

## The complaint

Mrs R complains that Santander UK plc withdrew its offer to lend her a buy-to-let mortgage.

## What happened

Mrs R has a buy-to-let mortgage with another lender. In May 2022, through a broker, she applied to remortgage to Santander. In addition to her existing mortgage, she wanted to borrow some extra money in order to buy a share of the freehold to the mortgaged property and then extend the lease.

Between 20 June and 26 September 2022, Santander issued three mortgage offers. Initially its offer was subject to a retention; that amount changed and was finally removed. Part B of each offer set out the conditions that needed to be met before completion, and included:

*“5. [...] we will not accept a lease where on [sic] at expiry of the mortgage: less than 50 years remain and all or part of the loan is repaid on an interest-only basis”.*

On 10 October 2022, Santander withdrew its offer of a mortgage because the length of the lease on the property didn't meet the requirement above.

Mrs R complained. She had been expecting to remortgage on the 2.79% five-year fixed rate product Santander had offered her, and felt several months had been wasted now that Santander wouldn't honour its offer – during which time interest rates had risen significantly, so she was no longer able to get as good a deal elsewhere. She had also been paying interest at her existing lender's standard variable rate since her previous fixed rate had ended on 31 August 2022.

Santander said it hadn't done anything wrong, because the remaining lease on the property didn't meet its minimum requirement and this hadn't come to light until a late stage, when it received an amended valuation.

Mrs R referred her complaint to us. Our Investigator concluded that Santander should have declined Mrs R's mortgage application around a month earlier than it did, on or about 13 September 2022. He recommended that the complaint be upheld.

Santander agreed, and offered to refund the difference between what Mrs R had paid on her lender's standard variable rate between 1 and 31 October 2022 and what she would have paid on the tracker rate she took with effect from 1 November 2022. It said it would also pay Mrs R £150 compensation.

Our Investigator thought that was fair, given that he had found Mrs R would most likely have arranged a new tracker rate a month earlier, and that the new rate could have been in place from 1 October 2022.

Mrs R disagreed and asked for a review. She still thought Santander should have declined her application much earlier, given that it knew about the length of her lease in July 2022. She also said she thought Santander's lending criteria had changed; otherwise it would have

declined her application earlier.

### **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.

Having done so, I've come to the same overall conclusion as the Investigator did – that is, that Santander has made a fair offer to resolve this complaint.

I've seen a copy of Santander's policy in respect of the minimum remaining lease it would accept. Where the mortgage is interest-only (as Mrs R's was to be), the minimum time remaining on the lease at the expiry of the mortgage term had to be 50 years. I haven't seen anything to indicate that this policy changed between May and October 2022, when Mrs R's application was in progress. This requirement is also on all the mortgage offers issued to Mrs R. Santander was entitled to decide to have this requirement; it has explained to Mrs R that this is because the length of the lease affects the property's value.

The completed mortgage application which Mrs R's broker submitted to Santander on her behalf said there were 125 years left on the property's lease. That turned out not to be the case: there were in fact 65 years left, which would have left only 47 years remaining at the end of the 18-year mortgage term for which Mrs R had applied.

However, Santander didn't know about this at the outset. The available evidence shows that it found out in July 2022: on 11 July 2022, the conveyancing solicitors faxed Santander with details of the correct remaining term on the lease and asking for its further instructions – specifically, *"Please confirm if you will require the lease to be extended"*.

There followed various correspondence between Santander, the conveyancing solicitors, and Mrs R. Mrs R had already said that she intended to buy the freehold to the property and extend the lease. Santander wanted to establish whether she could extend the lease before completion of the remortgage – because, if she could, the existing time left on the lease as it stood wouldn't be an issue and wouldn't stop Santander from lending.

Mrs R confirmed on 22 August 2022 that she wouldn't be extending the lease prior to completion because she intended to buy the freehold first. Santander's records show that it then referred the application back to the valuer, who went on to say on 5 September 2022 that if Mrs R were to buy the freehold at the same time as completion of the remortgage, that would be acceptable. The conveyancers relayed that to Mrs R the following day. Also on 6 September 2022, Mrs R told the conveyancers that purchasing the freehold was likely to take months. The conveyancers relayed that to Santander on 8 September 2022.

