

The complaint

This complaint is about Mr H and Ms P's buy-to-let (BTL) mortgage held with Santander UK Plc. The mortgage was on a fixed-rate product which ended on 2 May 2023.

Mr H, who has dealt with the complaint throughout, says that Santander sent correspondence to an incorrect address, as a result of which he was unaware that the fixed rate on the mortgage had expired. In June 2023 the mortgage moved onto Santander's BTL follow-on rate, resulting in increased repayments.

Mr H says that, because he wasn't aware the mortgage payments were about to go up, he wasn't able to increase his tenant's rent to cover this. Mr H says he has suffered financial loss, distress and inconvenience.

What happened

I do not 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. Santander has acknowledged it made an error, and has offered to put things right. Therefore I don't need to analyse what happened in detail in order to decide whether or not Santander is at fault. All I need to determine is whether Santander has done enough to put things right, or if there is anything further the bank needs to do.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr H and Ms P being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, 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.

In its final response letters Santander acknowledged that it had sent the letter confirming expiry of the fixed rate to an old address. In its final response, Santander offered Mr H and Ms P a range of rates that would have been available in May 2023. They were asked to choose which one they preferred, and Santander said it would then apply this to the mortgage and backdate it to run from 3 May 2023, the day after the previous fixed rate expired.

Santander apologised for sending letters to an outdated address. Santander confirmed it had reported this to its data protection team, and it was up to that department to decide whether or not to report to the Information Commissioner's Office (ICO). Santander explained that if Mr H and Ms P weren't satisfied with this, they would be able to raise the data breach with the ICO themselves. The bank confirmed it had updated Mr H and Ms P's address on its system.

Santander also offered £200 compensation for distress and inconvenience.

From the options offered by Santander, Mr H and Ms P selected a five-year fixed rate at 4.37% with a fee of £1,749. However, they didn't consider £200 to be adequate compensation.

In September 2023 the complaint was brought to our service where an Investigator looked at what had happened. On 2 November 2023 Santander confirmed to the Investigator that the new interest rate product had now been put in place, backdated to 3 May 2023. However, because this had taken so long to put in place, with further correspondence from Mr H not being replied to, Santander increased its offer of compensation to £500, and offered a further apology to Mr H and Ms P.

Another Investigator took over the complaint. She also looked at what had happened. Having done so, she noted that on 3 November 2023 Santander had credited £744.19 to Mr H's account, being the difference between repayments at the follow-on rate and at the rate chosen by Mr H and Ms P.

The Investigator also asked Santander to pay interest at 8% simple per annum on the overpayments, which Santander agreed to do, after deducting basic rate tax of 20%. The gross figure was £20.46, and the net figure £16.37.

Mr H didn't think this was a fair offer. He was also unhappy that the new mortgage product was for 63 months, rather than 60 months. He said that, because it was backdated to May 2023, it should end in May 2028, not August 2028. Mr H said that, because of Santander's actions, no other lenders could be considered, and that he would then be punished by being tied into the product "*for longer than the proposed length of the loan*".

Mr H said that the additional £300 compensation offered by Santander in relation to "*dishonest acts from a regulated bank*" was inadequate. Mr H also said that there had been no recognition of him being compensated for the data breach that had occurred.

Mr H said that the Investigator had failed to follow all lines of enquiry, and that the loss of rental income he'd incurred should be taken into consideration. Mr H said he'd accept compensation of £1,000 to settle the complaint.

Santander declined to increase its offer of compensation, so it now falls to me to issue a 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'll begin by explaining that the Financial Ombudsman Service isn't a regulator, and we have no powers to "police" financial businesses, sanction, fine or punish them. We are independent of both consumers and the businesses they are complaining about.

This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Mr H would like answered, it's not my role to put those questions to Santander or act as a representative or go-between on this case.

The underlying issue giving rise to the complaint – the switch to a new interest rate product – has now been completed. This took longer than anticipated, with Santander not replying to correspondence. Santander's accepted things could have gone more smoothly. Because the bank has accepted this, although Mr H might want me to go into detail about everything that's happened, I don't need to, given that the bank has acknowledged mistakes were made.

Data breach: Santander accepts it sent correspondence to an incorrect address and as a result reported this as a data breach to its data protection team. The bank explained in its final response letter dated 23 August 2023 that if Mr H and Ms P weren't satisfied with this, they could refer the matter to the ICO.

The ICO is the correct body to deal with data protection breaches. It is Mr H and Ms P's decision whether or not they wish to escalate matters to the ICO. The Financial Ombudsman Service has no power to enforce breaches of data protection legislation, and so the ICO is the more appropriate body for this.

But I note that, when responding to the complaint, Santander apologised for the data breach and offered compensation of £200 for this. I think this is reasonable and don't require Santander to do anything further in this respect.

New interest rate product: The products offered by Santander were clearly set out in its final response letters, and so I'm not persuaded Mr H and Ms P weren't aware of the date when the new product they took out would expire.

Mr H says that the product they chose runs for 63 months, rather than 60 and that this is "*for longer than the proposed length of the loan*". However, the mortgage was taken out in 2018 over a term of 25 years. Therefore in 2023 the mortgage had approximately 20 years left to run, which greatly exceeds the length of the term over which the new interest rate product is fixed. I'm satisfied, therefore, that the new interest rate product does not exceed the remaining length of the mortgage term.

Loss of rental income: A BTL mortgage is considered a commercial investment. Santander's role is to administer the mortgage account, not manage Mr H and Ms P's investment for them. Lenders generally remind borrowers that an interest rate product is due to expire (although in this case, Mr H and Ms P didn't get the letters, due to them being sent to the wrong address).

However, as commercial borrowers, the onus is on Mr H and Ms P to manage their investment, including being aware of the date when their interest rate product is due to expire. The expiry date is set out clearly in the mortgage offer, which shows that the original five-year fixed rate product would expire on 2 May 2023. A prudent investor would be expected to diarise important dates that could affect the value of, or return on, their investment, and if Mr H and Ms P didn't do so, I can't hold Santander responsible for this.

This means that, although I acknowledge Mr H says he lost the opportunity to increase his tenant's rent, I'm not persuaded that it would be fair or reasonable to expect Santander to compensate him and Miss P for this.

Putting things right

Our awards of compensation are not intended to be punitive, nor replicate damages at the level a court could award. I think for its initial error in sending correspondence to the wrong address, resulting in distress and inconvenience, the £200 compensation offered by Santander is fair and reasonable.

However, there were additional errors by Santander when Mr H was trying to put the new interest rate product in place. Santander has accepted the service it provided in this respect should have been better, and has apologised and offered compensation. I can see Mr H had to chase up Santander, and that his letters weren't replied to. I think the additional £300 offered by Santander and its apology for the distress and inconvenience caused are also fair, reasonable and proportionate to the errors made.

I therefore don't think Santander needs to pay any additional compensation over and above the total compensation of £500 which it has offered.

Santander has already paid Mr H and Ms P redress for the mortgage overpayments. If it has not already done so, Santander should also pay the amount calculated for net interest on those overpayments of £16.37, as detailed above.

My final decision

My final decision is that I uphold this complaint. I direct Santander UK Plc to settle the complaint as directed above. 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 H and Ms P to accept or reject my decision before 8 May 2024.

Jan O'Leary
Ombudsman