

The complaint

Mr F's complaint is that Santander UK Plc put pressure on him to pay off his interest-only mortgage. Mr F believed Santander had granted a term extension in 2019 to run until his 70th birthday (so until 2025).

Mr F said that, in order to repay his mortgage, he had to sell a second property, and so has lost the capital growth the property would have made had he not sold it until 2025.

To settle the complaint, Mr F would like Santander to compensate him for his losses, apologise for what it has done and review its policy of *"revoking mortgage extensions"*.

What happened

Mr F had an interest-only mortgage with Santander, originally taken out jointly with his wife, Mrs F, and with a lender (which I will call A&L) that was later taken over by Santander. The mortgage term was due to expire on 1 December 2019.

On 1 March 2019 Mr F contacted Santander to let the bank know that Mrs F had passed away. Santander's contemporaneous notes record it telling him that there were eight months remaining on the mortgage term. The call was transferred to the Interest Only Maturities Team (IOMT) as Mr F said he didn't have the funds to clear the mortgage balance.

There are no further call notes with the IOMT and, due to the passage of time, the call recording is no longer available. However, Mr F says that during this call Santander agreed to extend the mortgage term to February 2025, when he would reach his 70th birthday.

Santander told us that its policy is that it does not look at requests for term extensions until there is six months or less remaining on the mortgage term. The bank also said there are no notes to show that a term extension was either applied for or agreed.

Annual mortgage statements were sent, and from January 2020 onwards these showed that the mortgage term had expired. However, although Santander's system should have triggered letters to Mr F before the end of the term and thereafter, for reasons that are unclear, no letters were generated.

It wasn't until September 2022 that the issue came to light. In November 2022 Santander conducted a manual review of the account, when the bank noted that the term had expired in December 2019 when the balance of approximately £180,000 should have been repaid. Santander wrote to Mr F saying it would take legal action.

In December 2022 Mr F requested a term extension to his 70th birthday, but Santander declined this on the basis of affordability and because Mr F had an alternative repayment strategy (sale of a second property).

Mr F complained. In January 2023 Santander issued its final response letter. Santander acknowledged that it should have let Mr F know that the term had expired in 2019, and it paid him compensation of £250 for its omission. The bank's notes show that it told Mr F that

it would not take legal action while Mr F was being proactive about the sale of a second property he owned, which he was selling to repay the mortgage.

The property was sold and the mortgage was repaid on 13 April 2023.

On 17 April 2023 Mr F contacted Santander again. His complaint this time was that, actually, Santander *had* granted him a term extension, and that this had been done in March 2019. Mr F said that he hadn't made an application for a term extension, but because he'd received no further correspondence from Santander that the term had expired, he was satisfied the extension had been granted.

Santander didn't uphold this complaint, so Mr F raised it with our service. An Investigator looked at what had happened. She was not persuaded that Santander had granted a term extension in March 2019, as Mr F claimed. This is because the annual statements from 2020 onwards showed that the term had expired.

The Investigator also didn't uphold Mr F's complaint that he'd lost between £15,000 and £30,000 by selling his second property in 2023. She said that these were hypothetical losses and that there was no guarantee Mr F would have achieved a different price if he'd sold the property sooner or later.

However, the Investigator didn't think Santander had done enough to put things right in relation to its lack of communication. She thought that, if Santander had followed the correct process, Mr F would have been aware at a much earlier stage that his mortgage had expired. She thought that Mr F would have been caused distress when the first letter he received about this in November 2022 was that legal action would be taken. The Investigator asked Santander to pay an additional £500 compensation (so £750 in total), which the bank agreed to do.

Mr F didn't accept this and asked for an Ombudsman to review the complaint. He said that he'd had the second property valued by an estate agent in July 2022 to see if was on track to pay off the mortgage by his 70th birthday (in 2.5 years' time). Mr F says that if Santander had contacted him sooner to discuss repayment, a timescale could have been discussed. But because Santander put him under pressure, and expected him to update the bank about the sale, he was caused immense stress.

Mr F acknowledged that he was aware that the statements from January 2020 onwards said the term had expired, but in October 2022 he got a letter about the interest rate changing, which said the term was five months. In April 2023 he was told he had another five months. As a result, Mr F says there was no reason for him to expect a demand for immediate repayment.

