd been told about. He was told porting had to be simultaneous and so raised a complaint as he'd previously been told they had 90-days to do so.

Having listened to the earlier call Santander agreed to honour the 90-day window (albeit, it was wrong information) and so Mr and Mrs E went through the details of the new purchase. Mr E asked for a £183,000 mortgage on a property they were buying for £116,000 as it needed work doing to it. Santander said that wasn't possible and also there were discussions over whether Mr and Mrs E would be allowed an interest-only mortgage, and if they did whether that would reduce the amount Santander was willing to lend.

Unhappy with everything that had happened Mr and Mrs E stopped the application and asked this service to deal with a complaint about the whole process.

Our adjudicator said Santander hadn't considered Mr and Mrs E's application fairly. She said that Santander should give Mr and Mrs E another 90-day window, consider their application fairly, and pay £500 compensation.

Santander agreed with this.

Mr and Mrs E originally agreed with the outcome, although they asked if they could be allowed to port the mortgage product to property C. When they were told they couldn't they instead asked if the 90-day window could be extended as they hadn't yet put their house on the market, and there weren't many on the market in their area to buy. Mr E confirmed they were looking to stay in the same area as their parents were local and helped with childcare. The following day Mr E told us that things had changed as they might be moving to a different area as Mrs E might be offered a contract there. As this would involve a substantial move, including schools for their children, they wanted the porting window to be around 6-12 months.

Our adjudicator thought this was reasonable so put it to Santander. Santander didn't agree and so the matter has been passed to me to decide.

my provisional findings

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

I need to consider what, if anything, Santander has done wrong. Assuming I find something, I must then consider what needs to be done to put that right.

This hasn't been an easy case to deal with as there have been a lot of discrepancies in what Mr and Mrs E have told us. I don't doubt they are bringing this complaint in good faith, but it does make it very difficult to know how much weight to place on what they tell us when information is later proven to be incorrect, or at least not given in full disclosure.

In their complaint form Mr and Mrs E have said "*After my call to Scott on the 18th August some time passed and a sale of (property B) wasn't likely in time so I arranged for a mortgage through (N) to be taken out so we could buy the new build (property C) house...*" For clarity, I've anonymised the property names and lender name in the quote. But that's not correct. Mr and Mrs E had already arranged the mortgage through N some five months earlier, and in fact their solicitors had requested funds from N the day *before* the call in question.

When directly asked by our adjudicator for a copy of the mortgage offer from N, Mr and Mrs E provided various other documents instead. One of which was the N completion statement dated 7 September 2015. In the covering email Mr E says *“The attached is confirmation of my wife and I taking out the (N) mortgage on the date of the 7th September – please note the date is after my call to Santander in August after my disolusionment (sic) about being made to be means tested / being told I’d have to undergo an affordability test...”* This is misleading as the implication is that Mr and Mrs E only went to N after problems with Santander. But that’s not so because, as I’ve shown above, their solicitors requested the completion funds from N on the same day Mr and Mrs E first phoned Santander, having applied for the mortgage with N many months earlier.

Property C was bought for £449,000 and the Santander mortgage was only about £186,000. When our adjudicator asked Mr E how they would have raised the £263,000 deposit Mr E said that they had savings of around £35,000, equity in property B (later shown to be £31,000 using the sale price achieved in February 2016) and the rest would be money from Mrs E’s father. So that would mean Mrs E’s father would be putting nearly £200,000 up as a deposit for the property (or even more when you consider the fees, charges and moving costs that would be incurred). But in a phone call with Santander on 17 August 2015 Mr E was asked *“Will anyone not live in the property that contributed to the deposit?”* After asking for the adviser to repeat the question, Mr E answered *“no, there’s not, it’s from our own funds.”*

It’s not in dispute that Mr and Mrs E applied to N for the mortgage for property C. A mortgage offer was made in March 2015, and that mortgage completed on 28 August 2015. Mr and Mrs E have said it was never their intention to take the mortgage with N, and they only applied for it as it was a new-build property and they didn’t want to lose the house. They say they thought they would be viewed unfavourably if they didn’t apply for a mortgage through the broker recommended by the house builder. They’ve said once they had the mortgage offer from N it showed they were serious about the purchase, but they didn’t intend to use it. Instead they intended to port the Santander mortgage product.

But this isn’t consistent with what happened and when it happened. The house purchase was originally due to complete in April 2015, but was pushed back. The first contact Mr and Mrs E had with Santander about the purchase was on 17 August 2015.

Mr and Mrs E originally told us they thought porting would only take about a month, and so they contacted Santander on about 7 August 2015 once they were on notice the property would be ready at the end of August / beginning of September. But, in fact, they didn’t contact Santander until 17 August, so if the process would take a month (as they told us they thought) then it could never be in place by the end of August. Mr and Mrs E later told our adjudicator they thought the process would only take a few days.

In their complaint form Mr and Mrs E have said they weren’t told they couldn’t port a mortgage product to a house that already has a mortgage on it. But equally it seems they didn’t explicitly tell Santander they would be continuing with the purchase and ask whether they could then port the mortgage product if they first bought the property using other means.

It’s not the fact the property has a mortgage on it that’s the problem; it’s that Mr and Mrs E already own it. It’s common across the mortgage market that lenders won’t allow people to port to a property they already own. So Santander isn’t unusual there. Had Mr and Mrs E told Santander of their intentions then I’m sure it would have immediately told them they couldn’t do it, as it later did as soon as it was aware.

Mr and Mrs E have said if they were told in August of the problem, then they would have used other means to “repay” their Santander mortgage on property B and ported the mortgage product to property C. But that still wouldn’t have worked. Property C was a new-build with a set completion date of 28 August 2015. Mr and Mrs E have told us that couldn’t be interfered with.

