

The complaint

Miss M complains that Santander UK Plc didn't offer her a lower interest rate on her mortgage. As a result, she feels she's paid the standard variable rate (SVR) unfairly and so has overpaid.

What happened

Miss M has a mortgage with Santander which she took out in 2007. The mortgage was taken out on a fixed interest rate of 5.19% until 3 June 2009. After that date, the mortgage reverted to Santander's standard variable rate (SVR). The mortgage remained on the SVR until Miss M successfully applied for a new interest rate product in April 2020.

Santander had been reporting Miss M's mortgage as being in arrears due to ground rent payments they'd paid on her behalf, and added to the mortgage. In May 2016 Santander consolidated those outstanding payments onto the mortgage balance as a result of a remediation programme they had carried out.

In September 2016 Miss M called Santander to ask whether she could take out a new interest rate on the mortgage. Santander said that as the mortgage account had been in arrears in the last 12 months, Miss M wasn't eligible for a new interest rate product. Miss M called again in April 2017 and was told the same thing. In April 2020 Miss M successfully applied for a new interest rate product.

Miss M complained to Santander. She was unhappy the mortgage had been on the SVR since 2009. She said that despite calling and asking for better interest rates she had never been offered one.

Santander didn't uphold the complaint. They said they couldn't find any record of telephone conversations taking place. They also said they were not obliged to advise customers that they could access a new rate. They said the annual statements sent to Miss M said what interest rate the account was on.

Miss M brought her complaint to our service, but Santander didn't give us consent to consider it as they said it had been brought outside of the time limits. I issued a decision which explained that we could only consider Miss M's complaint about what had happened since 14 April 2014, as her complaint about the earlier period had been made outside of the time limits our service must apply.

Our investigator considered the merits of the part of Miss M's complaint that had been brought in time. Having done so, he upheld the complaint. He said that Miss M had asked Santander about the availability of interest rate products in September 2016. He said that whilst he acknowledged Santander's eligibility criteria for interest rates at the time, he didn't think it was fair of them to apply their policy in Miss M's particular circumstances.

He recommended that Santander should re-work the account as if the lowest fee-free fiveyearfixed rate had been applied to the mortgage from September 2016 to the date her

new rate in 2020 was applied to the mortgage. He also recommended that Santander pay Miss M £500 for the distress and inconvenience caused.

Santander disagreed with the investigator's outcome. They said the Financial Conduct Authority (FCA) clarified their position in relation to property related charges, confirming that these should not be classified as arrears. Following that clarification, Santander undertook an exercise to review all affected accounts and made the decision to capitalise the property related charges onto the mortgage balance. They also amended the borrower's credit files, and refunded any charges linked to those arrears as a goodwill gesture. Santander disagreed they made an error.

Santander also questioned why Miss M hadn't phoned sooner after the mortgage account had been arrears free for more than 12 months. They said that if they were to re-work Miss M's mortgage account by backdating a five year rate from 2016, Miss M wouldn't have been able to take the new product that she did in April 2020 without incurring an Early Repayment Charge.

Our investigator considered what Santander had said, but wasn't persuaded to change his opinion. So the complaint's been passed to me to issue a decision.

My provisional decision

I issued a provisional decision on 24 January 2022. This is what I said.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss M complains that Santander did not offer her an interest rate product earlier than they eventually did in 2020. As set out in my previous decision, I will only be considering whether Santander should have offered Miss M a lower interest rate on her mortgage from 14 April 2014 onwards.

As a starting point, Miss M's mortgage contract set out that once the initial fixed rate expired, Santander's SVR would be the interest rate applied to the mortgage account. So there was nothing in the contract which meant Santander had to offer Miss M lower interest rate products for the remainder of the mortgage term. Although in practice, most borrowers do apply for new rates once their initial rate expires, either with their existing lender, or a different lender, as they often tend to be cheaper.

In 2014 there were no regulatory requirements for lenders to pro-actively contact borrowers about new interest rates they may be eligible for. Nor was it common practice across the industry either. Although I have noted that Santander did send information with their annual statements which explained what borrowers needed to do if they wanted a new interest rate. If Miss M wanted to take out a lower rate on her mortgage, she needed to have contacted Santander and asked about that.

I've reviewed the contact history of the account, and I can see that there weren't any conversations between Miss M and Santander about the interest rate until September 2016. During that call, Miss M specifically asked about interest rate products that might be available to her. The adviser told her she wasn't eligible for a new rate as her mortgage account had been in arrears until May 2016.

Santander have told our service that at the time Miss M asked about interest rates in 2016, in order to be eligible for a new rate the mortgage account needed to have been arrears-free for 12 months. In principle it's not unreasonable for lenders to have their own eligibility

criteria for their interest rate products. So what I must decide, is whether it was fair and reasonable for Santander to apply that criteria to Miss M's mortgage considering her individual circumstances at the time.

Santander have pointed our service to a consultation paper issued by the FCA in 2016. In that paper the FCA set out their definition of a payment shortfall. In that definition it's clear that the FCA did not intend for property related charges, such as service charges or ground rent, to be classed by lenders as a payment shortfall. Santander said that following that paper, they chose to remediate customers whose mortgages were being reported as in arrears as a result of property related charges by capitalising the arrears balances. That's why Miss M's arrears balance was capitalised in May 2016.

