

The complaint

Ms W complains that Santander UK Plc has treated her unfairly with how it has handled her mortgage over a number of years.

What happened

Ms W has a mortgage with Santander which has been in place since 2005, the mortgage is primarily interest only with a small part being on repayment. This mortgage was taken as a joint mortgage with her ex-husband from whom Ms W divorced in 2015. A consent order was granted as part of the divorce that Ms W would remain in the matrimonial house and the deeds were transferred into her sole name. Ms W's ex-husband would be entitled to a £10,000 lump sum upon the future sale of the house and it was agreed a charge to this effect could be placed on the property.

Ms says at this point Santander would not allow her to transfer the mortgage into her sole name as her income did not pass its affordability checks to allow this. This was despite the past payment history of her maintaining the contractual monthly payments on her own since her separation from her ex-husband.

Towards the end of 2015, Ms W contacted Santander and explained the impact her mortgage payments were having on her and how she felt a move to a fixed rate was beneficial. She highlighted that she had met her contractual monthly repayments while on the standard variable rate for almost 2 years and asked if she could be moved to a fixed rate which would reduce her monthly payments by over £200. She also thought her current repayment would not differ by much if she was allowed to move to a repayment mortgage but she was prevented from doing this because Santander would not allow the mortgage to be transferred into her own name.

Santander allowed a 2-year fixed rate product to be taken by Ms W in 2016 with a single signature authority.

In early 2016, Ms W was the victim of a serious attack and she explained this had some significant impact on her life with her mental health deteriorating as a result and her needing to take time off work. This resulted in Ms W needing to use the assistance of Step Change to support her finances with a debt management plan and she feels this restricted her ability to change her mortgage during this time.

In 2018, on a single signature authority again, Ms W took out a 5-year fixed rate product. This mortgage had an early repayment charge (ERC) which was set at a fixed rate of 5% for the duration of the product term. If Ms W wanted to repay the balance of the mortgage before 2 May 2023, this ERC would be applicable totalling around £9000.

In March 2022, an application was made to transfer the mortgage equity (TOE) into Ms W's sole name. Santander agreed to this but the application was not completed until March 2023. Ms W complained about this process and the delays. She also felt it was unfair that when the mortgage was transferred to her name, that she was still liable to pay the ERC if she wanted to change mortgage products before 2 May 2023.

Santander looked into Ms W's complaint and accepted it added a number of delays to the process and lost information during this time. In total it offered £400 to recognise the impact of its errors and the delays. But it didn't think it needed to reduce the ERC on Ms W's mortgage if she wanted to change product before May 2023. It said the ERC stood as was described in the mortgage offer and it could not allow this to be reduced.

Santander didn't think it would have been in Ms W's interest to move to a new rate in 2022 and pay the full ERC as it wouldn't have been financially beneficial and it didn't think it needed to offer a retrospective rate from that time now.

Our investigator looked at this complaint and didn't think Santander needed to do anything else. He didn't think there was any evidence to suggest that Santander had treated Ms W unfairly in the past when she has asked it about her options for a TOE in the past. And he didn't think there was anything to support a full application had been made previously.

Once Ms W was on a fixed rate, he didn't think Santander was wrong to say an ERC was chargeable if she wanted to change her mortgage before the end of the product term. This was set out in the mortgage offer as a requirement of the contract and not something he felt was unfair. And although there had been some errors made with the TOE, he felt the compensation offered in recognition of this was fair and reasonable.

Ms W disagreed with our investigator's findings. She provided further evidence to support her complaint including a decision from this Service that she felt was similar to her own circumstances and supported her position. She didn't think it was fair if Santander didn't have any records of previous conversations about being able to complete a TOE but she said this has been requested a number of times. And the delays in this being completed in 2022 meant she lost the opportunity to secure a rate sooner. She asked that the complaint be referred for decision because of this.

Our investigator explained why his opinion remained unchanged and why he didn't think the decision provided could be taken as an example of what should have happened with Ms W and her circumstances.

Because Ms W disagreed with our investigator, the complaint has been passed to me for 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.

I've decided not to uphold this complaint, for much the same reasons as our investigator. I know Ms W will be disappointed by this, but I'll explain why I think what Santander has offered to put things right is fair.

Ms W has shared some sensitive and personal information with this Service about the ordeal she went through. I am very sorry to read what she has experienced and am grateful for her providing this information as part of her submissions when this will have likely caused distress in doing so. While I may not comment on this or other information provided, I have taken everything into consideration when reaching my decision and determining whether I think Santander has acted unfairly. But my decision will focus on what I consider to be the crux of the complaint and the points most relevant to this.

