

The complaint

Mr and Mrs M's complaint relates to a buy-to-let (BTL) mortgage they had with Santander UK Plc. They are unhappy that they were unable to port the mortgage to a new rental property and believe they were given incorrect information by Santander about the process. This meant that they had to pay an early repayment charge (ERC) when they repaid the Santander mortgage. It also meant that they lost a non-refundable deposit on a new property because they couldn't afford to go ahead with the purchase, having paid the ERC and higher interest rates.

What happened

Mr and Mrs M took out a BTL mortgage with Santander in 2020. A new interest rate product was attached to the mortgage in October 2020, which had an ERC associated with it if the mortgage was repaid within the product term.

In January 2023 Mrs M called Santander and asked about porting the mortgage to a different rental property. The porting process was explained, and she was also told Santander no longer sold BTL mortgages directly, so she and Mr M would need to use an independent mortgage broker to complete the process. A porting window was available if needed at the time – there could be up to three months between the old mortgage ending and the new one beginning – and the ERC would be refunded.

Mr and Mrs M have told us they reserved a new build property on 28 January 2023. This involved them paying a reservation fee of £500, which was not refundable if the purchase didn't complete.

On 20 February 2023 Mrs M called Santander back to complain, as they had been told by the broker they had approached for assistance that they couldn't port their mortgage.

Santander responded to the complaint in its letters of 23 February and 20 March 2023. It confirmed that porting a BTL mortgage could not be done with Santander, it had to be done through a broker. It went on to highlight that Mrs M had said the broker had told them they could only borrow a certain amount. This indicated to Santander that Mr and Mrs M had been told they could not have the mortgage they wanted, rather than that they could not port. Santander recommended they speak to their broker. It didn't consider it had done anything wrong and so rejected the complaint.

The sale of Mr and Mrs M's existing rental property completed on 24 March 2023 and the mortgage was paid off. An ERC was applied.

Mr and Mrs M were not satisfied with Santander's response and asked the Financial Ombudsman Service to consider their complaint.

One of our Investigators considered Mr and Mrs M's complaint, but she didn't recommend that it be upheld. Essentially, she explained that there was no evidence that Santander had done anything wrong, as no application had been made and declined. The Investigator highlighted that porting was only allowed if a mortgage application for the new property was

accepted, and Mr and Mrs M had correctly been told that any such application would be subject to assessment and was not guaranteed to be accepted.

Mr and Mrs M didn't accept what the Investigator had said. They said that the reason they had referred the complaint was because they were dissatisfied with Santander's response. They said when Mrs M spoke to Santander in January 2023 she believed having to apply to port in writing was a formality and was not aware that a full mortgage application needed to be made and would be assessed. Mr and Mrs M also said Santander had not addressed the issue of affordability in its responses or given them the opportunity to discuss the issue with it directly. They also provided a statement from the broker they had approached, which said that Mr and Mrs M had failed Santander's affordability criteria. Mr and Mrs M asked that the complaint be escalated if the Investigator couldn't change her conclusions.

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 would at this point explain that mortgage brokers are provided with systems that complete an initial assessment of a potential application to see if it is worthwhile for a full application to be made. There is no involvement of Santander in this process, and it will not have any record of any such assessment being done – this would only be held by the mortgage broker. I have reviewed the information Mr and Mrs M's mortgage broker provided and it appears they could not submit an application for a new BTL mortgage, to which they could have ported their existing interest rate product, because they failed the affordability checks. So effectively, Santander did not decline an application or refuse them anything; rather their circumstances meant that no application was made.

Mr and Mrs M have said they believed applying to port was simply a formality and no checks or assessment of their request would be done. While they may have believed that; it was not the case and they would not have been told it was. It is standard throughout the mortgage industry that in order to port an interest rate product to a new mortgage, that mortgage has to be applied for and the application accepted. The process of accepting an application involves a lender determining if the application – the individuals, their circumstances and the property – falls within its lending criteria as they are at the time. This was clearly set out in the documentation Mr and Mrs M were given. In addition, Mrs M has confirmed she was told they had to apply to port, and any such application had to be made through a mortgage broker. At the point Mr and Mrs M contacted the mortgage broker it was then the broker's responsibility to explain the process.

It is not uncommon for existing borrowers to assume that as they have a certain amount of borrowing, they will be able to have that amount again if they change property. Unfortunately, regulation and industry guidance vary over time, as does a lender's appetite for risk, which means that lending criteria also change over time. This sometimes means that even where previous borrowing has been approved, new borrowing of the same amount won't be acceptable to the lender. As long as a lender is applying its criteria equally to all potential customers, that is not something we can find fault with a lender for. Although I know that Mr and Mrs M will be disappointed with my findings, I am not persuaded Santander did anything wrong in this case or that it can be found responsible for their claimed losses.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 2 January 2024.

Derry Baxter
Ombudsman