Santander's records show that it reviewed the application on 13 September 2022 and instructed an amended valuation – but I think that, knowing at that time that the remaining lease on the property didn't meet its requirements and that Mrs R wouldn't be able to make any changes in time, it should have declined the application at that point.

Mrs R says Santander should have told her sooner if it wasn't willing to lend. Had it done so, she could have looked elsewhere for a mortgage while rates were considerably lower than they were when Santander withdrew its offer.

I've looked carefully at the exchanges of correspondence in this case, and I think the questions Santander was asking were reasonable – once it knew about the issue with the lease, it first wanted to know whether and when the lease could be extended, and secondly when Mrs R would be buying a share of the freehold. It was exploring whether it could grant

the mortgage. It should not, however, have gone on to issue a mortgage offer on 26 September 2022 and should have declined Mrs R's application sooner, once it became clear that the lease wouldn't be extended and the share of the freehold wouldn't be bought either before or on completion of the remortgage.

Ultimately, the length of the remaining lease meant that Santander would never have been prepared to grant the mortgage Mrs R wanted, so I can't fairly require it to compensate her on the basis of the fixed interest rate product she had applied for. But I'm satisfied that Mrs R would have applied elsewhere for a new product as soon as she knew her application to Santander had been declined. So I find that she should be compensated for the extra interest she has had to pay as a result of Santander not declining the application in mid-September 2022.

Mrs R arranged a tracker rate with her existing lender on 14 October 2022, with effect from 1 November 2022. She has said she has always taken fixed interest rate products in the past on this and other mortgages, and always for five years – but as a result of the volatile financial climate in October 2022 and the lack of availability of low fixed rate products, she took a two-year tracker with a small fee to pay on early redemption, in order that she could move the mortgage onto a fixed rate once interest rates were more stable.

I can certainly understand Mrs R's point – although the information I've seen shows that she had taken two-year, rather than five-year, fixed interest rates on this particular mortgage in 2018 and 2020. So I've considered the interest rate products her existing lender had available in mid-September 2022.

The lowest two-year fixed rate product on offer for which Mrs R would have been eligible between 8 September and 5 October 2022 was 4.84%, the lowest five-year fixed rate was 4.49%, and the lowest tracker rate was a two-year product at Bank of England base rate plus 1.09%.

The fixed rates available from this lender increased on 5 October 2022, to above 5%. The two-year tracker remained the same: Bank of England base rate plus 1.09%, which is the product Mrs R went ahead with.

On balance, I think Mrs R is most unlikely to have made a different decision and taken a fixed rate product on or soon after 13 September 2022, had Santander told her then that her application to it wouldn't proceed. The available fixed rates from her existing lender were more than double the 1.99% she had been paying until 31 August 2022 – and I consider it most likely that Mrs R would have made the same decision in September 2022 that she went on to make in October 2022.

I therefore find that Santander has made a fair and reasonable offer to put things right and, on the basis that it would have taken a short time to put the new product in place, Mrs R could reasonably have moved her mortgage onto a two-year tracker rate at Bank of England base rate plus 1.09% from 1 October 2022 instead of 1 November 2022. Mrs R didn't pay legal or valuation fees in connection with her Santander application, and I make no award for broker fees as they would have been payable irrespective of the outcome of the application.

I consider that Mrs R should also fairly receive some additional compensation for the inconvenience and disappointment she was caused as a result of Santander not having declined her application sooner. I find £150 is a fair award to reflect that.

### **Putting things right**

Santander UK plc should pay Mrs R:

- 1) the difference between what she paid on her lender's standard variable rate (which the lender has confirmed was 5.74%) between 1 and 31 October 2022 and what she would have paid on the tracker rate (Bank of England base rate plus 1.09%) she took with effect from 1 November 2022;
- 2) simple annual interest of 8% on the sum at 1) above from 1 November 2022 to the date of settlement\*;
- 3) £150 compensation.

\*Santander may deduct income tax from the 8% element as required by HMRC. It should tell Mrs R what it has deducted so that she can reclaim the tax from HMRC if she's entitled to do so.

### **My final decision**

My final decision is that Santander UK plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 24 October 2023.

Janet Millington  
**Ombudsman**