

## **The complaint**

Mr and Mrs W's complaint is about an application made to alter a residential mortgage (with consent to let (CTL)) Mr W has with Santander UK Plc. They have told us they wanted to change the mortgage to a buy-to-let (BTL) repayment basis, in joint names, over an extended term. However, the application was declined on the basis of affordability. Mr and Mrs W detailed their concerns as:

- Santander took the cost of running the property into account in the affordability assessment but would not factor the rental income into it. They consider that, given how long rent had been received for the property, it would have been a reasonable assumption that it would continue to be received, especially as Mr W said he had no plans to change its use.
- They were required to provide an accountant's certificate for their limited company, but Santander simply took an average of the earnings across a period, which it could have established from P60s. In addition, there was no modelling completed to establish what profit would be achieved and Mr W's likely income would be for the then current financial year. Nor was it taken into account that they had not historically drawn all of the profit out of the business, and could have had higher incomes if they'd wanted to.
- They believe that Santander had changed the terms and conditions associated with the CTL and had not been clear or transparent about those changes. They also highlighted that the CTL letter received in 2011 said that Mr W would have the option to transfer to a BTL mortgage, but at no time did it say that the rental income would not be taken into account if they wanted to change the existing mortgage. Mr W believes Santander owed him a duty of care to notify him of what he considered to be a change of policy/terms linked to the CTL.
- They were treated unfairly as it was a reasonable assumption that interest rates would increase on the existing mortgage and would take Mr W to a point whereby the existing mortgage would cost the same as the repayment mortgage they'd asked for. As such, they consider that Santander should have understood they could afford the repayment mortgage they had applied for.

Mr W also pointed out that the £50 compensation Santander had said it was paying him in the final response letter had not been paid.

## **What happened**

Mr W took out a 25-year interest-only mortgage with Santander in 2007 to purchase a residential property. In 2011 his circumstances had changed, and he moved out of the property. Thereafter, he let out the property with Santander's permission.

When Santander agreed to allow Mr W to let the property, it wrote to him confirming this and highlighting the consequences of him renting the property out. It explained that while if there was a current interest rate product linked to the mortgage, that could continue, when it ran out they would likely only be allowed to select a new product from its letting range. It said:

*'Alternatively, you could transfer your mortgage to our buy to let product. If you would be interested in transferring to this or any other buy to let rate which is available please contact our retentions team on 0800 028 0064, who will advise you further.'*

In September 2022 Santander wrote to Mr W about the mortgage, reminding him that it was due to be paid off in around 10 years, and asking him to confirm how he would be repaying it. At that time interest was charged at Santander's Standard Variable Rate (SVR).

In October 2022 Mr W spoke to Santander about changing the mortgage onto a joint repayment basis and possibly extending the term for affordability reasons. In the part of the discussions regarding what Mr W wanted to happen with the mortgage, there was no mention of changing it to a BTL basis. During the conversation Mr W was made aware that there might be affordability issues regarding income due to the changes in his working/employment arrangements over the previous couple of years. In addition, it was explained that the rental income from the property could not be taken into account when assessing affordability. This was because the mortgage was residential, which meant CTL could cease at any time, and so Santander would not allow reliance on that income. It was confirmed that if the mortgage was a BTL, it could be taken into account, but that would involve Mr and Mrs W applying to re-mortgage the property to a BTL basis via an independent mortgage broker, as Santander didn't sell that type of mortgage direct anymore. Mr W expressed his dissatisfaction that the rental income could not be taken into account.

Following evidence of income being provided, Santander declined the application because of affordability. It explained that as Mr W was again effectively in a first year of trading as a limited company, it would usually need a full year's accounts before it could consider an application from him. However, as it was the same limited company he had been previously trading as, with a gap of a year trading as effectively employed, Santander had made an exception and had taken the previous two years of trading into account. However, taking the average of the amount he had taken from the company in those years as income and dividends, along with Mrs W's unrelated employed income and her dividends, the affordability assessment had failed for a repayment mortgage over 20 years.

Mr W was unhappy with the explanation about how his and Mrs W's incomes and dividends had been assessed, as Santander had not taken into account the profits that had been left within the company. He was also unhappy that the rental income was not taken into account. It was explained that as it was a residential mortgage with a CTL, the status of the property could change as the CTL could be removed. Santander needed to assess affordability in the long term and, as it could not control what use the property would be put to in the future, it didn't take rental income into account for affordability assessments and added the cost of running the property onto the outgoings of the borrowers. It was also confirmed that the affordability assessment had to be done, as Mr and Mrs W wanted to make material changes to the mortgage in the form of adding a borrower and changing it to a repayment basis. Mr W was told that he could choose to look into adding an interest rate product to the existing mortgage without an affordability assessment being done. He complained.

