

## **The complaint**

Mr C complains that Santander UK Plc unfairly refused to allow him to port his mortgage product to a new property he intended purchasing with his fiancée.

## **What happened**

Mr C had a mortgage with Santander and a mortgage product which could be ported subject to conditions. The balance on the mortgage was about £508,000 and the property in February 2024 was valued at £680,000. An early repayment charge (“ERC”) was payable if the mortgage was redeemed before 2 December 2024 and the product wasn’t ported.

Mr C was buying another property with his fiancée. The new property cost in excess of £1.5m. A sizeable portion of the deposit was being provided by Mr C’s fiancée through her family. Mr C wanted to port the existing mortgage product, borrowing £510,000, and adding his fiancée as a joint borrower. Mr C applied through his broker in February 2024. But Santander rejected the mortgage application because a credit search showed that payments were two or more months in arrears on an agreement that Mr C’s fiancée had with a broadband supplier. As part of the application process Santander did a search which showed that she had two missed payments in total of £39 on a broadband account. Mr C says that this was an oversight when she sold a property. As Mr C was unable to port his mortgage product, he redeemed the mortgage and arranged a new mortgage with another provider. He incurred an ERC of £15,246.50 when he redeemed the mortgage with Santander on 12 April 2024.

Santander says that the application failed its lending criteria for a mortgage as the joint applicant had two missed contractual payments in the last 12 months and as there was a further applicant, Mr C couldn’t avail of its loyal mover scheme.

## Our investigator’s view

Our investigator recommended that the complaint should be upheld as affordability would not be a concern, the negative impact on the credit file was due to an oversight, a small amount of money was involved, and Santander should have used a pragmatic judgement.

Our investigator recommended that Santander refund the ERC in full together with interest and pay Mr C £300 for his distress and inconvenience.

Santander disagreed saying in summary that Mr C’s ability to port was subject to his joint application meeting Santander’s lending criteria. According to those criteria, it would be refused if an applicant missed two or more contractual payments in the last 12 months on an unsecured credit/ other credit agreement. As the applicant had missed two payments, it was treating them fairly by applying its lending criteria.

## My Provisional Decision

As my view of this complaint differed from that of our investigator I issued a Provisional Decision as set out below:

*If Mr C had applied solely, I understand the application would likely to be successful and would have been able to port his mortgage product. But this wasn't a sole application and in order to be able to port the mortgage product and so avoid paying the ERC, Mr C and his fiancée would have to be approved for the new mortgage. So, the application was outside Santander's loyal movers scheme that operates for existing borrowers with mortgage products.*

*The application then fell to be considered under the lending criteria applied to all borrowers applying for a mortgage. Part of the application process involved Santander looking at credit risk. Santander has devised its criteria to assess credit risk part of which is to refuse applications where the applicant has a recent history of being two or more months arrears on a credit agreement. Mr C's fiancée fell into that category and so the now joint application was refused.*

*Was that fair given that Mr C and his fiancée were successful, as they have shown me, in getting for a similar mainstream lender to Santander? But different lenders can have different policies, and some are more cautious than others. Not all lenders will apply the same criteria. So, I can't say that simply because another lender approves the application that Santander should have done so.*

*The application was refused because it didn't meet Santander's lending criteria due to the recent missed payments to a broadband provider. It seems to me that a borrower's recent history of payments on another credit agreement is a relevant consideration in assessing credit risk and that a policy of refusing applications if the applicant was two or more months in arrears on that agreement - as here - is not unreasonable. I see that Santander said it would look at the application again if there was an error on the record which is fair. But if the credit record shows that those payments haven't been made, I don't consider that it's unfair for Santander then to refuse an application.*

*As Santander says, it was treating the application the same as it would other applicants who had a similar profile of missed payments on their credit file. That seems fair. It's not the amount of the payments that's significant, it's the fact that they were not paid when the applicant was committed to paying them and that's relevant to an assessment of credit risk. Mr C's ability to port his mortgage product and avoid an ERC depended on his meeting Santander's lending criteria at the time of the application but he didn't and if he wanted to pursue this application during the term of the mortgage product, an ERC was payable."*

I said that for the above reasons I was considering not upholding this complaint and invited submissions from the parties before reaching a final decision.

Santander told me that it had no further submissions to make. Mr C disagreed saying in summary:

- A rigid interpretation of two or more months in arrears fails to account for the minor nature and context of the missed payments.
- Santander was inflexible as it wouldn't consider a sole application by him due to his fiancée's partial contribution to the deposit. That is inflexible and contrary to treating customers fairly.
- This is a potential violation of new Consumer Duty rules that lenders act in their customer's best interests, and I should evaluate whether Santander's approach constitutes good conduct in light of his financial position and history with Santander.
- Santander stands to gain £15,246.30 by its actions and this financial gain may have

influenced Santander's position

### **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.

In the light of Mr C's submissions, I've considered the evidence again. Mr C says that Santander's policy is too rigid. But I've addressed that in my Provisional Decision. A potential borrower's recent history of a failure to make payments as they fall due, is, in my view, a relevant consideration for a lender in making a lending decision. Mr C believes that this particular case should be treated differently because of "*the minor nature and context*" of the failure to make the payments. But my view is that the policy is fair in that it's not the amount that is significant but the failure to make the payments and so is treating customers equally. So, I've no issue with the fairness of that decision.

Secondly, Mr C says that Santander wouldn't consider a sole application by him and so he couldn't take advantage of its loyal movers scheme. I had indicated above that if this had been a sole application that Mr C would likely be successful but that's incorrect. While he may have had no issue purely in terms of eligibility for the mortgage, Mr C didn't have the resources to buy this property in his sole name and required the assistance of his fiancée and her family. The file notes indicate that the purchase price was to be made up of the equity from the sale of the property, the couple's joint savings and a gifted deposit of £600,000.00 from Mr C's fiancée's mother.

The notes I've seen on the file indicate that this was always a joint application commenced by the broker on 12 February 2024 and not that Mr C or his fiancée ever wanted it to be a sole application in Mr C's name. They were buying the house together with Mr C's fiancée paying the greater part of the deposit. I've no indication that Mr C's fiancée was content to contribute the bulk of the deposit without requiring a financial interest in the property. That being the case, Santander's rules required for there to be joint ownership of the house and a joint mortgage. That's a common requirement among lenders and I can't fault Santander for following good industry practice.

Mr C says that there's a potential breach of the new Consumer Duty rules and questions whether Santander's approach constitutes good conduct "*in the light of his financial position and history with Santander*". Mr C agreed a new mortgage product in 2022, the terms of which stated that there would be an ERC payable, and how it would be calculated if Mr C redeemed his mortgage before 2 December 2024. Santander's ability to require payment of the ERC in certain circumstances existed before the Consumer Duty came into force and so wasn't affected by it. It was a vested right. Therefore, the Consumer Duty would not mean that Santander could not apply the ERC when the mortgage was repaid.

The Consumer Duty regulations came into force in July 2023, before the application for a new mortgage was made, so it was in force when that application was made. The application was refused because it failed a credit risk test due to recent missed payments showing on a credit search. The Consumer Duty reflects a general expectation that firms should conduct their business in a way that ensures an appropriate level of protection for consumers. But it does not prevent mortgage lenders deciding what level of risk they are prepared to accept or not when lending. I don't consider that Santander was in breach of the Consumer Duty rules by establishing policies to limit its credit risk and implementing those policies when processing this credit application, which in my view it did fairly.

For the above reasons I consider that my Provisional Decision represents a fair outcome to this complaint. So, I do not uphold this complaint.

**My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 January 2025.

Gerard McManus  
**Ombudsman**