

## The complaint

Mr and Mrs R complain that Santander UK Plc treated them unfairly after the term of their interest only mortgage expired.

## What happened

Mr and Mrs R took out a mortgage with Santander in 2009. The mortgage was on an interest only basis with an 11-year term. The term expired in September 2020 with an unpaid balance.

Mr and Mrs R said it wasn't a good time to sell the property due to market conditions and they were worried about viewings during the Covid-19 pandemic. Santander agreed a term extension to May 2023 with a fixed interest rate product.

In early 2023 Mr and Mrs R asked for a further term extension at a reasonable interest rate. They said it wasn't a good time to sell the property or a second property they owned due to market conditions. They said due to capital gains tax the net proceeds from the sale of the second property wouldn't be enough to repay the mortgage balance in full. Mr and Mrs R said high interest rates meant it wasn't a good time to take out an equity release or lifetime mortgage or for their daughter, who lives in their second property, to take out a mortgage.

Santander declined Mr and Mrs R's request for a further extension. It said it doesn't offer mortgages with an interest only part if the term would go past the borrower's 70<sup>th</sup> birthday. Mr and Mrs R are both over 70. Mr and Mrs R told Santander they can't afford interest payments at the follow-on rate. Santander agreed a reduced payment plan and to hold recovery action for two months, which it extended up to December 2023. This was to allow Mr and Mrs R time to look into their options to repay the mortgage.

In late 2023 Mr and Mrs R asked Santander if they could take the property off the market. They said sales conditions would be better in March 2024. Santander didn't agree to hold recovery action on that basis. Mr and Mrs R raised a number of complaints, in summary:

- Santander unfairly declined their request for a term extension due to their age. They say Santander is discriminating against them. They say it didn't carry out a risk assessment – as required by law – before declining their request.
- Santander refused their requests for more time to repay the mortgage. They say they are looking into their options but it's not a good time to sell a property or take out any sort of mortgage. They say Santander is forcing them to sell their property of 34 years for less than it's worth.
- Santander is wrong to say the mortgage charter doesn't apply to their situation. They say Santander deliberately increased their payments so that they'd fall into arrears, the mortgage charter wouldn't apply and it could take possession of their property.
- Their interest payments aren't affordable on a state pension, which Santander knows from their income and expenditure. They asked Santander to accept a lower monthly

payment and stop adding interest – which it declined.

- Santander didn't provide clarity about its repossession process and how long they have until it instructs solicitors.
- Santander cancelled their direct debit, their branch didn't allow them to make payments by debit card and they had to set up payments by standing order.
- Santander refuses contact by email so conversation isn't recorded.

Our investigator said, in summary, that Santander had shown forbearance and acted fairly in allowing Mr and Mrs R time to look into their options. She said the mortgage charter didn't apply here. And Santander had legitimate concerns about how the mortgage would be repaid if it did extend the term further. Our investigator said it wasn't clear this would be in Mr and Mrs R's best interests. Overall, she didn't think Santander was unfair to decline a further term extension.

Mr and Mrs R didn't agree. They asked that an ombudsman re-consider the complaint.

### **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.

We offer an informal dispute resolution service. While I'm required to set out my reasons for reaching my decision, I don't have to respond to each point raised by the parties. And while we take law, regulation and good practice into account, only a court can decide whether a party is in breach of a contract or legal requirement. I can assure Mr and Mrs R that I've reviewed all of the comments and evidence provided by them, as well as by Santander.

I should also say that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

At the heart of this complaint is whether it's fair for Santander to ask Mr and Mrs R to repay their mortgage. I'll start by explaining why I don't think it's fair and reasonable to require Santander to offer Mr and Mrs R a further term extension. I will then explain why the various points raised by Mr and Mrs R didn't change my decision.

#### *The further term extension*

It's reasonable for Santander to expect Mr and Mrs R to repay the mortgage at the end of the term – as they agreed to do when they took it out. Circumstances were difficult in 2020 when the term expired. Santander agreed to extend the term to mid-2023 with a beneficial interest rate. I think this was fair. This allowed Mr and Mrs R about two and half years to make arrangements to repay the mortgage.

Santander had made Mr and Mrs R aware in 2020 that the maximum period it would extend the term was up to the borrower's 70<sup>th</sup> birthday. Mr and Mrs R were aware in 2020 that it was unlikely that Santander would offer a further extension.

As I said, it's reasonable for Santander to expect the capital to be repaid. And Mr and Mrs R have options available to repay the mortgage. They could sell the property (they say its worth about £700,000 to £800,000, which would leave them with equity of more than £500,000 towards another property). An equity release or lifetime mortgage is an option

available to them – which would allow them to remain living in the property. Mr and Mrs R could sell their second property, which would raise enough to repay most of the balance. This would significantly reduce the amount they'd need to refinance with an equity release or lifetime mortgage or repay by other means.

It seems Mr and Mrs R accept these options are available to them. They say this isn't the best time to sell a property – that they won't get as much for it as they might if they sold it at some point in the future. They say that they might get a better rate if they take out an equity release or lifetime mortgage in the future.

There would be risks involved for Santander in offering a term extension. There's no guarantee Mr and Mrs R would achieve a better deal. Property prices might not increase – and could fall. Interest rates might stay the same or even increase. In the meantime, Mr and Mrs R would have to pay mortgage interest – something they told Santander they were struggling with. If Mr and Mrs R can't pay the interest the balance owed will increase – putting them in a worse position. Even if it agreed a term extension, it's unlikely Santander would be able to offer a beneficial interest rate similar to the one it offered in 2020. Interest rates have increased significantly since then.

