

## The complaint

Mr O has complained that Santander UK Plc declined his request to port (transfer) his mortgage interest rate product onto a mortgage on another property. As a result, Mr O had to pay an early repayment charge (ERC) of over £7,000, which he considers to be unfair.

To settle the complaint, Mr O wants Santander to refund the ERC and pay compensation for the distress caused to him and his family.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr O being identified. So for these reasons, I will keep my summary of what happened quite short.

The events giving rise to the complaint took place in 2022. Mr O had a mortgage with Santander on a property in which he lived. He owed £142,500 on an interest-only basis. In December 2019 Mr O had transferred the mortgage onto a new interest rate product, at a fixed rate until 2 March 2025. If the mortgage was repaid, in full or in part, before that date, an ERC was payable. The mortgage interest rate product could be transferred to a mortgage on another property, subject to Santander's lending criteria and terms and conditions.

In the summer of 2022 Mr O wanted to move house, but keep his current property as a buy-to-let, re-mortgaging it in order to raise additional capital to go towards his new property (which he was buying at £450,000). Mr O would then take out a new residential mortgage on his new property.

Mr O had a conversation with Santander about this in June 2022. He explained that his broker had already arranged a BTL mortgage on his existing home, but he'd learned that going ahead with this and repaying his Santander mortgage would incur an ERC of about £7,000. Mr O wanted to know what his options were. Mr O said he'd need a new mortgage of about £270,000 for his new purchase, so he wanted to port his existing mortgage interest rate product, and borrow about £130,000 more. Mr O also wanted to convert his existing mortgage from interest only to capital repayment.

Santander explained that it wasn't possible to port the mortgage if Mr O wasn't selling the property. Mr O could keep his existing mortgage, with consent to let (CTL), and then take out a new mortgage to buy his new property, thus avoiding the ERC as Mr O wouldn't be redeeming his existing mortgage. However, during the conversation a number of stumbling blocks arose:

- Mr O wanted to release equity from his existing property to put towards his new purchase, which wasn't allowed if Santander granted CTL;

- therefore, if Mr O wanted to avoid the ERC, he'd have to keep his mortgage as it was;
- Mr O wasn't in permanent employment, but was a contractor. His latest contract, started the previous January, was due to run out in four months' time. Whilst Mr O was confident he'd get another contract, this type of employment didn't meet Santander's lending criteria.

Mr O called Santander again in September 2022 when he discussed porting again. At first the Santander agent assumed Mr O was selling his existing property, and so discussed porting the existing mortgage.

However, once it was established that Mr O wasn't selling, the agent confirmed that Mr O wouldn't be able to port his existing product onto a new mortgage; that's because, under Santander's terms and conditions, porting was only allowed where the customer was selling their property and buying another. Therefore, although Mr O would be able to keep his existing mortgage, with CTL and no extra borrowing, any new mortgage would have to be from Santander's new product range.

Mr O said he wanted to move his mortgage and borrow additional funds. This time Mr O said he was looking to borrow £400,000 against a purchase price of £450,000. Santander said that, for a second property, Mr O would need a deposit of £90,000, as the maximum permitted loan-to-value ratio was 80%. There was some discussion about new mortgage rates, and it was explained that if Mr O wanted to go ahead with a new mortgage, this would be subject to a full application and a credit check. Mr O said he would think about this and come back to Santander.

However, rather than go back to Santander to discuss a new mortgage, Mr O redeemed his Santander mortgage on 28 October 2022 and completed his new purchase on the same day with a mortgage from another lender.

Mr O complained to Santander. The complaint wasn't upheld so Mr O raised it with our service. He said he'd been with Santander's predecessor since 2006, and felt he'd been treated unfairly. Mr O said that he should have been charged the ERC as he had no choice but to move because Santander wasn't offering him the services that he wanted.

Mr O said he wasn't told when he took out the mortgage that he could not transition from a permanent role to a contract role, and that he would have to be in the role for 12 months. Mr O said that as a contractor it is not guaranteed he will be in a job for any length of time.

Mr O said that he and his family had been emotionally impacted because he couldn't go to any lender as he had only recently come out of an IVA. Mr O said he hadn't budgeted for the ERC in his finances when he was buying the other property.

An investigator looked at what had happened but didn't think the complaint should be upheld. This was because Mr O hadn't met the criteria for his mortgage interest rate to be ported onto a new property, and so Santander had been entitled to charge the ERC. He noted that Santander had looked at ways to help Mr O avoid the ERC by keeping his existing mortgage with CTL, but that wouldn't have allowed Mr O to borrow additional funds to release equity from that property.