Mr F therefore doesn't feel that £750 is fair, as he was caused a lot of stress and this amount does not provide a deterrent for Santander to stop behaving in such a callous manner.

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'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes and systems, or how they operate generally; that's the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else, but in doing so, we have to work within the rules of the Financial Ombudsman Service and the remit those rules give us.

We have no power to sanction, punish or fine businesses – that's the role of the FCA. Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

So whilst I note that Mr F would like any compensation awarded to act as a “*deterrent*”, that's not something that falls within my remit.

Mr F's two complaints made in November 2022 and April 2023 somewhat contradict one another. On the one hand, in his first complaint, Mr F was upset that the first contact Santander had made about the expired term (other than the annual statements) was a letter threatening him with legal action. Mr F asked Santander to extend the term, but the bank declined due to Mr F having a second property that he was able to sell.

I note during the phone conversations Mr F had with Santander in late 2022 and January 2023 that he did not mention at any point that he believed the term had been extended in 2019; this wasn't mentioned until *after* he'd sold the property in April 2023.

Santander's notes don't show any application for a term extension. I accept what Mr F has said – which is that the IOMT said that mortgage terms can be extended to a borrower's 70th birthday. Mr F also says that the call was disconnected. Given this, I'm not persuaded that it was reasonable for Mr F to believe that a term extension had been granted, when he has acknowledged that there was a general discussion about the maximum age limit for a term extension. This is borne out by the annual mortgage statements, which show that, from January 2020 onwards, the term had expired, which Mr F has accepted he noticed.

Santander has acknowledged that it should have contacted Mr F shortly before the term expired, and after it did, requesting payment of the outstanding balance. The bank's notes show that there were a small number of A&L mortgages that, when migrated onto Santander's system, resulted in a systems error which meant that borrowers weren't sent the usual computer-generated prompts about the impending end of the mortgage term, nor any letters after it had expired.

Santander's accepted that this was an error on its part and that Mr F should have been sent letters before the term ended, and after it ended in December 2019. I completely understand why Mr F was upset when he received a letter in November 2022 threatening him with legal action.

Santander considered a term extension, but declined this. There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but

wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, a request for a term extension *is* a material change to the mortgage contract. Santander wasn't able to extend the mortgage term on interest-only due to affordability. However, Santander could have agreed the extension without considering affordability if it considered it to be in Mr F's best interests. In this case, I'm not persuaded that Santander acted unreasonably in declining the request in December 2022 for a term extension.

This is because Mr F's repayment strategy for the mortgage was the sale of a second property. There is no guarantee that by February 2025 (Mr F's 70th birthday) the property would have appreciated in value to the extent Mr F believes. Indeed, it might even have fallen in value by then, given the uncertainties of the economy. Because Mr F had an immediate repayment strategy, I'm not persuaded that it was unreasonable for Santander to decline to extend the mortgage term to Mr F's 70th birthday.

Overall, I'm satisfied that no term extension had been granted in March 2019. Santander has explained that the failure to contact Mr F when the term was about to expire (and after that) was due to a systems 'glitch' on old A&L mortgages. I appreciate Mr F wouldn't have known about this computer error (and indeed, Santander didn't realise it until November 2022), but the other evidence in the form of annual statements satisfied me that Mr F knew, or ought to have known, that the term expired in 2019. In addition, I'd have expected Mr F to have mentioned at the very first contact with Santander in late 2022 that he believed a term extension had already been granted in 2019, rather than wait until after the mortgage had been repaid to first raise this point.

I'm satisfied that Santander wasn't under any obligation to extend the term when it was asked to do so in December 2022, and that its decision to decline an extension was fair in all the circumstances. However, I do acknowledge that Mr F was very upset at being told that legal action might be taken.

Putting things right

Santander has accepted that Mr F was caused distress and inconvenience by its failure to tell him until November 2022 that the term had expired in December 2019. I agree with the Investigator that a further award of compensation – in addition to the £250 Santander has already paid – is fair and reasonable in all the circumstances. I think that an additional £500 is appropriate for this. It reflects the upset caused to Mr F in having to take steps to sell his second property, and the distress he felt in receiving correspondence threatening him with legal action.

My final decision

My final decision is that to settle this complaint Santander UK Plc must pay Mr F compensation for distress and inconvenience of £750, made up of £250 already paid and an additional £500. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

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

Jan O'Leary
Ombudsman