The account notes from 2014 and 2015 indicate that the only arrears present on Miss M's account, were a result of the ground rent payments Santander had added to the account. And in fact, Miss M was paying more than the contractual monthly payment each month in order to reduce that balance resulting from the charges. So there weren't any arrears present on the account as a result of actual payment shortfalls where Miss M had paid less than she'd contractually agreed to pay towards the mortgage balance.

With that in mind, I'm not persuaded it was fair and reasonable for Santander to apply their standard eligibility criteria to Miss M's query about interest rates in September 2016. Technically her mortgage had been classified as being in arrears within the last 12 months. But Santander had since chosen not to treat that balance as arrears following clarification from the FCA about what constitutes a payment shortfall, and continued to report Miss M's mortgage account as up to date. As a result, I don't think it was reasonable for Santander to then prevent Miss M from accessing an interest rate product on the basis of those arrears.

So given the particular circumstances here, I don't think it was reasonable for Santander to decline Miss M's request for a new rate on that basis. Had Santander set that part of the eligibility criteria aside, I'm persuaded that Miss M would have applied for a new rate, and she would have been eligible for one. Santander haven't told our service about anything else that would have meant Miss M's request would have been declined. As a result, I think Miss M has suffered unfair treatment as a result of Santander's actions.

Putting things right

If Santander had acted fairly, Miss M's mortgage would have been on an interest rate product from September 2016 rather than the SVR. As a result, Santander should re-work Miss M's mortgage account as if she'd taken an interest rate that would have been available to her at that time. In 2020, Miss M took a two year fixed rate. So I think it's likely she would have done the same in 2016. Of course, that rate would have expired in 2018 and so Santander should retrospectively apply their lowest two year fixed rate from that point as well.

I appreciate that would result in the fixed rate running into Miss M's current product period. But I don't think it would be reasonable for Santander to pass on any additional costs to Miss M that result from that. In 2020 Miss M took out a new rate in good faith to mitigate her losses. So I think the re-working of the account should run up to the date the new rate in 2020 was applied.

Once Santander have re-worked the mortgage balance, they should give Miss M the choice of either:

- *Applying the overpayments, including any additional compounded interest, to the outstanding mortgage balance to reduce the overall amount owed. Or,*
- *Receiving the overpayments as a cash refund to her now, with the addition of 8%*

simple interest calculated from the date each overpayment was made, until the date of settlement.*

I also consider that Miss M has experienced distress and inconvenience as a result of the higher payments she's had to make whilst being on the SVR. She's explained how much of a difference the latest interest rate product has made to her life and her ability to get on top of her finances. And so I think Santander should pay Miss M £500 to compensate for the distress and inconvenience their mistake has caused. That payment should be made directly to Miss M.

**Interest is at the rate of 8% a year simple. If Santander UK Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate."*

Responses to my provisional decision

Santander accepted my provisional decision.

Miss M said that she thought the compensation should go back to 2014, as the arrears that were on her account from that period weren't actually arrears at all.

She disputes that no calls were made to Santander before September 2016, as she said she wouldn't have just happily paid the high interest rate knowing she could move to a lower one.

She said whilst Santander decided to redress borrowers in 2016, this was not her fault and the redress should have been backdated. She said all of this has impacted her credit file and all of her finances. She thinks she should be put back in the position she should have been in as far back as possible.

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.

I appreciate Miss M's strength of feeling about what's happened. But I firstly want to clarify that our service has not considered a complaint about the way Santander addressed Miss M's mortgage arrears, and the remediation exercise they did. The complaint we've considered is about whether Santander should have offered Miss M an interest rate product sooner than they did. So I won't comment any further on Miss M's points about the remediation, and the impact to her credit file.

Miss M says she did ask Santander about lower interest rates before September 2016, and so she thinks the redress should go back to the earliest point that we can consider this complaint from – in 2014. I've already explained that I haven't seen any evidence of any earlier calls about the interest rate taking place. So in the absence of evidence I have to decide what is most likely to have happened based on the balance of probabilities.

Miss M had previously told this service she called Santander several times between 2009 and 2012. I've also seen detailed call notes on the account for the calls that there are evidence of. So I think it's likely that similar notes would have been left if earlier calls had been made. I appreciate Miss M has been through a very difficult time over the years, and she's been doing all she can in recent years to get all of her finances back on track. But on balance, considering everything provided by both sides, I'm not persuaded Miss M did ask about new interest rate products between 2014 and September 2016. And Santander

weren't required to pro-actively contact Miss M to discuss interest rate products unless she'd asked.

As a result, I'm still satisfied that the redress should be calculated back to September 2016, when there is evidence of Miss M asking Santander about new interest rate products.

Putting things right

To put things right Santander should re-work Miss M's mortgage account in the following way:

- Apply the lowest two year fixed interest rate Miss M would have been eligible for in September 2016 from that date;
- Apply the lowest two year fixed interest rate Miss M would have been eligible for once the above rate would have expired in 2018.

Santander should not apply any Early Repayment Charges to the mortgage as a result of this re-structure if there is an overlap in any of the interest rate products.

Once Santander have re-worked the mortgage balance, they should give Miss M the choice of either:

- Applying the overpayments, including any additional compounded interest, to the outstanding mortgage balance to reduce the overall amount owed. Or,
- Receiving the overpayments as a cash refund to her now, with the addition of 8% simple interest* calculated from the date each overpayment was made, until the date of settlement.

Santander should also pay Miss M £500 for the distress and inconvenience caused. That should be paid directly to Miss M.

*Interest is at the rate of 8% a year simple. If Santander UK Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and direct Santander UK Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 March 2022.

Kathryn Billings
Ombudsman