

The complaint

Mr and Mrs S have complained that Santander UK Plc declined their request to port (transfer) their mortgage interest rate product onto another mortgage on a new property.

To settle the complaint, Mr and Mrs S want Santander to compensate them for financial loss, distress and inconvenience.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat all the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr and Mrs S had an interest-only mortgage with Santander of about £311,000, originally taken out in 2007. In 2021 they wanted to move home and reduce their mortgage, borrowing £137,500 and porting their interest rate product. They found a property, and their broker submitted an application for the mortgage. The broker told Santander that the repayment vehicle would be a future sale of the property.

The new property was 90 miles away from Mr S's place of employment. Mrs S had been made redundant during the pandemic and was not working. This gave Santander cause for concern, and questions were put to the broker about Mr and Mrs S's financial circumstances.

In error, Santander issued a mortgage offer; the bank acknowledged it shouldn't have done this, because it considered the mortgage unaffordable. Nevertheless, Santander agreed not to rescind this, and the broker confirmed Mr and Mrs S wanted to proceed.

In June 2021 Mr and Mrs S moved their mortgage onto a new interest rate product, that had no early repayment charge, still on an interest-only basis. This was at a variable rate of 1.19% over Bank of England Base Rate.

Unfortunately the purchase fell through for reasons unconnected with Santander. Mr and Mrs S found another property to buy. However, they wanted an increased mortgage of £185,000, which Santander wasn't able to offer, despite the application being assessed at senior level.

Mr and Mrs S redeemed their mortgage in June 2022, when they moved to their new property which they bought free of mortgage.

Mr and Mrs S complained to Santander. The bank didn't uphold the complaint about its lending decision, but offered £250 for any upset caused. Santander also reimbursed the survey fees Mr and Mrs S had paid, incorrectly paying them £777 when the fee had actually been £430. As this was in Mr and Mrs S's favour, Santander didn't ask for the difference back.

Dissatisfied with Santander's response, Mr and Mrs S brought their complaint to our service. An investigator looked at what had happened, but didn't think the complaint should be upheld. He was satisfied that, notwithstanding Financial Conduct Authority (FCA) regulations about porting, Santander was entitled to consider affordability. The investigator thought that the questions Santander asked about this were reasonable, and, given the broker's responses, the concerns Santander had about affordability of the mortgage were legitimate.

Mr and Mrs S disagreed with the investigator's findings and asked for an ombudsman to review the complaint. They said that Santander had told them at the outset that they could port the full £311,000 without any fuss. They also said that they weren't aware Santander had agreed to let the mortgage offer on the first property stand; if they'd known this, they'd have increased their offer so they wouldn't have lost that property. Mr and Mrs S explained that the plan was for Mrs S to find a job in their new area, and they'd never been told that Santander had said the mortgage was unaffordable.

Because the matter is unresolved, it falls to me to issue a 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've reached the broadly same conclusion as the investigator. I don't think Santander treated Mr and Mrs S unfairly when it declined their application for a new mortgage. These are my reasons.

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

These rules are reflected in Santander's 'Loyal Movers' policy. However, this doesn't mean that, where a customer asks to port a mortgage interest rate product, Santander isn't required to carry out any assessment of affordability. Santander can, if it chooses, dispense with an affordability assessment, but it doesn't have to.

I'm not persuaded that Mr and Mrs S were assured they could port their mortgage "*without any fuss*". Any mortgage application is always subject to a full application and an assessment of affordability. And in this case, there *were* changes that were material to affordability. Mrs S had been made redundant, and Mr S's declared earnings were just 16.5% of his income at the time of the original mortgage application in 2007.

Given this, I think it was reasonable for Santander to consider whether or not the changes Mr and Mrs S wanted to make to the mortgage contract would be affordable and/or in their best interests.

In this case, the information provided on the application about Mr and Mrs S's circumstances gave Santander cause for concern about affordability. Mr and Mrs S didn't appear to have sufficient income to sustain the mortgage, and Santander was told Mr and Mrs S had only been able to do so by using their savings, which could not be considered as a form of income.

Santander accepted it issued the offer on the first property in error. Mr and Mrs S say they weren't aware that this hadn't been withdrawn, but the notes with the broker show that he knew this and even confirmed to Santander that Mr and Mrs S had wanted to continue with that mortgage offer. I therefore can't hold Santander responsible for Mr and Mrs S not offering more on that property in order to try to secure it.

Mr S's income was largely commission-based, and so earnings over his basic pay of £16,500 could not be considered as guaranteed. Mr and Mrs S's two sons had been living with them and contributing £1,000 towards the household expenses, but this would reduce to £600 after the move. Again, this wasn't a source of income that Santander could consider.

Santander also had concerns about Mr S having to commute 90 miles for his job, although the broker explained that he would be living with his elderly mother during the week, providing care for her and returning to the family home at the weekend.

I think Santander's concerns around affordability were legitimate, given the change in circumstances since Mr and Mrs S had taken out the mortgage in 2007. Overall, I'm satisfied

that Santander reached its decision fairly, after taking into account all relevant factors. Santander considered the information the broker provided in response to its questions, and referred the application to senior colleagues. Santander therefore gave the application proper consideration, but ultimately wasn't able to offer a new mortgage.

I'm also not persuaded that Santander should have disregarded the affordability assessment and allowed the application in the best interests of Mr and Mrs S. Even though they were downsizing and wanted to reduce the amount of borrowing, the concerns Santander had about long-term sustainability of the mortgage were, in my opinion, justified. Mr and Mrs S wanted to borrow more than eleven times Mr S's declared income; as there were no other acceptable sources of income, I am not persuaded it would have been in Mr and Mrs S's best interests for Santander to provide Mr and Mrs S with a mortgage in those circumstances.

I know this isn't the outcome Mr and Mrs S wanted, but I'm not persuaded that Santander was wrong to decline to offer a mortgage, given Mr and Mrs S's situation. I am glad to note that Mr and Mrs S were able to go ahead with their purchase without the need for a mortgage. This means that they won't have to sell and downsize (again) at the end of the mortgage term, which is what the broker told Santander they'd be doing if they'd taken out a new mortgage.

In addition, if Mr and Mrs S had ported the tracker rate product they'd switched to in June 2021, their repayments on a balance of £185,000 would now be almost £1,000 per month, which is more than they were at the point where the £311,000 mortgage was switched to the new product. With no guarantee that Mrs S would have been able to secure suitable employment, and with Santander's concerns around Mr S's income, the evidence is persuasive that porting the mortgage would not have been in Mr and Mrs S's best interests.

I note Mr and Mrs S say that they'd never been told that the mortgage offer on the first property hadn't been rescinded, or that they'd never been told that affordability was an issue. But these matters are clearly documented in the exchanges between Santander and Mr and Mrs S's mortgage broker. Santander had no direct contact with Mr and Mrs S during the application process, only their broker. If Mr and Mrs S believe they weren't provided with relevant information, they'll need to take this up with the broker.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 31 July 2023.

Jan O'Leary
Ombudsman