DRN-3346877

The complaint

Mr and Mrs W complain that Santander UK Plc, trading as Alliance & Leicester Commercial Bank, failed to give them a better interest rate on their mortgage.

What happened

In 2009 Mr and Mrs W took out an interest only mortgage with Santander (formerly Alliance and Leicester) following advice from a broker. The mortgage was for £165,000 (plus fees) with a term of 17 years. The interest rate on the mortgage was fixed at 4.64% until 30 April 2012. Once this expired, the mortgage reverted to the standard variable rate (SVR) – which was 4.99% at the time.

Around 2014, Mr and Mrs W asked Santander for consent to let (CTL). This was provided and has been renewed each year – with a fee of £95 each time.

The mortgage remained on the SVR rate until recently, in January 2020, when Mr and Mrs W successfully applied for a fixed interest rate product.

Mr and Mrs W raised a complaint. They said that they contacted Santander every year – around January when they were filling out their tax returns– and asked if they could switch to a lower rate but were told none were available.

Santander didn't uphold the complaint. It said that whilst there was a record of Mr and Mrs W getting in touch each January from 2014 – there were no call recordings or notes to show that they had asked for a better rate. The notes only reflected that they asked for information to complete their tax returns.

Mr and Mrs W referred the matter to this service. Our investigator thought this service has the power to look at the complaint over the time period from 2012 (when the mortgage reverted to the SVR) until Mr and Mrs W made the complaint in 2020. Santander consented.

Our investigator considered the complaint and thought it should be upheld. He was persuaded by what Mr and Mrs W said about asking for a new rate so recommended that the mortgage account be reworked from January 2014 as if Mr and Mrs W had successfully applied for the lowest new interest rate product available each time over the period – until 2020 when the new product was provided.

Santander disagreed and asked for an ombudsman to consider the matter. I issued a provisional decision setting out my thoughts on the complaint.

My provisional decision

In my provisional decision I said:

> ***Should Santander have actively offered Mr and Mrs W new rates?***
>
> *Mr and Mrs W have questioned why Santander didn't get in touch with them to let them know they could change interest rates. They say that they don't recall receiving*

any correspondence about other available interest rate products.

Once Mr and Mrs W were on the SVR, from 2012 onwards, there was no general obligation for Santander to pro-actively contact them to offer new interest rates. It included information about how to apply on their annual statements.

From 2018, however, while there was still no regulatory obligation to pro-actively offer new rates, Santander – in common with many other lenders – undertook to write to customers on the SVR who could benefit from new interest rates. While this is a voluntary agreement not a regulatory requirement, it was something Santander committed to do and in my view now represents good industry practice.

Santander has provided information to show that it was likely it contacted Mr and Mrs W around that time as part of their borrowing was charged interest on the SVR. And so, I don't think it treated Mr and Mrs W unfairly by not doing more to let them know that better rates may have been available.

But Mr and Mrs W have also said that they asked Santander for better rates over the course of the last ten years but were told none were available.

Did Mr and Mrs W ask for better rates?

Mr and Mrs W have said that they called up every couple of years and asked for a new rate but were told they could not have one. Unfortunately, whilst Santander has records of their calls – it has said it does not have any detailed notes of these or recordings until the call in January 2020 – following which Mr and Mrs W successfully applied for a new rate.

With the lack of this evidence I can't be certain whether Mr and Mrs W asked for new rates – and I don't know what the details of these conversations were. They recall being passed to another department at times and, despite our investigator providing all possible phone numbers they may have called from, Santander hasn't been able to locate call recordings.

So I've looked at the evidence that is available to decide what I think is most likely, on the balance of probabilities, to have happened. Having done so, I think it's more likely than not that Mr and Mrs W asked for better rates. I say this as I've listened to the call from January 2020 and one of the first things that Mr W says is that they call "every couple of years asking for new rates but were told none were available". He says on the later application call that they have "tried several times to get the rate down but have been paying the SVR for around ten years".

I consider their testimony and recollections are consistent and plausible - and that the actions they took when they were able to apply reflect their intentions.

Whether or not there were actually better rates available to them is a matter I'll come onto later, but whilst I've taken note of what Santander has said in that there are no notes to reflect this - with the lack of evidence to the contrary - I'm persuaded they did, on balance, ask for better interest rates. I've also kept in mind that notes are just that – they are brief details of a conversation. The notes that Santander have provided are very brief and include acronyms to describe the contact. Having considered these, I'm not persuaded that these can be relied upon to show that they didn't ask for better rates.

Mr and Mrs W have also said they looked to other lenders to secure more favourable *rates but were unable to and I think it's likely that when doing so, they would have also asked their own lender.*

Were better rates available?

As I think it's likely that Mr and Mrs W did ask for new rates in the past, I've considered whether better rates would have been available to them based on the information Santander has provided.

From 2012, Mr and Mrs W paid an interest rate of around 4.99% on their mortgage. Santander has explained that, although Mr and Mrs W have a residential mortgage, as they have CTL, they are only eligible for retention product rates – which are the same as it's buy-to-let (BTL) rates. It also explained that it 'bands' customers based on a number of different factors and risks. Most notably - it's explained that the criteria for rates are based on loan to value and that no fixed rates were available for BTL mortgages with a loan to value (LTV) above 75%.

