

## The complaint

Miss L complains about the way Santander UK Plc handled her application to port her mortgage product to a new property and take additional borrowing. She feels it charged her an Early Repayment Charge unfairly and would like this refunded.

## What happened

In 2018 Miss L took out a mortgage with Santander. The mortgage was on a fixed interest rate of 2.14% until 2 October 2023. The offer letter said “if you move house you may be able to transfer this mortgage to a new property you are buying. You must meet the conditions set out in the mortgage conditions booklet under ‘Transferring your loan to a new mortgage’. You must also meet our lending criteria and pass our affordability assessment at that time.”

The offer also said that an Early Repayment Charge (ERC) would be payable if the mortgage was redeemed before 2 October 2023. It set out examples of what that charge would be depending on when the mortgage was redeemed.

In 2019 Miss L wanted to purchase a new property. She discussed her needs with a mortgage broker and applied to Santander to port her existing mortgage product to the new property, as well as take out some additional borrowing. The application was for a total borrowing amount of £140,620. The existing mortgage balance at the time was around £99,000.

Santander assessed Miss L’s application and told the broker that the maximum it could lend Miss L was £125,500. Miss L’s broker told Santander that Miss L needed the £140,620 total borrowing to purchase the property she wanted, and so submitted another application to borrow the total amount on a new five-year fixed interest rate. The broker said Miss L would redeem the existing mortgage. Santander approved the application and applied an Early Repayment Charge of £4,939.35 when the mortgage was redeemed in December 2019.

Miss L complained to Santander. She was unhappy she had incurred an ERC when she had kept her mortgage with Santander, and the only reason she had to change the product was because of Santander’s lending criteria. She said she doesn’t feel she’s been treated fairly - as if she was a new customer, she could have borrowed the £140,620 without incurring any charges. But because she was an existing customer, she was disadvantaged as Santander wasn’t prepared to lend her the amount she needed unless she redeemed her existing mortgage. She said she expected Santander to waive the ERC as she had kept her mortgage with it. She said she’d experienced financial loss as a result of Santander’s internal policy and so she’d been treated unfairly.

Santander said the requested borrowing of £140,620 wasn’t affordable when it did its income calculation, and the underwriters could only offer Miss L £125,500. The broker then applied to redeem Miss L’s existing mortgage and proceed with the full mortgage on a five year fixed rate. That was acceptable because of the stress test applied to that rate. Santander said as Miss L was not porting her mortgage, the full ERC was chargeable.

Miss L brought her complaint to our service, and one of our Investigators looked into things.

He didn't think Santander had treated Miss L unfairly when it considered her application. So he didn't uphold the complaint.

Miss L disagreed. She said that Santander had told her she could transfer her mortgage over to the new property without having to pay an ERC. She said it was only a few days before she was due to complete on the new purchase that it told her she needed to pay an ERC. She said had she known she would have to pay the ERC she would have applied to a different lender for the mortgage as there were better rates available elsewhere. By the time she was aware of the charge she had no choice but to go ahead with the new mortgage otherwise she would have lost the house and the legal costs already incurred.

Another Investigator looked into things and reached the same outcome. He said there wasn't any evidence that Santander had given Miss L incorrect information. He also said the application was dealt with by Miss L's broker, and it was up to the broker to ensure the new mortgage was suitable for Miss L's needs.

Miss L asked for her complaint to be referred to an Ombudsman.

### **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.

When Miss L initially applied to port her mortgage to her new property, Santander said it would approve the application, it just wasn't prepared to lend her the full amount she'd asked for in additional borrowing. So there's no dispute here that Miss L's mortgage product was portable, and if she was happy to borrow less than she'd originally asked for, she would have been able to port her existing product and avoid paying an ERC.

When Santander assessed Miss L's application, as she was asking for additional borrowing, it had to ensure the borrowing Miss L was asking for met its lending policy and criteria. Lenders are required to carry out certain checks to ensure any proposed borrowing is affordable. The relevant mortgage regulations (found in chapter 11 of the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB)) state that lenders must also take account of likely future interest rate increases for the purposes of their assessment of whether the borrower will be able to pay the sums due. It must do so over a minimum period of five years from the expected start date of the mortgage, unless the interest rate is fixed for a period of five years or more.

When Miss L applied for her additional borrowing, the existing interest rate product she had on her mortgage had less than five years to run. So, as a responsible lender, Santander had to apply what's known as a 'stress test' to the borrowing to ensure Miss L could afford the mortgage payments if interest rates were to rise when her fixed rate ended. Unfortunately, once Santander completed its affordability checks, it found that the full mortgage amount Miss L had applied for wouldn't be affordable once that stress test had been applied.

Miss L's broker then submitted another application which involved redeeming her existing mortgage, and taking out a new five year fixed rate on the total amount of borrowing requested. In that case, Santander wasn't required to carry out the additional stress test set by the regulator as the mortgage payment amounts were going to be fixed for five years. As a result, Santander approved the application.

I'm satisfied Santander has applied the regulator's rules and its internal policy to Miss L's application. And based on Miss L's circumstances at the time, I'm satisfied in doing so that it considered her application fairly. I don't consider it would have been in Miss L's interests for

Santander to waive the checks required by the regulator, as that could have left her in the position where she was unable to afford her mortgage payments after her existing product ended in October 2023. Whilst it couldn't have been known at the time of the affordability assessment – rates have actually increased significantly since 2019, which could have left Miss L in a difficult position. She now has the certainty of affordable monthly payments until her current product expires in March 2025.

I appreciate Miss L is disappointed that she's still had to pay the ERC even though she's kept her mortgage with Santander. And her intention was to keep her existing product. But the ERC was attached to her specific mortgage product. When she redeemed that mortgage product, the ERC became payable – in line with the terms set out in Miss L's 2018 mortgage offer. I wouldn't expect Santander to waive an ERC in such circumstances as I'm not satisfied it considered Miss L's application unfairly.

Miss L was advised to take this mortgage out by her broker. If she's concerned about the fact she's incurred an ERC and not ended up on a product she wanted, that was the responsibility of the broker – not Santander. I've not seen any evidence to suggest Santander gave Miss L any assurances that her mortgage application would be approved, or that it would waive the ERC.

Miss L has raised concerns about the timeframe in which she had to make a decision about her mortgage application. The application was submitted by Miss L's broker on 15 November 2019. Santander told her broker that it could only lend her £125,500 on 3 December 2019. At that point, Miss L's broker knew she wouldn't be able to get the total borrowing she wanted without incurring an ERC. I don't consider Santander taking just over two weeks to consider the application unreasonable. It was then for the broker to advise Miss L on what she should do next. If there were other lower rates that Miss L feels she could have applied for with other lenders, that was something she should have discussed with her broker, and not something I can hold Santander responsible for.

Overall, whilst I appreciate Miss L will be disappointed with this outcome, I'm not satisfied Santander has treated her application unfairly.

### **My final decision**

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 3 October 2024.

Kathryn Billings  
**Ombudsman**