

The complaint

Mrs E is unhappy with how Santander handled her attempt to port her mortgage rate to a different property. She considers it unfair that Santander has retained the full early repayment charge (ERC).

What happened

Mrs E took out a repayment mortgage with Santander in 2017. It was originally taken out on a residential basis but was converted to a 'consent to let'. Around January 2020, Mrs E took out a 5 year fixed rate deal. The rate was fixed at 2.99% until 2 April 2025.

The Mortgage Offer show that, as is typical with such an arrangement, the rate came with an ERC – an amount that Mrs E would need to pay if the mortgage was repaid before the end of rate term.

In early September 2022, Mrs E says she contacted Santander to ask whether she could port the rate to a different property and that she was told this would be possible. She redeemed the mortgage (a little over £68,000) shortly after and paid the applicable ERC.

Mrs E contacted Santander shortly after that, to discuss porting the rate and borrowing a total of £160,000 in joint names with her husband. This was to buy the property they were already living in, which Mrs E's mother in law owned and in which they had been renting. Santander's representative took details of Mrs and Mr E's income and expenditure as a first stage in the process. Based on the information gathered, they informed Mrs E that borrowing of £160,000 was showing as unaffordable. After clarifying some of the income and expenditure information and altering the proposed mortgage term, the representative told Mrs E that the maximum it could lend was £102,600.

In November 2022, Mrs E made an application through a mortgage broker to borrow £126,900 in her sole name. The application was declined on affordability grounds.

Mrs E complained shortly after. She said Santander kept dropping the amount it was willing to lend and that the situation regarding the ERC was unfair.

Santander didn't uphold the complaint. It said the proposed borrowing had been unaffordable and that it couldn't see that it had made any error.

Mrs E referred her complaint to the Financial Ombudsman Service in December 2022. After being made aware that the case had been allocated to an investigator here, Mrs E said that she had made another application in February 2023 to Santander directly and that this had been declined on the grounds that an application would need to be in joint names with her husband, due to them both living in the property and them having previously held a joint mortgage.

Because the February application had been made after the complaint was referred to this Service, Santander would ordinarily need to have the opportunity to consider Mrs E's concerns about it being declined, before we could get involved. The investigator asked Santander if it was willing to consent to us considering the concerns about the February application and it said that it was.

The investigator issued an initial assessment not upholding the complaint. They said they were satisfied both the November and February applications had been fairly considered. They said that as the November application had been made through a broker, Santander hadn't needed to advise Mrs E about its lending criteria and it was reasonable for Santander to have relied on the information provided in the application.

Mrs E didn't agree. She said she'd only gone through a mortgage broker in November 2022 because when she first contacted Santander direct in September 2022, the information it provided was inconsistent and incorrect, so she felt going through a broker was her only option.

She said Santander should've told her before the February application (following both the initial contact in September and in response to the broker application in November) that she wouldn't be able to apply for a mortgage on the property in her sole name, with her husband also living in the property. Mrs E said she could have understood if the investigator had suggested that she and Santander should bear joint responsibility (i.e. need to pay some but not all of the ERC), but not that she should pay the whole thing.

The investigator still thought the complaint shouldn't be upheld, so the case was escalated for fresh review by an Ombudsman.

In the meantime, the investigator asked Santander to provide recordings of the calls between Mrs E and Santander on 8 and 15 September 2022. Santander provided a recording of the 15 September call but said it couldn't find a recording of the 8 September call. It said this particular call was likely only retained for 6 months due to it being a 'service' call and not one with a mortgage adviser.

I issued a Provisional Decision (PD) in November 2023. In it, I said:

"In order to uphold this complaint and say that Santander needs to do something different, I'd need to find that it has made an error or otherwise treated Mrs E unfairly. Whilst I acknowledge that Mrs E feels strongly about this situation, I haven't found that to be the case.

Under the terms of Mrs E's previous mortgage, to be eligible for a refund of the ERC, she would have needed to have entered into a new mortgage within 3 months of the prior mortgage having been redeemed. Mrs E redeemed her mortgage on 14 September 2022. This means that when Mrs E applied direct to Santander in Feb 2023, this was already outside the timeframe to receive a refund of the ERC.