Mr and Mrs W have said that shortly after taking out the mortgage, the LTV on their mortgage was 100% due to the financial crisis of 2008/2009. Further, Santander has said that the LTV in 2014 was 95%. As a result, they would not have been eligible for a better rate at that time. But I'm mindful that between this time, and successfully applying for a new rate in 2020, Mr and Mrs W may have been eligible for better mortgage rates – depending on the LTV.

I can't see that a valuation has been undertaken on the property until recently and so, without knowing what the LTV would have been, I can't be certain of the rates that would have been available.

In order to determine a fair outcome in this case, I consider it reasonable for Santander to undertake a desktop valuation retrospectively to work out the LTV on Mr and Mrs W's mortgage for each year from 2015 to 2019 inclusive.

It's provided details of the rates available around 2017 and 2018 which is helpful, and it appears that there would have been more favourable rates for Mr and Mrs W, provided they met the eligibility criteria – in particular in this case, whether their loan to value was below 75%.

Once this information has been received, I will review this to decide what I consider to be a fair outcome in this case.

I'm also aware that Santander could have offered Mr and Mrs W its follow-on rate (FOR). If it is found that they would not have been eligible for better rates due to the LTV being greater than 75%, then it remains that Santander should rework the account as if the mortgage had been on the FOR, from the date it was introduced (which I believe was January 2018).

My provisional view on how to put things right

In order to put things right I asked for Santander to undertake a desktop valuation to determine the LTV for the period from January 2015 to 2019 and, dependent upon this – provide the interest rates that would have been available. I also said that, if it was the case that they would not have been eligible for more favourable interest rates due to the LTV, it should rework the account as if the FOR applied from January 2018.

The responses to my provisional decision

Mr and Mrs W accepted my provisional decision.

Santander undertook the desktop valuations requested for each year from 2015 to 2019. These showed that the LTV would have been less than the 75% limit and so Mr and Mrs W would have been eligible for a more favourable rate on their mortgage from January 2015. Santander provided the corresponding rates that would have been available at that time and the remaining period until 2020 when Mr and Mrs W fixed their interest rate.

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've thought carefully again about what I said in my provisional decision and considered the interest rates provided by Santander.

The LTV in January 2015 would have been 73% and, according to the information provided by Santander, the best fixed rate deal available without a fee would have been 4.29% - for two years until 2 April 2017. The best available rate with a £999 booking fee was 3.99%.

In 2017, Mr and Mrs W would have been eligible for a rate without a booking fee of 3.49%. Or alternatively, a rate of 2.49% - with a booking fee of £1,999 or a rate of 2.99% with a booking fee of £999.

Santander has proposed that the account is reworked to the interest rates available with no booking fee that I have set out above. But I consider that the fair resolution here is to allow Mr and Mrs W to choose whether to have the booking fee apply - and access the benefit of the lower rate - or to have the account reworked with the rate that applied without a fee.

Mr and Mrs W should have the opportunity to decide which they would prefer.

I consider that the follow-on rate (FOR) should then apply from the end of the 2017 fixed rate - which would be May 2019 - until Mr and Mrs W new rate applied in January 2020. This period of time is too short for a new fixed rate deal to be put in place (which generally run for a minimum of two years – but usually slightly more) So I think it is fair for the FOR to apply which puts Mr and Mrs W in the position that they would have been in if they had been treated fairly and allows them to access a more favourable rate that the SVR for that period.

Putting things right

For the reasons I gave in my provisional decision, I think that this complaint should be upheld. If Santander had acted fairly, Mr and Mrs W's mortgage would have been on an interest rate product from January 2015 rather than the SVR.

To put things right I require Santander to re-work the mortgage account in line with whichever following options Mr and Mrs W chose, to apply from January 2015 until 2 April 2017:

1. Two-year fixed interest rate of 3.99% with an applicable booking fee of £999

2. Two-year fixed interest rate of 4.29%, without a fee

And following this, a new deal to apply to the account until May 2019 of one of the three following options:

1. Two-year fixed interest rate deal of 2.49% with a fee of £1,999

2. Two-year fixed interest rate deal of 2.99% with a fee of £999

3. Two-year fixed rate deal of 3.49% with no fee.

Whilst the above deals are marketed as applicable for ‘two years’, it’s common in the industry for these to run slightly longer than this period. I don’t consider there’s anything wrong with this, but I wish to highlight this to avoid any confusion. The initial rate expired in April 2017, at which point the second rate can be selected by Mr and Mrs W – which would be applicable until May 2019.

If Mr and Mrs W choose to select a rate with a product fee – Santander should offset the first monthly overpayments against this.

Mr and Mrs W will need to communicate which of the above two options they wish to select to Santander within 21 days of the date of this decision.

Following this, the mortgage should also be reworked as if the FOR applied from May 2019 until 2020, when Mr and Mrs W selected their rate.

Once Santander have re-worked the mortgage balance, it should give Mr and Mrs W the choice of either:

- Applying the overpayments, including any additional compounded interest, to the outstanding mortgage balance to reduce the overall amount owed. Or,

- Receive the overpayment as a cash refund to them now, with the addition of 8% simple interest* calculated from the date each overpayment was made, until the date of settlement.

*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 Mr and Mrs W how much it’s taken off. It should also give Mr and Mrs W a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I’ve given, I uphold this complaint and direct Santander UK Plc, trading as Alliance & Leicester Commercial Bank, to put things right as I’ve set out above.

I also direct it to write to Mr and Mrs W setting out what it has done and the calculations it has made.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs W to accept or reject my decision before 6 April 2022.

Camilla Finnigan
Ombudsman