

## **The complaint**

This complaint's about a mortgage Mr H and Miss K used to hold jointly with Santander UK Plc. After they separated and put the mortgaged property up for sale, Mr H applied for a new mortgage in his own name to buy another home, hoping to port the interest rate product from the joint mortgage to the new one. However, Mr H's application for a new mortgage with Santander was turned down. He ended up taking a mortgage with a different lender at a higher interest rate; meanwhile he and Miss K incurred an early repayment charge (ERC) on redemption of the joint Santander mortgage.

Mr H complained that the decision to refuse him a new mortgage was unfair; Miss K joined the complaint (because the ERC was incurred on the joint mortgage and is therefore her liability as well as Mr H's) but all of our dealings have been with Mr H.

## **What happened**

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr H and Miss K being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr H and Miss K took the mortgage out in 2017, on the advice and recommendation of a third party intermediary; it was for just under £740,000 inclusive of fees, on an initial interest rate of 2.19% fixed until July 2022. The loan to value (LTV) ratio was 75%, and the mortgage repayment strategy was split between interest-only (£493,500) and capital repayment (£246,250). In June 2022, Mr H and Miss K agreed a successor rate deal fixed at 2.49% until September 2024.

At the beginning of 2023, Mr H applied to Santander for a new mortgage in his sole name; the amount he wanted to borrow was around £425,000, all on an interest-only basis. The proposed LTV was 54%, Santander rejected the application, citing a default on Mr H's credit file for an unpaid debt, as well as another mortgage commitment Mr H had with a former partner. Mr H appealed the decision, but Santander didn't change its mind.

Our investigator didn't recommend the complaint be upheld. He thought Santander had considered the porting request fairly and in accordance with its lending policy.

Mr H and Miss K remain unhappy so the case has come to me for review.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the

Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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 set out my conclusions and the reasons for them below.

My starting point here is that no one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to borrow again and a lender isn't obliged to lend again. But a lender must treat customers fairly. In the context of an application for a new mortgage, that means assessing it in accordance with the bank's lending criteria and being mindful of what mortgage regulation requires of it, which includes considering what is in a customer's best interests. Lenders' criteria are commercially sensitive and not generally made public.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) 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.

A change of borrower (from two to one) is a material change to the mortgage contract. For mortgages taken out before 26 April 2014, if a material change to the mortgage contract is requested, the lender can waive or disregard an affordability assessment if doing so would be in the borrower's best interests. However, as this mortgage was taken out after that date, Santander was allowed to consider whether the changes Mr H and Miss K wanted to make to the mortgage were within its lending criteria. Mr H and Miss K wanted to repay the joint mortgage and for Mr H to take out a new mortgage in his sole name, transferring the interest rate product.

The amount Mr H wanted to borrow on the new mortgage was lower, as was the LTV. But he was proposing to take the entire mortgage on interest-only, with no capital repayment element. In the circumstances, Santander was, I find, entitled to consider affordability. But in any event, affordability wasn't what caused Mr H's application to be unsuccessful. Rather, it was Mr H's credit history.

The primary reason for turning the application down – the existence of a default for an unpaid debt of around £29,000 which hadn't been present when the original mortgage was

agreed – properly reflected Santander's lending criteria. I'm aware of what Mr H has said about how that debt occurred. However, in the absence of persuasive documentary evidence to the contrary, Santander was reasonably entitled to take on face value that the default in his name was for a debt in his name.

The new mortgage may have been for a lower amount and LTV than the existing mortgage, but there's an increased risk of lending to one borrower where there were previously two, as indeed there is with all of a mortgage being interest-only. Considering all of the circumstances, I think Santander did assess Mr H's application for a new mortgage fairly.

The fact that another lender was prepared to lend Mr H the money he wanted to buy another property (albeit at a higher interest rate) has no bearing on the fairness or otherwise of Santander's decision not to lend. Every lender's appetite for risk is different, and this will be reflected not just in the different criteria they apply to their lending decisions but also to the interest rates they charge.

A consequence of Mr H not being accepted for a new mortgage was that the existing joint mortgage with Santander was repaid when Mr H and Miss K sold their former home without a new Santander mortgage taking its place. With no new mortgage available to port the terms of the fixed rate onto, the ERC charged on redemption of the old mortgage was non-refundable. As that wasn't the result of maladministration or unfair treatment on Santander's part when it assessed Mr H's sole application, there's no reasonable basis to order it be refunded to Mr H and Miss K.

I'll make one final observation; in his response to the investigator's view of the complaint, Mr H has raised a number of new points that weren't part of the complaint as originally presented to Santander and then referred to us. These include dissatisfaction with the circumstances in which he, and presumably Miss K, were persuaded to take the new fixed rate in 2022, so soon before they put the house up for sale. Mr H has also challenged the fairness or otherwise of the ERC itself.

I've noted his view that these points are indivisible from the underlying complaint about the decision not to lend to him, but the simple fact is that our rules don't permit us to look into a complaint before the financial business has been given the opportunity to do so first. If Mr H and Miss K wish to pursue a complaint about the arrangement of the follow-on fixed rate in 2022, the fairness of the ERC that formed part of that agreement, or any other issue they might have with the joint mortgage that wasn't in the original complaint, they'd need to make a fresh complaint (together) to Santander first.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions how important this is to Mr H and Miss K. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome. Having done that, and having considered everything that both parties have said and provided, I don't find that Santander has treated Mr H and Miss K unfairly.

**My final decision**

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss K to accept or reject my decision before 26 February 2024.

Jeff Parrington

**Ombudsman**