

## **The complaint**

Mr and Mrs M complain that Santander UK Plc wouldn't allow them to take a fixed rate on their mortgage.

## **What happened**

Mr and Mrs M took out their mortgage with Santander in around 2008. They borrowed around £550,000 – around £65,000 was on repayment terms and the rest on interest only. Mr and Mrs M took a series of fixed rates that ran until 2013. At that point, the mortgage reverted to Santander's standard variable rate (SVR).

Unfortunately, Mr and Mrs M have experienced financial difficulty. Their mortgage began to fall into arrears from 2009, and the arrears have built up over the years. When the mortgage reverted to the SVR in 2013, it was £10,000 in arrears, peaking at £60,000 in 2019. By early 2021, the arrears were around £55,000.

Mr and Mrs M have asked Santander for a new interest rate over the years, but Santander has refused to give them a new rate because of the arrears. But in November 2020 it agreed to move them to the follow on rate (FOR), a different reversion rate which tracks the Bank of England base rate and is lower than the SVR. The FOR took effect from 1 December 2020.

Mr and Mrs M complained. They didn't think they'd been treated fairly. They thought that keeping them on the SVR between 2013 and 2020 meant that they'd been made to pay much more interest – which was why they were in arrears. They said that Santander shouldn't have refused them lower interest rates.

Following our involvement, Santander agreed to backdate the FOR to when Mr and Mrs M asked for a rate after it first became available in 2018, and to re-work the mortgage accordingly. Our investigator thought that was fair, but he didn't think it was unreasonable that Santander had refused Mr and Mrs M new fixed interest rates.

Mr and Mrs M accepted that, but they also wanted Santander to pay them £5,000 compensation for the distress caused by having to make higher payments and its contact with them at what was a difficult time. As no agreement could be reached, the case came to me for a final decision.

## **My provisional decision**

I issued a provisional decision to allow the parties to comment on my thinking. I said:

I'm sorry to hear of the difficulties Mr and Mrs M have faced in recent years – I can see they've had a combination of financial, personal and health issues, and it's clear they've had a far from easy time.

Unfortunately, as a result of their difficulties I can see that the mortgage has been in very substantial arrears for a very long time.

Mr M has been in regular contact with Santander in recent years, explaining his situation. I can see that he told it he was experiencing cashflow problems with his self-employment work. At various times between 2016 and 2019, he told Santander he was expecting imminent payments ranging from £45,000 to £750,000 which he would use to clear the arrears.

However, these payments never became available, though from time to time Mr and Mrs M were able to pay smaller lump sums of £6,000 or so. Throughout this time, they also missed monthly payments, or were unable to pay the full payment each month. While the level of arrears sometimes went down, the overall trend was for the arrears to increase – peaking at £60,000 (24 monthly payments) in early 2019.

In 2019, Santander took court action to recover the mortgage, and a payment arrangement was agreed in early 2020. But then the coronavirus pandemic hit, and Mr M faced a significant drop in his income. Mr and Mrs M took a six month payment deferral. In March 2020, Santander offered to put Mr and Mrs M on the FOR, but they refused because they wanted a fixed rate, though they agreed to the FOR later that year and it took effect from December 2020.

I don't think it would be fair to expect Santander to have put Mr and Mrs M on a fixed interest rate, as they wanted.

Santander says that customers in arrears are not eligible for fixed rates, so no rate was available to Mr and Mrs M. That is indeed its policy. That's not the end of the matter though - I would still expect it to consider offering a rate where doing so would be a fair way of helping a borrower experiencing difficulties, despite its policy.

I'm not persuaded that this is such a case, though. Given the difficulties Mr and Mrs M have faced over the years, while a new rate would have lowered their payments, it wouldn't have made the mortgage affordable. So a new rate would not have solved the underlying problem.

And while a rate lowers the monthly payments, there are downsides too. A fixed rate includes an early repayment charge (ERC) which can be substantial – up to 5% of the mortgage balance. And there's often a fee associated with taking a rate.

Throughout the time up to 2019, the arrears were steadily increasing. Santander was considering whether to take legal action, and did so in 2019. If the property had been repossessed, the mortgage would be brought to an end – incurring the ERC.

And if Mr and Mrs M had decided the mortgage was no longer sustainable and sold their property voluntarily, again the ERC would have been applied.

Also, throughout this period, Mr M was regularly promising Santander that he would make large lump sum overpayments. While he never did so, if he had paid more than 10% of the balance they would also incur an ERC.

While we now know with hindsight that Santander did not repossess the property, Mr and Mrs M did not sell it and Mr M did not make any large lump sum payments, none of that could have been known at the time.

