

The complaint

Mr and Mrs J complain that Santander UK Plc unfairly applied an early repayment charge (ERC) when they repaid their mortgage.

What happened

In 2019, Mr and Mrs J took out a mortgage with Santander. It had a fixed rate of 1.95% and an ERC applied if the mortgage was repaid on or before 2 January 2025.

Mr and Mrs J separated and they wanted to buy a property each. Mrs J asked Santander about porting – or transferring – the mortgage. Mrs J said it told them they would be able to split the mortgage and port part of it to their respective properties thereby avoiding the ERC.

Mr and Mrs J completed individual applications. But on 4 September 2023, Santander said that it would not be able to port Mr J's share of the mortgage. Mr J's application for a new mortgage with Santander was declined.

In November 2023, Santander ported part of the mortgage to a new property. When they redeemed their existing mortgage they incurred an ERC of around £10,000.

Mr and Mrs J complain that Santander gave them incorrect information by saying they could port the mortgage into two separate loans. They consider it is unfair that Santander went back on what it said and that it would not give Mr J a mortgage. They want the ERC refunded.

The investigator did not consider that Santander should refund the ERC. He said Santander had acted correctly and in line with its policy in not allowing the rate to be ported to two different mortgages. But he thought Santander should increase its compensation to £300 to reflect the distress and inconvenience they suffered.

Santander accepted what the investigator said. Mr and Mrs J did not.

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.

The mortgage offer that Mr and Mrs J accepted set out that an ERC was payable if the mortgage was repaid on or before 2 January 2025. It also said that they had the right to transfer the loan to another property – as long as they met its lending criteria and passed its affordability checks.

Santander applied the ERC correctly as only part of the mortgage was ported to a new property. I am satisfied that Santander's policy did not allow part of a mortgage to be ported to one property and part to another. So it isn't in dispute that Santander gave Mrs J incorrect information when it told her that was possible.

Where a business has given a consumer incorrect information, we would not tell the

business to honour the incorrect information. Rather we would consider whether the consumer would have done anything differently had they been given the correct information in the first place.

The difficulty I have is that Mr and Mrs J knew that they could not port the mortgage to two different properties before they repaid the mortgage. So it is arguable that they would have gone ahead and incurred the ERC even if they had been given the correct information in the first place – that is what they did when they knew the correct position.

In saying that, although Mrs J was told that she would incur an ERC, she might have been under the impression that the ERC could be recouped once Mr J ported his share of the mortgage to another property. But I don't think this helps Mr and Mrs J. They were prepared to proceed without knowing of Mr J's application had been successful – and the redemption of the existing mortgage did not complete until some time after they found out that they could not do what they wanted.

In any event, Mr and Mrs J could never have done what they wanted. That is because Mr J was unable to qualify for a mortgage with Santander in his own name. So, putting aside it was not something Santander would allow, Mr and Mrs J could never have ported the mortgage to two different properties because Mr J's application was unsuccessful. It was reasonable for Santander to assess whether the mortgage was affordable in Mr and Mrs J's sole name – that is the reason Mr J's mortgage did not go ahead. And again, Mr and Mrs J decided to proceed knowing that only part of the existing mortgage was being ported.

It is not in dispute that Santander gave Mr and Mrs J incorrect information. But the ERC was correctly applied and would always have been payable in these circumstances. I am not persuaded Mr and Mrs J would have done anything differently had they been given the correct information. But it is clear that Santander unfairly raised their expectations. I consider £300 is a fair amount to reflect the distress and inconvenience caused by that incorrect information. I understand £100 has already been paid to Mrs J.

My final decision

My final decision is that Santander UK Plc should pay Mr and Mrs J a further £200 to settle this complaint – on top of the £100 already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 13 August 2024.

Ken Rose
Ombudsman