## The complaint

Mr H complains that Santander UK Plc reneged on its promise to allow him to port his interest only mortgage after he sold his house.

## What happened

In 2021, Mr H had approximately £400,000 outstanding on his interest only mortgage with Santander. He was some way through the term of a fixed interest rate product which meant he would pay approximately £20,000 as an early repayment charge (ERC) if he redeemed the mortgage. But he wanted to move home, so discussed his plans with Santander.

Mr H says he had a number of telephone conversations with Santander to ensure he'd retain his mortgage when he sold his house. He says, each time, he was told he would merely be porting his current mortgage to the new property, and he only had to notify Santander by phone once he'd selected a new property. So, he sold his house on 30 August 2022 and moved into rented accommodation while he looked for a new home – on the understanding that he had 90 days to do so. But, when Mr H found a new property, he says Santander told him he'd need to make a full mortgage application before it would make a mortgage offer.

Mr H says he was never told the porting of his mortgage would be subject to a full application and credit check. He says he's never missed a payment on his mortgage, and nothing has changed so he would easily be able to maintain the payments on the ported mortgage. Now he's had to pay the ERC and has lost his fixed rate of 1.99%. So, Mr H complained to Santander.

In its response letter dated 4 August 2022, Santander said it hadn't made a mistake and it had made Mr H aware of the process and the application required. It said the process was explained to Mr H in a call on 12 October 2021, and the representative offered to transfer Mr H to Santander's applications team to discuss the matter in further detail. But Mr H said he'd call back another time. At Mr H's request, Santander reviewed its response to his complaint twice – on 10 November 2022 and 6 December 2022 – but stood by its initial findings both times.

Dissatisfied with Santander's response, Mr H asked us to consider his complaint. Our investigator also didn't think Santander had done anything wrong. She explained that she'd listened to recordings of calls between Mr H and Santander – three in total. She noted from the first two calls that Mr H was informed he would need to speak to a specialist team for full details of what was required for him to port his mortgage.

During the third call – when Mr H disclosed the specifics of his plans – Santander explained that he wouldn't be able to keep the whole of the mortgage on interest only. And that would mean the contractual monthly payment (CMP) would increase. Due to the likely increase in CMP Santander carried out an affordability check and told Mr H it could not offer him the full amount of the mortgage he wanted. And to offer him a reduced amount it would need to conduct a credit check. It did so, with Mr H's agreement, and an underpayment issue with a separate loan was flagged. In that call Mr H agreed with Santander that the application would continue but he would resolve the issue with the separate loan.

Our investigator thought Santander had followed its procedures and had explained the porting process to Mr H. And, as Mr H says he's resolved the issue with the separate loan, he may wish to apply again with Santander.

Mr H didn't accept our investigator's opinion. He said he was told during the calls that porting means transferring his current balance and current product to the new property. It wasn't made clear to him that this was subject to a full application. Santander's message to him was consistent before the call when the credit check was carried out, in that his mortgage would be successfully ported to his new property. And he's been consistently told that the same 100% interest only mortgage would be transferred to his new property. He based his decision to sell his house on the reassurance he received from Santander.

As Mr H disagreed with our investigator, his complaint has been passed to me for a decision.

Based on the evidence available at the time, I wrote to both parties with my provisional decision on 5 May 2023 stating my intention to uphold this complaint. Both parties responded and new evidence provided changed my thoughts on what the correct decision should be. Because of that new evidence, I didn't think Mr H's complaint should be upheld and I wrote to both parties explaining that on 14 September 2023. Again, I allowed both parties the opportunity to make further submissions. They've done so and, having considered their final submissions, I can now go on to explain my final decision.