Based on what was known at the time, while a new rate would have reduced the monthly payments, it wouldn't have made the mortgage fully affordable. And while the arrears were still substantial, there was an increased risk of the mortgage coming to an end one way or the other – and Mr M's plan to clear the arrears was a large lump sum overpayment.

While none of those things were the reason Santander gave at the time – it just relied on its policy that Mr and Mrs M weren't eligible for a rate – they are in my view highly relevant to the question of whether it would have been fair to expect Santander to give Mr and Mrs M a rate notwithstanding the policy. I've thought about this carefully, and I'm satisfied that it wasn't unfair for Santander to refuse Mr and Mrs M a new fixed rate.

However, Santander introduced a new reversion rate – the FOR – in early 2018. The FOR was lower than the SVR that Mr and Mrs M were on. It didn't come with any of the downsides of a fixed rate – such as an arrangement fee or an ERC.

Santander has offered to put Mr and Mrs M back in the position they would have been in had they been offered the FOR from December 2018, rather than December 2020 when they actually took it.

But I don't think this quite goes far enough. The FOR was available from early 2018. I don't think it was fair that it wasn't available at this time to customers in arrears – such as Mr and Mrs M – who would therefore have to pay a higher reversion rate than customers not in arrears, who were eligible for the FOR.

I can see from the contact notes that there was no contact between Mr and Mrs M and Santander between January and May 2018, and no payments made. But in May 2018, there were discussions between Santander and Mr M about their finances and ability to make payments. I think this would have been an opportunity for Santander to have advised Mr and Mrs M about the existence of the FOR, and to have put their mortgage on it – reducing the interest rate and their monthly payments.

I think a fair resolution to this complaint is for Santander to rework Mr and Mrs M's mortgage as if they had been offered the FOR with effect from 1 June 2018. It will need to re-calculate the interest rate and the monthly payments since then accordingly. Any savings and overpayments that result should be used to reduce the outstanding arrears on the mortgage.

Mr and Mrs M say they also want Santander to pay them £5,000 compensation for the distress caused. But I don't think it would be fair to award this. I don't think the contact between Santander and Mr and Mrs M was excessive between 2018 and 2020 – taking into account the state of the mortgage at this time. And while I don't doubt this was a very stressful time for them, I think that was due to their wider circumstances which caused their financial difficulties, rather than anything Santander did.

Had they been on the FOR, their contractual monthly payments would have been lower. But I'm not persuaded this means they would have paid less. Where they didn't make any payments, that wouldn't have changed. And where they did make payments, they would still have been expected to pay as much as they could to reduce the arrears. But being on the FOR would have meant that more of what they paid could have gone to reducing the arrears.

Overall, therefore, while I'm satisfied that being on the FOR at an earlier stage would have reduced the arrears on the mortgage, I'm not persuaded that it would have substantially altered what Mr and Mrs M needed to pay each month, or that their experience of dealing with their financial difficulties would have been substantially different.

### **The responses to my provisional decision**

Mr and Mrs M said they were happy that the FOR would be backdated. But they thought that Santander should also compensate them. They said that the monthly repayments were "crippling", and the level of the payments caused them significant distress. Had the interest

rate been lower, that would have made things much easier for them – not least because they could potentially have reduced the arrears.

Santander did not have anything further to add.

### **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 again about the conclusions I reached in my provisional decision. But as I explained, I don't think Mr and Mrs M were eligible for a new interest rate – and that it was fair that Santander didn't offer them one. It should have put them on the FOR from 2018, and that's why I've said it should re-work their mortgage as if that had happened.

However, I don't think this was the cause or source of Mr and Mrs M's problems. They have been in very significant arrears for many years – and even during the period from 2018 there were months when they made no payment at all. As I said in my provisional decision, the FOR wouldn't have made any difference in those months; they still wouldn't have made a payment.

And where they were able to pay, Mr and Mrs M would always have needed to pay whatever they could afford to reduce the arrears – so in practice the amount they actually paid each month would have been much the same, it's just that more of it could have gone to the arrears. Re-working the account corrects that.

Nor do I think that Santander's contact with them was excessive or unreasonable, given the state of their mortgage account at the time.

Overall, therefore, I don't think it would be fair to ask Santander to compensate Mr and Mrs M in addition to re-working their mortgage balance. The only place where it went wrong was in not applying the FOR sooner, and that did not materially affect the amount Mr and Mrs M would have paid each month. The distress and upset they experienced having to find those payments was ultimately due to their financial difficulties, not Santander's actions.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Santander UK Plc to re-work Mr and Mrs M's mortgage so that it is as if it had been on the follow on rate from 1 June 2018.

Any savings and overpayments that result in respect of each month's payments should be used to reduce the arrears from that month forward.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 8 April 2022.

Simon Pugh  
**Ombudsman**