

The complaint

This complaint's about a mortgage Mr and Mrs T hold with Santander UK Plc. The essence of the complaint is that Santander rejected, or at least failed properly to consider, their various requests to extend the mortgage term. The mortgage term has now expired.

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs T being identified. So for these reasons, I will concentrate on giving a brief summary of the complaint, rounding the figures, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs T took the mortgage out in 2008, followed by later further advances. The mortgage was part repayment, part interest-only, and since 2015, the interest-only component has had a balance of around £13,000, due to be repaid by 1 October 2023.

There have been various exchanges between Mr and Mrs T and Santander in recent years about how best to deal with the impending term end. In 2021, Mr and Mrs T explored the possibility of changing the mortgage to capital repayment, but complained when Santander insisted they submit copy bank statements in a particular format. The application was abandoned with Mr and Mrs T telling Santander they were looking at other options, including moving elsewhere.

Subsequently, Mr and Mrs T asked about applying a new interest rate product to the mortgage. Santander declined this because by then, the remaining term was shorter than the duration of any of the available rate deals. The possibility of a lifetime mortgage was discussed briefly, but didn't lead to anything.

Starting in May 2023, Mr and Mrs T applied to extend the mortgage term on a capital repayment basis. Santander considered the affordability of this process, but said no on the basis that some of Mr and Mrs T's income couldn't be considered. As an alternative, it proposed a two-year term extension on interest-only. Mr and Mrs T complained, and in its final response to the complaint, dated 3 October 2023, Santander offered £250 compensation and agreed to revisit the application as a policy exception.

By now the mortgage term had expired, but on 31 October 2023, after completing its exception review, Santander issued a new offer for a repayment mortgage over six years, on a fixed rate of 5.16% running until February 2029. By then, however, Mr and Mrs T had referred their complaint to this service, saying that in settlement, they expected the outstanding interest-only balance to be written off.

Our investigator didn't recommend the complaint be upheld. He thought Santander had considered the term extension request fairly and in accordance with its lending policy.

Mr and Mrs T remain unhappy so the case has come to me for review.

What I've decided – and why

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

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 ombudsman service, and the remit those rules give us.

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 set out my conclusions and the reasons for them below.

My starting point here is that Mr and Mrs T borrowed money under the terms of an agreement that required them to repay the money by 1 October 2023. No one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to more time to repay the debt after it's due for repayment. But a lender must treat customers fairly. In the context of an application for a term extension, that means assessing it in accordance with the bank's lending criteria and being mindful of what mortgage regulation requires of it, which includes considering what is in a customer's best interests. Lenders' criteria are commercially sensitive and not generally made public.

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.

A term extension is a material change to the mortgage contract, so is a switch from interest only to capital repayment. In the circumstances, Santander was, I find, entitled to consider whether and how comfortably Mr and Mrs T would be able to afford a mortgage extension on capital repayment terms. But it also had to consider whether the change to the mortgage would be in Mr and Mrs T's best interests – and if it was, then the affordability assessment could be disregarded.

Santander looked carefully at Mr and Mrs T's wider financial situation, which included income that, in the normal course of events, would not be accepted for consideration under Santander's standard lending policy. When considered again, Santander agreed to accept the income source, presumably on the basis that it was in Mr and Mrs T's best interests to allow the new term. Considering all of the circumstances, I think Santander did assess the term extension request fairly and, ultimately, offered Mr and Mrs T what they wanted.

Only Mr and Mrs T know why they did not accept the offer of a new mortgage when Santander offered it on 31 October 2023. They will no doubt have their reasons, and it was certainly a choice they were entitled to make. However, insofar as it was their choice, Mr and Mrs T must accept the consequences that flow from it.

The new offer expired on 14 November 2023, and Santander is no longer bound by it. The present position is that the mortgage balance is overdue for repayment, Mr and Mrs T are making monthly interest payments (at Santander's standard variable rate, currently 7.50%) and Santander is presently holding recovery action for the overdue balance in abeyance pending the outcome of this complaint.

So the current situation is that once my final decision has been issued, Mr and Mrs T will need to approach Santander afresh, and begin the process of trying to agree a plan for the mortgage all over again.

To be clear, however, it should not be inferred from my making this observation that any such request, if made, must be agreed to. As with the request I've dealt with here, Santander's obligation would be to assess a subsequent request fairly. Alternatively, Mr and Mrs T could speak to an independent financial advisor to explore other options, such as equity release, if they want to remain in their property.

That leaves one last point. Before the case came to us, Santander has made an offer to pay Mr and Mrs T £250 compensation for their time, trouble and upset. Given that I haven't found that Santander has treated them unfairly, if that offer had not been made, I would not have awarded more. Insofar as the offer *has* been made, it seems fair overall that Santander pay it, assuming Mr and Mrs T accept my final decision.

My final decision

My final decision is that this complaint should be fairly determined by with Santander UK Plc paying Mr and Mrs T £250. I make no other offer or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 3 July 2024.

Jeff Parrington

Ombudsman