**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.

In my provisional decision dated 14 September 2023, I wrote the following:

> To decide Mr H's complaint, I've thought about whether Santander led him to believe it would allow him to port his mortgage – with all the same features – to a new property and that his application wouldn't be subject to assessment. I've also thought about whether Santander fairly assessed Mr H's application.
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> Generally, the purpose of a porting option on a mortgage is that the interest rate product can be transferred to the new mortgage when a borrower moves home. The benefits are that the interest rate product is retained, and any ERC does not become payable.
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> However, the mortgage itself is new and can be subject to a full application. The assessment of the application is likely to take into account the suitability of the new property for the mortgage and the affordability of the new mortgage payments, as well as ability to repay the capital if the mortgage is on interest only terms.
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> Where the borrower isn't increasing the amount they want to borrow – as Mr H wasn't – there's flexibility in the mortgage rules allowing a lender to set aside the need for an affordability assessment and an assessment of interest only repayment strategy.
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> In Mr H's case, he didn't want to sell and buy simultaneously. Santander's porting option allows for that as long as a new property is purchased, and the new mortgage starts, within 90 days of the previous mortgage being redeemed.
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> <u>Did Santander mislead Mr H?</u>

I've thought about whether Santander told Mr H that his new mortgage wasn't subject to an application process, and so led him to believe he would automatically keep all the features of his existing mortgage. Santander has provided call recordings from 12 October 2021 and 25 October 2021 during which Mr H talked about moving home and porting his mortgage. On 12 October Santander told Mr H he can port his mortgage and there's a specialist team he can talk to who would explain the criteria that applies. Santander explained that Mr H wouldn't have to sell and buy simultaneously. But Mr H declined Santander's offer to put him through to the specialist team.

During the call of 25 October 2021 Mr H talked about his intentions to take out a bridging loan. Santander said it doesn't offer bridging loans and informed him again of the facility to port when not selling and buying simultaneously. And it also said he'd need to speak to its specialist team. But it would appear that Mr H didn't do that until 3 August 2022 when he was told about Santander's interest only criteria and how that applied in his case.

While I've seen that Santander did tell Mr H before 3 August 2022 that he could port his mortgage, I think it made it clear that criteria applied, and he'd need to discuss that with the specialist team. His mortgage terms and conditions would also have confirmed that the porting feature was subject to specific criteria. I haven't seen that Santander made any promises about Mr H getting an identical mortgage without the need for an application and assessment. So, I don't think it misled Mr H about that.

<u>Was Santander's assessment of Mr H's application fair and reasonable?</u>

In my first provisional decision, I wrote:

> Santander informed Mr H during the call on 3 August 2022 that, under its current criteria, it won't allow him to have over 50% of the value of the property on interest only terms. That meant a portion of the new mortgage would need to be set up on a capital repayment basis and that would increase the CMP. And, as the CMP would increase, Santander needed to assess whether the new mortgage payment was affordable.
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> As explained above, I accept that Santander didn't mislead Mr H about it needing to assess his application to port. I also accept that, because Mr H was selling the existing mortgaged property and wanted a mortgage on a new one, he was applying for a new mortgage. However, he wasn't asking Santander to lend him new money, as the loan already existed. I haven't seen that Mr H wanted to increase his borrowing or that his loan to value would increase. So, his plans didn't increase Santander's risk, or his own risk. And I understand that he didn't have a history of arrears, meaning Santander had no cause to believe he may not be able to make future payments.
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> Santander applied its current interest only criteria to Mr H's application. But it only decided that was necessary because he wanted to change the mortgaged property – under the porting facility the mortgage terms and conditions allowed. I understand that Santander may have been concerned that Mr H's interest only repayment strategy had changed. But it hasn't said that it would have reassessed the existing mortgage because of that, if Mr H didn't want to port. So, I don't think his application to port was reason enough for Santander to apply its current interest only criteria, if the port itself didn't represent an increased risk to either party.
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> In saying that I've thought about the mortgage rules, in the MCOB section of the FCA's Handbook. MCOB 11.6.2 requires a lender to assess affordability when granting a new mortgage or varying an existing one – though 11.6.3 says that

requirement doesn't apply where there's no further borrowing and no other change to the mortgage contract that's material to affordability.

In this case, based on what Santander was prepared to offer, Mr H's mortgage type would change from interest only to part repayment, and his monthly payment would increase. Those are changes to the mortgage terms material to affordability – which means under the rules Santander had to do a full affordability assessment. The result of that affordability assessment meant that Santander offered Mr H less than his current mortgage balance – impacting his plans to port his mortgage.

I don't think that was fair. The only reason Mr H was in this position was because of Santander's lending criteria that it doesn't allow more than 50% loan to value on interest only. That meant he had to convert part of the mortgage to repayment terms – and Santander had to do the affordability assessment.