Mrs E's complaint is that it's not fair that Santander has retained the whole ERC, so my investigation and findings are focused on the period up to 14 December 2022.

To determine this complaint, I've needed to consider the following questions:

- Did Santander give Mrs E incorrect information in September 2022 when she enquired about porting her rate?
- Did Santander handle the November broker application, fairly?
- Should Santander have made Mrs E aware, before February 2023, that any application would need to be in joint names?

I've considered these issues in turn.

Did Santander give Mrs E incorrect information in September 2022 when she enquired about porting her rate?

Mrs E says that when she first made contact in September 2022, she was told that it would be possible to port her previous rate. Santander says it doesn't have a recording of the call that took place on 8 September 2022. Although ideally the recording would be available to listen to, I consider it unlikely to be material to the outcome of the complaint. I say this because Mrs E has said she was told on this call that she would be able to port her rate in the event she were to redeem her existing mortgage.

Taking this at face value, such a statement wouldn't have been incorrect at that time, with the caveat that it would be subject to Santander's lending criteria and underwriting. I can't know for sure whether and to what extent the person Mrs E spoke to explained this, but Santander's representative wouldn't have been in a position to guarantee that the rate would be ported and that a new mortgage application would be successful. So, I think it's likely some kind of caveat would've been provided.

I'm also mindful that Mrs E's mortgage offer relating to the loan she redeemed says under section 8 'Flexible features' "You have the right to transfer this loan to another property. You must meet conditions set out in the mortgage conditions under 'Transferring your loan to a new mortgage', **You must also meet our lending criteria and pass our affordability assessment at the time**" (my emphasis).

Mrs E has said that in the following interaction later in September, the adviser wasn't helpful and, that they provided inconsistent and inaccurate information and that she didn't have confidence in them. I've listened to a recording of the call that took place on 15 September. Mrs E tells Santander's representative that she wants to port her previous rate and apply jointly for a new mortgage of £160,000. Santander's representative explains there are three steps in making a mortgage application, with the first step being an initial evaluation of their income and expenditure.

If Mrs E had been wanting to port her rate on a like for like basis and without any additional borrowing, it probably wouldn't have been appropriate for Santander to undertake its usual affordability checks. However, Mrs E was seeking to borrow more money, so it wasn't unreasonable for Santander to want to check affordability.

During the call Mrs E supplies details of her and her husband's income and expenditure details, as well as details of their credit commitments at the time. Based on the information provided, Santander's representative tells Mrs C that the £160,000 is showing as unaffordable.

Normally, where the previous mortgage is in someone's sole name, the rate can only be ported where the subsequent mortgage is also in someone's sole name. Assuming that was

the situation here, Santander's representative ought to have explained this to Mrs E. Having said that, given that the amount requested was showing as unaffordable in joint names, it's highly likely that if Mrs E had pursued a sole application at that point in time, it would also have come out as unaffordable.

Bearing all of this in mind, I don't currently find that the way Santander approached the interactions with Mrs E in September 2023, prejudiced her position regarding the ERC.

Did Santander handle the November application via broker, fairly?

Mrs E has said she only applied through a broker in November 2022 because she found the discussions that took place direct with Santander (described above) unhelpful. I know Mrs E has said that the information Santander's representative gave was inconsistent and inaccurate, but (my above comments aside about the ability to port a rate from sole name to joint) I did not find this to be the case.

My take of the call is the representative was following the normal process and trying to assist Mrs E. Ultimately, the representative told Mrs E that the amount she wanted to borrow jointly with her husband was showing as unaffordable, based on the information she had provided about their income and expenditure.

Regardless, it was Mrs E's decision to apply through a broker in November and I cannot reasonably attribute this decision to an error on Santander's part.

The November application was declined on affordability. I've reviewed the underwriting file and am satisfied that Santander fairly considered the application against its lending criteria. I know Mrs E has said that Santander kept coming back with different (lower) figures, however this was information provided by the broker. I do appreciate that the decision to decline the application in November will have been disappointing, but I cannot say this was due to Santander making an error.