Mr O didn't accept the investigator's outcome and made some further points, which I summarise below:

- Santander never offered to allow him to keep his existing mortgage and apply for CTL and he wants recorded proof of this;
- it makes no sense for him to have gone ahead with another lender if he could have avoided the ERC of £7,000 by staying with Santander;
- he'd been with Santander's predecessor since 2006, and had had no difficulties with affordability of the mortgage, which was only £300 on interest-only.

The investigator provided Mr O with the call recordings where Santander had told Mr O that he could keep his existing mortgage with CTL and avoid the ERC. The investigator also explained that, because Mr O had wanted to increase his borrowing and change the repayment type, Santander would have been entitled to consider affordability.

Mr O still didn't accept the investigator's findings. He said that, when he'd taken out the five-year fixed rate in 2019 he'd tried to rescind it and go back to his old rate, but was refused. He also said that the ERC wasn't made clear to him in 2019, and if he'd known about it, he could have made an informed decision at the time.

Mr O said that the mortgage he'd discussed with Santander in September 2022 was £300 more than the mortgage offer he already had. Mr O said that if Santander had offered him the same rate, then he would have gone with the CTL, even though it wasn't guaranteed that he would have qualified based on his job status and finances.

Mr O asked for an ombudsman to review the complaint.

### **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.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;

- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, Mr O *did* want to make changes to his existing mortgage that were material to affordability – because he wanted to borrow more money (initially he said about another £130,000 on top of his existing mortgage, bringing the loan up to £270,000, but later said he'd need £400,000), and increase the mortgage term to 25 years.

Therefore if an application *had* gone ahead, Santander would, I find, have been entitled to consider affordability, and whether the application met its lending criteria. Santander clarified during the first call that, because Mr O was a contractor on a contract that had only been running for a few months, this didn't meet its lending criteria. If Mr O had been selling the property and wanting to port on a like-for-like basis onto his new property (so an interest-only mortgage of £142,500 over the same nine-year term) then Santander could have made an exception under MMR rules and allowed this. But if that had happened, Mr O wouldn't have had enough money to buy his new property, as he needed to borrow much more than £142,500 in order to do so.

But in any event, even if Mr O *had* made a full application to port his existing mortgage interest rate product and take out new borrowing, I'm satisfied that the application could not have proceeded in any event. This is because Mr O wasn't selling his existing property.

Clause 19 of Santander's mortgage terms and conditions deals with the process for transferring the mortgage onto a new property. It says:

- "19.1 This condition applies if you notify us that you wish:*
- a) to pay off the money you owe us **on completing a sale of the property;***  
*and*
  - b) at the same time, to complete a mortgage with us under which we will lend you money on the security of another property that you wish to buy."*  
(my emphasis)

It is therefore a condition, in order to port the interest rate product onto a new mortgage on another property, that the property on which the mortgage was originally held is sold. That wasn't Mr O's intention; he wanted to rent out the property. Given this, even if he'd taken out a new Santander mortgage, he still could not have ported his existing interest rate product. And any application for a new mortgage would have been subject to Santander's lending criteria, including employment status and past credit history.

In all the circumstances, I think that, once Santander knew Mr O wasn't selling his original property, the bank looked at how it could help Mr O to avoid incurring the ERC by keeping

his mortgage on the same terms, but with CTL. Although Mr O says he wasn't told this, I've listened to the call recordings – copies of which Mr O has also been sent. In those calls Santander explained to Mr O that he could keep his existing mortgage on its existing terms, but with CTL (and thus avoid the ERC). However, he wouldn't be able take out additional borrowing on that mortgage to raise money towards his new property.

In all the circumstances, I don't think Santander has done anything wrong. Mr O could not have ported his mortgage interest rate product onto a new mortgage, for the reasons I've explained above. Therefore the ERC was correctly applied in line with the terms of the contract Mr O agreed to in 2019.

I note Mr O has recently told us that the existence and implications of the ERC were never pointed out to him when he took the product switch in 2019. That's a new issue that Mr O will need to raise with Santander. But in relation to this particular complaint, I'm satisfied Santander is under no obligation either to reimburse the ERC or pay compensation to Mr O.

### **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 September 2023.

Jan O'Leary  
**Ombudsman**