

The complaint

Mr D's complaint about Santander UK Plc (Santander) relates to the manner in which Santander handled his request to remove his wife's name from their joint mortgage account.

What happened

Mr D and Mrs D owned a property I shall call B Rd which they had mortgaged to Santander on a two-year fixed rate buy-to let mortgage (the mortgage). It was a term of the mortgage that if it was redeemed prior to the end of the fixed term Mr and Mrs D would have to pay a 3% early repayment charge (ERC). He says the property was purchased for £220,000, although at the time of his complaint was valued at around £250,000, with a mortgage balance of approximately £165,000.

Mr D and his wife decided to divorce and so sold their main residence. The majority of the net sale proceeds were to be paid to his wife in accordance with the agreement they had reached regarding marital assets. Mr D says they also agreed that Mrs D would transfer her interest in B Rd to him. Consequently, Mr D asked Santander if they would agree to remove his wife from her obligations in relation to the mortgage account which in principle it said it would. To facilitate the transfer of the mortgage into his sole name, Mr D says Santander agreed to lend him £129,000. As this was less than the amount owed on the existing mortgage Santander advised him that he would have to make up the difference of £36,000, which he said he was happy to do. He also says Santander told him there would be no ERC payable in this circumstance.

Mr D explained to Santander that the rental figures they had used were too low and the achievable market rent was higher. Santander said he if he reapplied, then based on those figures, they would be prepared in principle to lend up to £150,000 and again they would not charge an ERC. Mr D decided to make another application, but it was in the course of so doing that his main residence was sold. Mr D decided to move in with his son until he found somewhere else to live or B Rd became available when the tenants moved out at the end of January 2023.

Santander then said it couldn't proceed with the mortgage application because Mr D no longer had a residential address, even though when he had commenced the application he did. Mr D feels this is unfair because he argues he did have a residential address, that being his son's home. Mr D asked Santander if it would waive the ERC if he went to a new lender, but it refused. He explained that if he could get the title and a mortgage to B Rd into his sole name, then he would be able to reclaim a significant sum from HMRC that he had paid by way of additional stamp duty when originally purchasing the property on a buy-to let basis. As the window for reclaiming that sum has now closed Mr D feels that Santander should reimburse for the amount he was unable to reclaim.

Santander don't believe they have done anything wrong and say they have adhered to their policy. Mr D was unhappy with Santander's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that Santander hadn't

done anything wrong and had dealt with the complaint fairly. Mr D didn't agree and asked for the complaint to be passed to an Ombudsman for 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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence.

Transfer of the mortgage account in Mr D's sole name

I understand that Mr and Mrs D reached a legal agreement regarding their marital assets, one of which was B Rd. However, that legal agreement does not mean that Santander had any obligation to change the contractual arrangements which existed as between itself and Mr and Mrs D in so far as it related to the mortgage on B Rd. That said I can see that Santander were seemingly in principle agreeable to providing a new mortgage to Mr D, albeit of a lesser amount, to which he would have contributed a cash lump sum to allow the transfer to proceed.

The sticking point arose when Mr D moved in with his son, following the sale of his main residence. In one sense I can see Mr D's argument that he still had a residence since he was living with his son. However, this complaint cannot be determined by simply considering the ordinary definition of residence. What I am required to do is to look to see whether Santander dealt with Mr D fairly and to do that I need to consider whether it acted in accordance with its own policies and procedures. It's not my role to recommend how financial businesses should conduct or arrange their commercial operations and processes – that's for them to determine. I don't have the power to make rules for financial businesses, assess or direct that they change their policy or procedures. I only look at what happened in the circumstances of the individual complaint and check they followed their rules and procedures and have applied them fairly.

Santander's policy for buy to let mortgages states at '12.7.2 Ownership'. *We will only accept applications where at least one applicant is an owner of a residential property in the UK.'*

Quite obviously, by this criterion, Mr D did not own a residential property when he applied. I anticipate the argument that he did when he commenced the application, but to my mind the point at which this criterion is to be considered is the point at which Santander were deciding whether or not to grant the mortgage. So, my view is that Santander have applied their policy fairly and were correct to decline Mr D's application.

ERC

When a lender offers a fixed rate mortgage product, both the lender and borrower are tied into the fixed rate for the duration of the term. There's a cost to the lender in raising the funds to lend, which it recovers with the interest payments. If the borrower repays the mortgage during the fixed rate term, the lender will stop receiving income in the form of monthly interest, and there is a risk the lender won't recover its own costs incurred by raising the funds to lend. This means there is usually a clause in the mortgage agreement which allows the borrower to exit the mortgage early in return for paying an ERC. It's important to

note that an ERC is not designed to be a penalty for the borrower. It's there to cover the lender's costs.

Mr D doesn't dispute the existence of the ERC nor the amount, and it is made clear in the mortgage offer he received when and how it would be applied. Mr D has pointed to the fact that on two occasions Santander were prepared to waive the ERC and argues that it is unfair that it then declined to do so. However, the circumstances were materially different since Santander were remaining as the lender whereas when it refused to waive the ERC that was when Mr D was wishing to move to another lender. So, I can't say that Santander have acted unfairly here.

HMRC Stamp Duty Reclaim

The ability to successfully reclaim the stamp duty depended upon Mr D having the mortgage account transferred into his sole name. For the reasons I have given above this was not possible, but this was not due to any fault on the part of Santander. It must follow that any loss Mr D feels he has cannot be Santander's responsibility.

Delay

Mr D has argued that Santander delayed the application process which resulted in his main residence selling before his application completed. It is unclear as to the exact date upon which Mr and Mrs D sold their main residence. However, I am satisfied that when Mr D made his first application the property had not been sold. When he received the offer to lend him £129,000 he could have proceeded at that point, but he chose to make a fresh application. At that point he still owned his main residence, and it was during that application that he sold the property. Mr D has said that the property sold very quickly, but of course the ultimate decision as to when the property was sold lay with him and his wife. So, I can't say that there is any evidence of delay here on Santander's account. So, although Mr D will probably be disappointed with my decision, I can't say Santander has acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 November 2023.

Jonathan Willis
Ombudsman