This is the criteria Santander applies to new borrowers. But Mr H wasn't a new borrower. He already had a Santander mortgage on fully interest only terms. Allowing Mr H to port his mortgage retaining it on interest only terms meant he would have been able to go ahead with his plans – and wouldn't have increased Santander's risk exposure either, since it wouldn't have been agreeing to anything more than it was already lending. I recognise Santander is entitled to change its lending criteria at any time, and since Mr H took out his first mortgage it no longer wants to lend over 50% loan to value on interest only. It would be reasonable to refuse a new application on that basis – but Mr H wasn't a new borrower. He was an existing customer only seeking to retain what he already had.

That means if Santander can't clearly show that Mr H's plan to port his mortgage represented increased risk to either party, I don't think it assessed his application fairly. I don't think it needed to apply the 50% limit to Mr H's interest only borrowing, meaning it didn't need to require a change to repayment type or an increased CMP. And so, I don't think it needed to reassess affordability based on the increased CMP. I think if it hadn't done so, it was unlikely to have declined his application to port, given his mortgage payment track record. As I think Santander didn't assess Mr H's application fairly, I uphold his complaint.

However, Santander responded with evidence showing that Mr H's plans were to move to a property of significantly less value than the one he had a mortgage on with Santander. Santander's records – specifically it's record of Mr H's proposed application for the new mortgage and telephone recordings during which Mr H detailed his plans – show that the purchase price of Mr H's proposed new property was £545,000.

As Mr H's existing property sold for approximately £750,000 and his proposed mortgage borrowing was not changing, his proposed loan to value percentage would increase significantly. That represents an increased risk to Santander. And because Mr H's application posed an increased risk to Santander, I think it was reasonable for it to conduct an affordability assessment.

As Santander has now shown Mr H's plan to port his mortgage did represent an increased risk, I think it did assess Mr H's application fairly. I think it was reasonable, under the circumstances I've now been made aware of, that Santander applied its current lending criteria.

While I understand that my decision will come as a disappointment to Mr H, particularly given my previous provisional decision, the new evidence provided means I don't uphold Mr H's complaint.

Santander accepted my decision, but Mr H did not. He said the loan to value issue was not brought up by Santander during any of the conversations he had with it about porting his mortgage. Mr H said he was never informed that he had to retain the same LTV and he wasn't told the LTV was the reason for declining the mortgage.

I've thought carefully about Mr H's comments. Having done so, they haven't changed my decision. I'll explain why.

From the evidence available, it appears that, in considering Mr H's request to port his mortgage, Santander responded to the circumstances Mr H presented to it. Mr H had found a property and he wanted to port his mortgage to that property. I think Santander assessed Mr H's circumstances, including the value of the new property and how much he wanted to borrow based on its lending criteria.

I've previously said, having done that, Santander wasn't obliged by MCOB rules to reassess affordability. That's because I thought the new – proposed – circumstances didn't represent a greater risk than his previous mortgage. But, given that I now know the new property would have been of a significantly lower value than the one he sold – Santander's previous security for the mortgage – I'm satisfied that the new mortgage would have increased Santander's risk. It reduced the security for the mortgage. So, that means it was reasonable that Santander reassessed affordability and – importantly here – did so under its current lending criteria. According to that lending criteria Mr H's repayment vehicle was insufficient and led to the need for him to change a portion of his mortgage to capital repayment. And that led to the potential increase in contractual monthly payments and concerns about affordability.

I understand that the difference may be subtle here, but the reason Mr H couldn't proceed with the mortgage was that the part repayment and part interest only wasn't deemed affordable under Santander's lending criteria. The change in LTV meant that the proposed lending was a greater risk than the previous lending and that meant Santander was justified in assessing affordability and applying current lending policy. As I've said, I think Santander assessed the application Mr H made. I don't think it was obliged to assess other – hypothetical – circumstances that may have worked for Mr H, such as him purchasing a different property to the one he wanted.

As Mr H's submissions haven't led me to change my provisional decision of 14 September 2023, my final decision is I don't uphold Mr H's complaint.

## My final decision

My final decision is I don't uphold Mr H's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 November 2023.

Gavin Cook
**Ombudsman**