Historical transactions

Santander has not raised a time bar objection to our consideration of Ms W's complaint, this is despite some of the events complained about being more than six years ago. As a result, I have considered the events in the entirety with the information I have available.

The first thing to consider is whether Santander should have done more to assist Ms W with her requests to complete a TOE sooner. I can see from email communication in December 2015, that Ms W explained to Santander that it was not allowing her to take the mortgage into her sole name. It doesn't confirm any application was made and there are no contact notes on Ms W's file to support this. This was around the time Ms W had received confirmation of her ex-husband being removed from the property deeds and I think it is likely that conversations about her taking the mortgage into her sole name would have happened. This is both demonstrated by the email she's provided and it being the next logical step.

As I've said though, there does not appear to be a full application ever made. Had this happened, Santander could have been expected to forgo the affordability assessment if Ms W didn't require any additional borrowing and if the proposed transaction was in her best interest. I don't know if additional borrowing was required. And while Ms W's ex-husband was entitled to £10,000 from the property if sold, Ms W wasn't required to repay this immediately. But it might have been a consideration at the time.

Equally, even if Santander was able to forgo its affordability checks and it was able to complete the TOE sooner, I don't know what Ms W would have done with the mortgage in her sole name. While she highlighted she wanted to move all of the mortgage to repayment in 2015 and she believed this to be only a small increase to her contractual monthly payment at the time, it isn't guaranteed she would have chosen this option. And Santander would have needed to have agreed to this application too.

So even if Santander should have allowed a TOE sooner – and I can't say for certain based on the information I have that this is the case – I'd need to be sure this would have resulted in Ms W acting differently. I cannot be satisfied this is the case.

Has Santander acted fairly saying and ERC is chargeable.

In early 2016, Ms W's mortgage was moved onto the fixed rate she wanted for 2 years and Santander allowed this with single signature. When this product ended, she took out a new 5-year fixed product with single signature authorisation and it is the ERC on this product that Ms W has complained about now.

The mortgage offer for the 5-year fixed rate mortgage taken in 2018 sets out that the ERC is payable at a rate of 5% for the duration of the fixed rate period. And while some products have a sliding ERC, a bank is allowed to determine what it feels is appropriate as a charge for any borrowing it has provided.

Ms W has asked that Santander allow her to look at rates from July 2022 when her TOE application was accepted and should have been completed and these should have been available to her without the ERC being applied. With interest rates increasing significantly in 2022 and into 2023, it is understandable why Ms W feels as though she has lost out with the delay in her TOE application being completed and her not being able to take a fixed rate product when she wanted. But even if it had been, I don't think Santander has acted unfairly when it has said the ERC was chargeable if she wanted to move her mortgage to a new product sooner. As I've said, the ERC was set out within the mortgage offer and this explained what Ms W would pay if the mortgage was repaid sooner, this includes moving to a new product. I don't think it would be fair to ask Santander to waive this

Santander said in its final response to the complaint that it would look to offer a rate from

January 2023 if rates continued to increase beyond this and Ms W was not able to obtain one. At this point it is likely she might have been able to obtain an offer for a product that started after her fixed rate expired and the ERC would not have been chargeable. I think this was a fair offer and if Santander hasn't provided these options to Ms W, it should ensure she hasn't lost out as a result.

Delays in TOE

Santander has accepted the TOE did not complete as quickly as it should have done so I don't need to determine if there was an error here. As I've said, I think the impact of this is limited as Ms W's mortgage was on a fixed rate product that did not expire until May 2023 and while I acknowledge she will have wanted to have her ex-husband removed from this as soon as possible. And she has provided evidence to demonstrate the conversations being had between themselves about these issues. I can't say she would have done anything differently had this happened sooner.

The ERC was applicable if the mortgage was changed before May 2023 and so Ms W would have needed to decide whether the £9000 fee made financial sense in the long run. I am not persuaded she would have paid this based on her challenge to the amount now and I don't think it would be fair to ask for this to be waived as I've already explained.

I think the compensation for the delays in the TOE being completed as quickly as it should have been are fair and in line with what I'd expect to see. Ms W and her ex-partner were keen to have this financial connection broken and it will have added stress to this. But I feel the crux of this complaint and distress is whether Santander should have allowed Ms W to move to a new product sooner without the ERC being applied and I don't think there has been an error here. So I see no reason to ask Santander to increase the award already made.

My final decision

For the reasons I've explained above, I do not uphold Ms W's complaint as the redress offered is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 12 February 2024.

Thomas Brissenden
Ombudsman