Should Santander have made Mrs E aware, before February 2023, that any application would need to be in joint names?

As mentioned earlier, the February application was outside of the relevant timeframe for Mrs E to get a refund of the ERC. Mrs E says that Santander ought to have made it clear earlier (in November when applying through a broker and before then during the contact direct in Sept), that it wouldn't lend to Mrs E only with her husband living in property.

When Mrs E contacted Santander in September 2022, she and her husband were proposing to apply for a mortgage in joint names, so the issue that was communicated in February 23 wouldn't have come up. Both that initial application in September and the broker application in November were turned down on affordability, which is often one of the first things to be evaluated.

Where a lender establishes that it isn't prepared to lend based on part of its lending criteria (such as affordability), there is no requirement for it to go on to consider all other criteria. Santander told the broker it wasn't prepared to lend the amount requested in November 2022 and it was entitled to reach this conclusion.

Bearing this in mind, I can't reasonably say that Santander made an error by not telling Mrs E in September or November 2022, that an application in her name only wouldn't be accepted with her husband living in the property. In any case, the subsequent direct application in February 2023 was outside the ERC period, so even if it was the case that Santander ought to have done more in November 2022 (which I haven't found to be the case), this didn't and wouldn't affect the situation regarding payment of the ERC.

Notwithstanding the timing of the February 2023 direct application, Mrs E has made the point that it isn't that unusual for someone married to have a mortgage in their own name, with their spouse also living in the property. I appreciate the point Mrs E is making. That said, it seems Mrs E and her husband have prior joint financial history such that Santander was concerned this could amount to Mrs E's husband having a financial interest in the property.

Regardless, because the direct application in February 2023 was outside of the ERC period, this did not affect Mrs E not getting a refund of the ERC.

In conclusion

I do appreciate Mrs E feels strongly that reason Santander turned down her applications for a new mortgage was because it was financially advantageous for it to retain the ERC. However, the evidence suggests that the applications in both September and November were legitimately declined on affordability grounds. Bearing this in mind and taking everything else into account, I am not currently minded to uphold this complaint."

I asked for any further evidence and/or arguments to be provided by 29 November 2023. Mrs E responded disagreeing with my provisional assessment. In summary, she said:

- It is unacceptable the call before the mortgage was redeemed isn't available. Without the call recording being available, it's not possible to say what was likely, without proof.
- The decision to pay the ERC and port the mortgage was based on what she had been told during this call. Santander would or ought to have known and advised at this point that a port wouldn't be possible, because of the need for the borrowing to be in her sole name and what it later advised (in February) about this not being possible.
- If she had been told the correct information, she wouldn't have redeemed the existing mortgage and instead would have waited until the term had expired and no ERC was payable.
- In the call of 15 September 2022, they were originally offered less than the amount that had just been redeemed (£68,000). This is what caused them to lose confidence and start to worry about the ERC.
- It remains unfair that Santander declined the whole of the application in November 2022. Given the situation with the ERC, the fair thing for Santander to do would have been to offer what it could lend and allow her to accept or decline that. Given the situation with the ERC and rising interest rates, there remains a conflict of interest in that it was to Santander's advantage to not offer any lending at that point.

- It remains the case that the stance Santander took in February 2023 is not its official stance, as has been proven by information provided to the investigator, which shows that Santander would accept a sole application as long as the other party signs the required documentation.

Santander didn't provide a response.

I've gone on to reach a 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.

Having done so, I still do not uphold this complaint. I do appreciate this will likely come as a disappointment to Mrs E, but I hope my explanation helps her to understand how I've come to this conclusion.

I want to re-iterate my role as an Ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the key points when I set out my conclusions and my reasons for reaching them. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.

I consider that the same fundamental questions remain.

Did Santander give Mrs E incorrect information in September 2022 when she enquired about porting her rate?

I note the concerns Mrs E has raised about the lack of a recording for the first call that took place on 8 September 2022. I have nothing to add to what I have already said about this in the PD (which forms part of this Final Decision).