Ultimately though, Mr and Mrs R have options available to repay the mortgage. I don't think it's fair to require Santander to wait when Mr and Mrs R are in a position to repay the mortgage, simply because they are hoping for a better deal in the future.

### *Age discrimination*

Santander's policy is not to lend on an interest only basis past the borrower's 70<sup>th</sup> birthday. Mr and Mrs R are both over 70 years old. Mr and Mrs R say that Santander discriminated against them because of their age. They say it didn't carry out a risk assessment – as required by law – before declining their request.

The relevant law here is the Equality Act 2010 and associated regulations. While age is a protected characteristic, the law says that financial services providers can take age into account (referred to as the financial services exemption). If the lender has carried out a risk assessment based on age it must base its assessment on relevant information from a source on which it's reasonable to rely. If there's no risk assessment it can rely on the exemption.

Although I take relevant law into account, specific findings of a breach of the Equality Act are more a matter for the courts than they are for me. I think the crucial question here is whether Santander acted fairly when it required Mr and Mrs R to repay their mortgage rather than agree to a further term extension. For the reasons set out above, I think it did.

### *Interest rate*

Mr and Mrs R had a fixed rate of 2.99% until April 2023. It was unfortunate for Mr and Mrs R that interest rates increased. This meant their monthly payments increased significantly when the product ended.

While I appreciate that Mr and Mrs R are struggling with their monthly payments while on the follow-on rate, I don't think Santander has fairly to offer a new interest rate product. Mr and Mrs R's mortgage term has expired and Santander expects Mr and Mrs R to repay the mortgage. Santander can't offer a new interest rate product (which have a set term) when there is no term remaining on the mortgage. I don't think it's fair to require it to do so.

Mr and Mrs R say monthly interest payments at Santander's follow-on rate aren't affordable.

Based on the income and expenditure information Mr and Mrs R provided to Santander, it agreed they could make reduced monthly payments while they repay or refinance the mortgage. I think this was fair. I don't think it's fair to require Santander to stop applying interest or to write off interest applied to the mortgage.

### *Taking action for possession*

I think Santander has been fair in offering a term extension and, when that expired, offering to hold recovery action for a period while Mr and Mrs R arrange to repay or re-finance the mortgage. Santander told Mr and Mrs R it would hold action for a maximum of six months.

I don't think it's fair to require Santander to provide its internal policy regarding possession action to Mr and Mrs R. It's likely this contains commercially sensitive information.

In October 2023 Mr and Mrs R asked if they could take the property off the market until the following spring. Santander said it wouldn't hold action on that basis. I think that was fair. Santander put forbearance measures in place to allow Mr and Mrs R time to sell the property. Santander held action while Mr and Mrs R's complaint was dealt with.

It's now more than a year since the term extension expired. I can't fairly require Santander to hold action indefinitely. It's entitled to be repaid the money that it lent to Mr and Mrs R. Ultimately, it can take possession of the property to recover the debt.

While taking possession is a last resort, Santander needs to take into account that Mr and Mrs R are unable to pay their monthly interest in full. For so long as Mr and Mrs R are unable to pay the interest in full each month the amount of the debt secured on the property will increase. This will potentially put Mr and Mrs R into a worse position when they sell the property or refinance the mortgage.

### *Mortgage charter*

I'm not persuaded that the mortgage charter provides any assistance to Mr and Mrs R. The mortgage charter says a switch to interest only payments or an extension up to retirement age can be available to customers whose payments are up to date. This doesn't apply to Mr and Mrs R because their mortgage is in arrears – as Santander told them. But it wouldn't help them anyway. They're already on interest only terms and have already retired.

The charter says borrowers shouldn't be forced to leave their home without their consent other than in exceptional circumstances within a year after the first missed payment. Santander hasn't started action for possession.

The charter says lenders should continue to offer support to customers. Santander offered forbearance measures to Mr and Mrs R – to hold recovery action and accept reduced payments for a period while the property was marketed for sale. I think this was fair.

### *The direct debit and communication*

In December 2023, as no arrangement was in place, Santander cancelled the direct debit. This was to avoid the full monthly payment being taken.

Mr and Mrs R arranged payment (of the amount previously agreed) by another means. I appreciate that caused some inconvenience. But I don't think Santander was unfair when it cancelled the direct debit. Mr and Mrs R had told it they couldn't afford to pay the full monthly payment and no reduced payment amount had been agreed.

Mr and Mrs R say Santander requires contact by phone and refuses contact by email, so conversations aren't recorded. Most likely though their calls are recorded. Mr and Mrs R can check this with Santander. If what they mean is that they'd like written confirmation after agreeing something with Santander – for instance, the terms of a reduced payment plan – they can ask Santander for this.

*What happens now?*

Mr and Mrs R have options to repay the mortgage. If they haven't already done so, they could consider taking advice from an independent financial adviser about the best option or combination of options for them. I'd encourage them to keep Santander informed about their progress towards repaying the mortgage.

I think Santander has treated Mr and Mrs R fairly. If Mr and Mrs R can evidence progress towards repaying the mortgage, I'd expect Santander to continue to show forbearance. I don't think it's fair and reasonable to require Santander to hold recovery action indefinitely. I don't think it's fair and reasonable to require it to offer a further term extension. I don't think it's fair and reasonable to require it to offer a beneficial interest rate to Mr and Mrs R, or to require it to stop applying or refund interest or take further steps in relation to this complaint.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 18 September 2024.

Ruth Stevenson  
**Ombudsman**