

The complaint

Mr H and Miss K complain that Santander UK Plc didn't support them prior to them taking out a fixed rate mortgage which has resulted in them paying an early repayment charge (ERC). They said that had Santander discussed their future plans, the fees they incurred could have been avoided.

Mr H and Miss K said the online documents they received from Santander in relation to product flexibility were misleading, confusing and ambiguous.

What happened

Mr H and Miss K took a mortgage out in 2017, by taking advice from a broker. The mortgage was for just under £740,000 including fees on an initial interest rate of 2.19% fixed until July 2022.

In June 2022, Mr H and Miss K agreed another fixed rate at 2.49% which was fixed until September 2024.

At the beginning of 2023, Mr H applied to Santander for a new mortgage in his sole name, but Santander declined the application. Our Service considered this complaint, and a final decision was issued on 29 January 2024 which didn't uphold the complaint.

The Ombudsman was satisfied that Santander had considered Mr H's application fairly which meant that the original mortgage couldn't be transferred (ported) to Mr H's new property. So based on this, the Ombudsman said the ERC wouldn't be refunded.

Mr H and Miss K's complaint now, is that Santander didn't make it clear or provide them with enough support prior to taking out the fixed rate in July 2022, that their mortgage may not be able to be ported and had Santander made this clear, the fees could have been avoided.

Santander said that Mr H and Miss K completed the application for a new fixed rate online, so advice wasn't given to them. They said it was made clear to them what the ERC's would be if the balance was repaid in full while on the fixed rate.

Mr H and Miss K brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator didn't uphold the complaint. He said that Mr H and Miss K decided to take the new fixed rate out online so Santander didn't give them advice. He also said that as an Ombudsman had already decided that it wasn't unreasonable for Santander to port the original application, that it followed that the ERC would be charged.

Mr H and Miss K didn't agree. They made the following comments:

- Mr H was forced to sell the property which was outside of his control. He believes Santander have discretion based on personal circumstances and whether they should have charged the ERC.
- Mr H did everything possible to transfer the mortgage to a new property in order to minimise the ERC. He was denied the opportunity to port the mortgage.
- Santander have collected over £20,000 in ERC fees and benefitted from 17 months' worth of interest savings estimated at over £25,000. Santander have made a profit versus the costs incurred by Mr H.

- Mr H has been paying the mortgage since 2020 as he and Miss K separated, and Miss K was comfortable with her share of the ERC payment as she didn't stand to lose from the higher payments from being denied the opportunity to port the mortgage. But for Mr H, he doesn't believe he had sufficient advice prior to agreeing the fixed rate and believes the Ombudsman and the Financial Conduct Authority need to change the rules.
- The ERC's should be made clearer and online rate fixes should include questions and warnings about potential moves, changes to personal circumstances and clearly state that porting mortgages are just as risky as applying as a new customer. Had Mr H of been asked these questions online he would have taken advice, not fixed the mortgage and not paid the ERC.
- Mr H believes that Santander should neither lose or profit from a customer who redeems their mortgage early.
- Mr H would like our Service to write to Santander and explain that while we conclude that they didn't break the rules, they advertise their discretion over ERC liabilities and changes in personal circumstances as being one of the reasons they provide for potentially waiving them. Mr H would like 50% of the ERC refunded to him.

As Mr H and Miss K disagreed with the investigator, they asked for an Ombudsman to review the complaint, so it's been passed to me to decide.

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.

Fixed rate July 2022

Mr H and Miss K complain that Santander didn't provide them with enough support prior to them going onto the fixed rate in July 2022. They said that if Santander had taken the time to find out about their situation or ensure that different possible options were shown online – then they wouldn't have entered into the fixed rate.

Mr H and Miss K took their fixed rate out online – that isn't in dispute. What that means is that Santander didn't advise Mr H and Miss K on what they should do. Mr H and Miss K made their own choice about moving onto a fixed rate.

The issue here is that Mr H and Miss K believe that the information given to them by Santander on their website was misleading, confusing and ambiguous. They also believe that they should have been asked questions online which included relevant warnings, which would have alerted them to the fact that going onto a fixed rate may not have been the best thing for them.