Santander responded to the complaint in a letter of 25 November 2022. It confirmed how it assessed income from a limited company and what its requirements regarding evidencing income were. Santander confirmed this information had been given to Mr W on 21 October 2022. While it acknowledged that getting an accountant's certificate was inconvenient, that is what it required to progress an application. It said that it had followed its policy for the

assessment of the application, including not taking the rental income into account, and so it was not upholding the complaint. However, it acknowledged that there had been a delay in providing the response to the complaint and made a payment of £50 directly to Mr W's bank account.

Mr and Mrs W didn't accept Santander's response and, when it was unwilling to change it, referred the complaint to the Financial Ombudsman Service. Following this happening, Santander confirmed that it would be making the £50 payment to the mortgage paying account.

One of our Investigators considered Mr and Mrs W's complaint, but she didn't recommend that it be upheld. Mr and Mrs W didn't agree. They continued questioning Santander's assessment of affordability. They also reiterated that Mr W had not been made aware of Santander's change of policy and that the CTL arrangement had confirmed it would give him notice of any changes to the terms of that arrangement. They asked that the complaint be escalated. Mr W confirmed receipt of the compensation payment.

I issued a provisional decision on 13 November 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'Initially I would comment on the matter of Mr and Mrs W's complaint point that they had asked for a BTL mortgage, which was declined. Having listened to the conversations between Mr W and Santander, I am satisfied that he did not ask to convert the mortgage to a BTL basis at any point. As such, I won't comment on any of the points raised about a potential change to a BTL mortgage, as they are not relevant to the events this complaint is about.'*

*As Santander explained to Mr W, the changes to the mortgage that Mr and Mrs W were asking for were material – changing the repayment method alone would potentially have had a very material effect on the monthly payments. It was not unreasonable for Santander to assess if the changes Mr and Mrs W wanted to make were affordable in both the short and longer terms. Indeed, it was required to do so by the rules and guidance in place from the Regulator.*

*I would initially confirm that CTL is not a contractual right under the residential mortgage Mr W has with Santander. It is a concession it grants in some circumstances – usually for situations where a property will be rented out for a relatively short period and then returned to being owner-occupied. The CTL can be withdrawn in some circumstances and is usually in place for a set period of time, although I acknowledge Mr W's CTL arrangement has been in place for around 12 years. In addition to the lender being able to end the arrangement, so can the borrower and without any input from, or notice period given to the lender. In light of this, Santander does not consider the income from a residential mortgage with a CTL to be a reliable source of income. That is a judgement it is able to make on a commercial basis and as it is based in logic and the nature of the CTL, it is not something this service would find to be an unreasonable approach.*

*Mr and Mrs W have complained that they were asked to provide an accountant's certificate, as given how the information was used in the affordability assessment, Santander didn't need it – all of the information it used was on their P60s. Mr and Mrs W are entitled to their opinion on this matter, but I can't agree. As our investigator has confirmed asking for information from the accountant for a limited company is Santander's normal process and most lenders will want the similar information. The accountant's certificate provided more information than Mr and Mrs W's P60s would have as it detailed dividends they had received from the company – which would not be on a P60 as it is not earned income. As that money was factored into the affordability assessment, it was necessary for the certificate to be*

*obtained. In addition, it is also quite standard that an income based on an average from a number of the preceding years is used for affordability assessments.*

*I note that Mr W thinks that Santander should have assessed the information in the accountant's certificate in a different way; one that would be more favourable to him and Mrs W. I can understand why he feels this way, but a lender is entitled to determine what risks it is willing to accept. What income streams a lender is willing to accept in an affordability assessment is one of those risk factors. That would include choosing not to assume that the profits that remained in the business could reasonably be allocated to income for the purposes of its affordability assessment.*

*Mr W has said he believes Santander changed the terms and conditions associated with CTL as the letter in 2011 didn't mention that rental income would not be taken into account if he applied to change his mortgage. I would agree that the letter sent to Mr W didn't mention this issue. However, that doesn't mean that the terms and conditions of CTL were changed. The letter Mr W was sent related to the existing mortgage continuing as it was. It did not cover anything to do with the borrower wanting to make material changes to the underlying mortgage contract and I would not expect it to – such an application would always be subject to whatever the lending criteria was at the time it was made.*

*Mr and Mrs W have said they were not treated fairly when their application was assessed. I am not persuaded that was the case. Santander was flexible in its approach to Mr W's income requirements, given he had only been working through the limited company for less than a year at the time of the application. While it was flexible in this regard, that doesn't mean it had to accept the application. Indeed, having looked at the situation, it appears that Santander applied its policies to Mr and Mrs W's application in the same way, or more favourably, than it would any other borrower. As such, I can't find it treated them unfairly.'*

Both parties confirmed receipt of the provisional decision. Neither provided any further comment or evidence.

### **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.

I have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, and in light of the lack of any further comment from the parties, I have not changed my conclusions.

### **My final decision**

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to accept or reject my decision before 2 January 2024.

Derry Baxter  
**Ombudsman**