

The complaint

Mr and Mrs D complain that Santander UK Plc has applied an early repayment charge (ERC) when they redeemed their mortgage. They think the ERC wasn't accurately explained to them by Santander when they took out their mortgage and the amount charged is excessive and unfair.

What happened

Mr and Mrs D took a mortgage with Santander in late 2018. The mortgage was on a fixed interest rate until January 2024. They borrowed further money by way of a further advance in June 2020, which had a fixed rate of interest until September 2023.

Both of these mortgage products had an ERC until the end of the respective fixed rate period. The ERC was set out in each mortgage offer as a percentage of the loan if it was fully repaid.

Mr and Mrs D were experiencing financial difficulty. They ended up moving out of the house and renting it out. In March 2023, Mr D spoke with Santander and asked for an exception to be made in their circumstances and for the ERC to be waived due to their financial difficulties. Santander considered the request but didn't agree to it. The mortgage was redeemed in July 2023.

Mr and Mrs D complained to Santander about its decision to apply the ERC. It didn't uphold the complaint, so Mr and Mrs D referred the complaint to us. They said Santander had led them to believe the ERC would be waived. And they thought they were misled by Santander's sales staff into believing the ERC would reduce over time as they believe is the industry norm.

One of our Investigators looked into the complaint. He didn't think it should be upheld. Mr and Mrs D didn't agree. They said that the mortgage had been mis-sold to them when they took it, and the ERC wasn't accurately disclosed to them. They said they were willing to pay the interest they would've paid until the end of the mortgage product which they believe was fair, but that an ERC of this amount was punitive and disproportionate given the short amount of time remaining on their mortgage product.

Mr and Mrs D asked for the complaint to be considered by an Ombudsman. So, it's been passed to me to review and make a final decision.

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 recognise that Mr and Mrs D feel very strongly about this. But, having considered everything, I don't think Santander has done anything wrong. I realise this is going to disappoint Mr and Mrs D. But I'll explain why.

The Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans.

Santander is entitled to set an ERC based not on the actual cost to it of Mr and Mrs D ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Santander is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. And that's What Santander has done here, which it's entitled to do.

Mr and Mrs D haven't specifically questioned whether this was a reasonable pre-estimate. Instead, they've said they weren't given clear information to make a decision when they took their mortgages. And they were led to believe that the ERC would reduce over time as they believe is the industry standard.

Of course, I can't know what was said when Mr and Mrs D took either of their mortgages. And when what's happened is in dispute, I have to make my decision on the balance of probabilities. That is, what I think most likely happened taking into account the evidence I do have. In considering this particular point, I've reviewed the mortgage offers for both of Mr and Mrs D's mortgage accounts. Both of these offers were produced and provided to Mr and Mrs D at the time they took the mortgages. So would likely have been seen and reviewed by them before proceeding.

The initial mortgage offer taken in 2018, has a section entitled "Early Repayment Charges". This says that if the loan is repaid before 2 January 2024, then 5% of the amount repaid will be applied as an ERC. It goes on to give cash examples of what might be charged. Whilst the amount that may be charged does reduce over the years, that's because this was a repayment mortgage so the balance would naturally reduce over time, therefore reducing the amount required to redeem the mortgage and the ERC.

The mortgage offer for the further advance has a section entitled Early Repayment. This clearly sets out that 3% of the amount repaid will be charged if the mortgage is redeemed before 2 September 2023. Again, it gives reducing cash values over time of what this may be. But this is for the reasons I've set out above. Not because the percentage charged reduced over time.

Based on this, I'm satisfied that Santander made Mr and Mrs D sufficiently aware what the ERC would be if they redeemed either mortgage before the end of the fixed interest rate period.

Mr and Mrs D have said that most lenders reduce the ERC over time. But I don't agree.

Some lenders do take this approach, but not all. And it's for a lender to decide how it calculates this in line with the rules I've set out above. Santander has chosen to do it as a fixed percentage, and has expressed this as a cash value. It's entitled to do so, and I can't say it's done anything wrong in this regard.

Whilst I do understand why Mr and Mrs D feel strongly about this matter given that they were very close to the end of the ERC period, it was ultimately their decision to repay the mortgage. And they did so in the knowledge that they'd incur an ERC. I can't fairly ask Santander to refund this.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 March 2024.

Rob Deadman
Ombudsman