

## **The complaint**

This complaint's about a mortgage that Mr J holds with Santander UK Plc. He's unhappy that his application for a new fixed rate deal when his original interest rate product expired was cancelled without explanation or reason. This meant his mortgage reverted to Santander's standard variable rate (SVR) which has cost him a lot more interest each month. Mr J says this is unfair.

## **What happened**

By way of a provisional decision dated 4 March 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr J and Santander. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with all parties, and so I don't need to repeat all of the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mr J being identified. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr J took the mortgage out in 2015, on the advice and recommendation of Santander; the initial interest product was a two-year fixed rate. In 2017, Mr J took a fixed rate interest product running until February 2023. In late 2022, Mr J submitted a request for a new product to follow on when the five-year deal ran out. On 10 October 2022 Santander issued an offer for a new rate of 5.64%, fixed until January 2028. However, it subsequently cancelled the application and Mr J's mortgage reverted to SVR in February 2023.

Mr J complained, and its final response, Santander said there was no mistake and it had the right to withdraw the offer without giving a reason. Mr J referred his complaint to us. Our investigator asked Santander why the offer had been withdrawn, and it gave its reasons in confidence, which our rules allow it to do. However, the investigator wasn't persuaded Santander had acted fairly and recommended the complaint be upheld.

To put things right, he said Santander should re-work Mr J's mortgage as if the 5.64% offered in October 2022 had been applied. Despite several chasers from the investigator, Santander hasn't provided a substantive reply saying whether it accepts or rejects the proposed resolution.

## **What I've provisionally decided – and why**

I'll make some general observations before dealing with the substance of the complaint. 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

My starting point here is that no borrower is entitled to a lower interest rate; lenders have to consider context and individual circumstances in all cases. They also have their individual lending criteria and appetite for risk. It's not the role of the Financial Ombudsman Service to say what those criteria should be, or to second-guess lenders' judgement on risk. But a lender must treat customers fairly.

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.

Santander has told us in confidence that it has concerns that go to Mr J's ability to afford the mortgage. However, Mr J wasn't asking for additional borrowing and the 10 October 2022 offer indicates he was paying the product fee rather than adding it to the mortgage balance. No other changes to the mortgage were proposed that would be material to affordability; indeed, applying the new rate would have resulted in lower monthly payments than would be due on SVR. Mr J had no history of arrears and had made a number of lump sum reductions to the mortgage balance during its lifetime.

In all the circumstances, I don't think it was fair of Santander to withdraw the offer of a new rate on affordability grounds. In that context, I've reached the same conclusion as the investigator.

Whilst the case has been with us, there have been further developments; recently, Santander accepted a fresh application from Mr J, made through an intermediary, to put his mortgage on a fixed rate of 4.69%, effective from 1 January 2024. That's a lower rate than the one he was refused in late 2022, and which our investigator was

proposing Santander should apply. Also, Santander has told us it is willing to refund Mr J the difference in interest between SVR and the 5.64% rate, for the period between February 2023 and January 2024.

I think that is a reasonable proposal; it actually puts Mr J in a better position than he would be in if he'd gone straight onto the 5.64% deal in February 2023 and then switched to the 4.69% rate in January 2024. If he'd done that, Mr J would have incurred an early repayment charge (ERC) for leaving the 5.69% deal prematurely."

I gave the parties two weeks to comment on the provisional decision; that time has now passed. Neither party has added anything further for me to consider.

### **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 considered afresh everything that both parties have said and provided, I won't be departing from my provisional conclusions.

### **My final decision**

My final decision is that I uphold this complaint, by ordering Santander UK Plc to do the following:

- re-work Mr J's mortgage account on the basis that the 5.64% fixed rate product was applied on 1 February 2023, up to and including 31 December 2023, and then replaced by the 4.69% rate that took effect on 1 January 2024;
- refund the differential interest Mr J incurred each month from February to December 2023 inclusive; and
- pay interest on each refunded amount, at 8% simple per annum\* from the date each refunded amount was paid by Mr J to the eventual date of settlement.

\*If Santander deducts basic rate income tax from the interest element of this award, it should supply Mr J with the relevant tax certificate, so that he can apply to HMRC for a refund if his wider circumstances allow.

My decision concludes our consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 April 2024.

Jeff Parrington

**Ombudsman**