So even if Santander had told them on 17 August 2015 (which was the very first call) it would have been too late to arrange to port the mortgage product to property C. Porting isn't the same as drawing down funds. To port a mortgage product to a new property Santander would need a full application and a valuation to be carried out. The application would then be underwritten, a formal mortgage offer made and solicitors would be needed to complete the standard searches etc. This couldn't have happened within the 11 days Mr and Mrs E had allowed.

So I don't think Santander did anything wrong in not telling Mr and Mrs E they couldn't port to a property they already owned as – quite simply – Mr and Mrs E didn't ask. Santander can't cover all possible eventualities and permutations that could happen within the mortgage process. And even if it could have done more it wouldn't have made a difference as it was too late for anything else to be put in place to allow the mortgage product to be ported to property C.

Where Santander did make a mistake was in telling Mr and Mrs E that they had a 90-day window in which to port after they redeemed their mortgage on property B. This was wrong. The product they had didn't offer any window, it only allowed for simultaneous porting. Normally when mis-information is given like this I'd consider whether a consumer acted on it to their detriment. But I don't need to here as Santander has already offered to put it right by offering a 90-day window for Mr and Mrs E to take a new mortgage with it, and if the application's successful it'll honour the mortgage on the old flexible product they had. To be clear, that's not a guarantee that the application will be successful. Santander is entitled to consider any application it receives in accordance with its lending criteria and, and will only issue a mortgage offer if those criteria are met. I'll expand on that shortly

Mr and Mrs E have asked for longer as they don't want to rush into finding a new property, but that's not how it works. Had the information been correct then Mr and Mrs E would have had 90 days – no longer. So it wouldn't make sense for me to make an order that the period be extended, as there was never an option for them to have had longer than that. In fact, it could be argued, they've already had significantly longer as they've been aware of the offer (and that Santander is willing to stand by it) since 7 June 2016 – so over three months already. So by the time my final decision is issued – if I consider the outcome should remain unchanged from this provisional decision – then Mr and Mrs E would have had nearly five months to market their property and find a new one, in addition to the 90-day window which will start from the date they accept my final decision (if they chose to do so). That will have given them near enough eight months.

Santander has also said upon receipt of a full porting application from Mr and Mrs E it will assess this, ensuring it's in Mr and Mrs E's best interests to proceed. I won't comment on the possible outcome of that here as, until a formal application is made, we don't have enough information to comment. Suffice to say Santander should be fully aware of this service's stance on considering such applications, and if Mr and Mrs E feel they've been treated unfairly if that application is declined (or accepted on different terms) then that would be a new complaint for them to make at the time. To warn both sides in advance, this shouldn't be used by Mr and Mrs E as a tool to extend the time allowed for the port, nor should it be used by Santander as a way to "time-out" Mr and Mrs E on the 90 days allowed. To ensure there aren't such problems I would ask Santander to outline what it's *likely* to need from - and what it's *likely* to allow - Mr and Mrs E when it responds to this provisional decision. I understand this is always subject to change, but it would be a useful starting point.

I see no reason, on the face of it, to limit Mr and Mrs E to a mortgage of only 75% LTV as has been previously mentioned as their original mortgage was for about 85% LTV. But I'll leave that to the parties to discuss when the time comes.

I understand Santander's initial reluctance to allow Mr and Mrs E another interest-only mortgage as they didn't do what they promised to do when they arranged their previous mortgage in 2006; that is, sell their property, reduce the debt and switch to repayment. Whilst they did sell the property they didn't do so for seven years – which wasn't what was implied in the original application, and the terms upon which Santander granted the mortgage.

The implication was that the sale would be imminent and all the funds used to reduce the debt. Instead it was seven years, and only a small amount was put towards the Santander mortgage. And most importantly, Mr and Mrs E didn't switch to repayment as they implicitly said they would. I understand Santander is now willing to consider an interest-only mortgage, so I simply mention this for completeness.

I also understand Santander has doubts about whether Mr and Mrs E will sell their current home and move into a new property, bearing in mind the last property they said they wanted to buy involved considerable downsizing, and the fact Mr and Mrs E have previously retained a property after saying they'd sell it. So, taking into account those quite understandable concerns, as part of the agreement it would be perfectly acceptable for Santander to insist on the simultaneous sale of property C and the purchase on the new (as yet unfound) property D. Otherwise, property C could be sold before property D is bought if Mr and Mrs E prefer.

Santander has also offered £500 for any trouble and upset Mr and Mrs E experienced. I understand Mr and Mrs E think Santander should go further than this offer. But, in the circumstances, I consider this is a fair and reasonable way to resolve this complaint.

my provisional decision

Subject to anything further Mr and Mrs E and Santander may wish to tell me by the date at the top of this provisional decision, I'm minded to uphold this complaint. But only as far as I feel the offer made by Santander in response to our adjudicator's view is fair.

So I'm minded to order Santander UK Plc to:

- Consider an application from Mr and Mrs E upon receipt of a full porting application. Mr and Mrs E will need to provide all the information that's requested (including information about their income and expenditure),
- Allow Mr and Mrs E a 90-day window from the date my final decision is accepted to complete on this purchase through Santander, upon the meeting of which the flexible mortgage product will be allocated to the mortgage account (but for no more than the original 2006 mortgage amount of £185,295),
- Pay £500 to Mr and Mrs E.

I remind Santander to outline in its response to this provisional decision what it's *likely* to need from - and what it's *likely* to allow - Mr and Mrs E as I've mentioned previously.

Julia Chapman
ombudsman