Regarding the call that took place on 15 September, Mrs E has said that she had particular concerns about the advice received during that call, when the amount the adviser originally said that Santander could lend, was less than the amount that had been outstanding and had just been redeemed on her previous mortgage.

Mrs E is correct that the amount the adviser originally mentioned (around £42,000) was less than the amount she had just redeemed on her previous mortgage (around £68,000). I can understand this may have been surprising and probably somewhat disconcerting given that the idea was to port the previous amount and then borrow more on top. Notwithstanding that the adviser (after clarifying certain details around income and expenditure) increased the figure Santander could lend, I still find that nothing that was discussed during that call meant that Mrs E had no choice but to stop at that point and/or make her next application in November through a broker. Nor is it material to the outcome of the complaint – as I will go on to explain later.

I will return to the relevance of the call that took place on 8 September later on in the decision, but that aside I still find (in line with what I said in the PD) that the way Santander approached the interactions with Mrs E on 15 September 2023, didn't prejudice her position regarding the ERC.

Did Santander handle the November application via broker, fairly?

Mrs E has said that given the circumstances surrounding the November 2022 application (that the ERC had already been paid), Santander shouldn't have declined the whole of the application and instead should have said the maximum that it was willing to lend – so that any loss associated with the payment of the ERC could be minimised.

It remains relevant and significant here that the application in November 2022 was made through a broker. Santander's obligation was to assess the application for borrowing that had been made and communicate to the broker its decision. This is what it did. I appreciate that Mrs E thinks it ought to have done more, but I disagree. I've also noted that Mrs E has emphasised her concerns that any lending decision by Santander would be influenced by the fact it stood to gain from declining the application, as it would retain the ERC and have any borrowing on a higher rate of interest. However, as set out in my PD, I'm satisfied that Santander fairly evaluated the November 2022 application and that its decision to decline the application was in line with its lending criteria at the time.

Should Santander have made Mrs E aware, before February 2023, that any application would need to be in joint names?

Here, it is necessary to return to the call that took place on 8 September 2022. This is significant, because Mrs E has made the point that it is on the basis of what she understood from this call, that she took the decision to repay her existing mortgage and pay the ERC, as she would be able to port the rate and take out additional borrowing.

Mrs E has made the point that given that an application to port would need to be on a like for like basis (in her sole name) and what Santander said in February 2023 when it declined her sole application for borrowing (that it wouldn't lend to her on a sole basis with Mr E living in the property, given their financial history), she could never in fact have ported the mortgage.

I think this is right. However, I find that it doesn't make a difference to the outcome of the complaint. Whilst it remains unhelpful that we don't have a recording of the call that took place on 8 September 2022, the crucial thing here is that a lender would not realistically get into the level of detail about the proposed borrowing, that would've been necessary to draw the conclusion that Mrs E wouldn't be able to port her previous rate.

The call on 8 September 2022 would always be one based on high level principles. As set out in my PD, Santander's representative wouldn't have been in a position to guarantee to Mrs E at that stage, that her application to port with additional borrowing would be successful. The application would always be subject to Santander's lending criteria and underwriting.

A lender could not reasonably have been expected to know at that stage that a sole application wouldn't be successful because of Mrs E and her husband's prior financial arrangements combined with the fact that he would be living in the property. This was always something (alongside other things like affordability) likely to become apparent and to be engaged with at a later stage after an application had been made. So on balance, I can't reasonably conclude that Santander ought to have advised Mrs E at that early stage, that a rate port (plus additional borrowing) wouldn't be possible. And because of this, I don't find that it has caused Mrs E a loss that it needs to put right.

Finally, I note that Mrs E has re-iterated that that the stance Santander took in February 2023 is not its official stance, as she says has been proven by information provided to the investigator, which shows that Santander would accept a sole application as long as the other party signs the required documentation.

I covered this point in my PD and have nothing further to add.

My final decision

My final decision is that I don't uphold Mrs E's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 January 2024.

Ben Brewer
Ombudsman