I've taken a look at the product transfer offer which was issued to Mr H and Miss K on the 9 June 2022 – the same day that they applied online for a new rate. This offer confirmed the interest rate of 2.49% until 2 September 2024. Section 7 of the offer confirmed the level of ERC that would need to be paid if Mr H and Miss K decided to repay the mortgage before the expiry of the rate. It confirmed the ERC would be calculated at 3% of the balance repaid and cash examples were also provided. These product terms were accepted online on the same day. Even though this offer was accepted by Mr H and Miss K on the same day, it was available until 23 June 2022.

I have thought about what Mr H and Miss K have said and they believe that Santander's online system should have asked them more questions about their circumstances to make sure they made the right choice – but I don't agree with this.

We expect lenders to ensure that they give clear, fair and not misleading information to consumers. We would not expect them to provide information about every eventuality that may or may not occur. They should ensure that any fees or charges are displayed clearly before a consumer chooses a product – to ensure that it's right for them.

This offer, which was produced on 9 June 2022, made it very clear that there would be an ERC payable if the loan was redeemed or part redeemed before 2 September 2024. The offer gave examples to show what this would mean, and I don't think this information is confusing in anyway.

Under section 8 – flexible features and under the heading moving home, it says *'you have the right to transfer this loan to another property. You must meet conditions set out in the mortgage conditions under 'transferring your loan to a new mortgage'. You must also meet our lending criteria and pass our affordability assessment at the time.'*

A final decision has already been issued by our Service which found that Santander had treated Mr H's application fairly when they initially declined it. This meant that the ERC was payable when the mortgage was redeemed. I am not going to comment on the application or the fact that Mr H wasn't able to port his mortgage as this has already been dealt with. However, Mr H has said that Santander should make it clear that porting an application wasn't guaranteed. Section 8, as quoted above made it clear that certain conditions have to be met which also included passing an affordability assessment. So again, I don't agree that Santander gave any incorrect or misleading information that made it sound otherwise.

Based on what I have seen, I don't uphold this part of the complaint.

Early repayment charge

The Financial Conduct Authority's Mortgages and Home Finance; Conduct of Business sourcebook (MCOB) includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value, and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates the ERC, and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Santander is entitled to set an ERC based not on the actual cost to them of Mr H and Miss K's ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Mr H and Miss K have said that Santander have made a profit because they have charged them an ERC of over £20,000 based on the costs Santander have incurred as a result – but that's not the case. Mortgages of a similar type is wider than that. Santander sets their ERC at a product term and type level, so here that is all two year fixed rates and not just the 2.49% two year fixed rate that Mr H and Miss K took out. That is normal industry practice and in line with what we would expect.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, they don't get back all the returns as expected, and so don't make back the costs in raising the funds to offer that preferential rate.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Santander is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so., and to apportion that cost across the mortgages in that group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; Santander doesn't have to refund the difference, but equally they don't tell a consumer to pay the difference if it goes the other way.

The ERC is expressed as a cash value in the mortgage offer. So I've considered whether the ERC was a reasonable pre-estimate of the cost of the mortgage being repaid early.

Santander has provided evidence to show how they pre-estimated the costs of this group of mortgages being paid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. I am satisfied that the information Santander has provided is commercially sensitive and I have good reason to accept that in confidence, so I won't be disclosing that to Mr H and Miss K.

The information from Santander shows that it takes into account a number of factors when estimating the costs of a fixed rate mortgage being repaid. They have provided a breakdown of the figures they used and an explanation for the calculations and estimates they have made. I've looked very carefully at what Santander has said and I consider it is a fair way to calculate the ERC.

In the circumstances, I'm satisfied that:

- Santander was entitled to charge Mr H and Miss K the ERC set out in their mortgage contract when they repaid their mortgage early (including the repayment of any benefit).
- There was no requirement for Santander to only charge an amount worked out based on Mr H and Miss K's individual loan and date of redemption, instead they were allowed to charge an amount based on their pre-estimate of the costs of early termination of a group of mortgages of similar type.
- The calculations provided to us by Santander demonstrate the ERC set out in the contract was a reasonable pre-estimate of the costs for that group of mortgages.

I appreciate that Mr H and Miss K will be disappointed with my decision, but I am satisfied that Santander, in the circumstances of this complaint, have done what we have expected them to do.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss K to accept or reject my decision before 23 December 2024.

Maria Drury
Ombudsman