

The complaint

Mr and Mrs H complain that Santander UK Plc applied an incorrect interest rate to their mortgage. They say they've paid too much interest. Mr and Mrs H also complain that after repaying the mortgage balance stated in court documents, Santander said they still had an outstanding balance to pay.

What happened

Mr and Mrs H took out an interest-only mortgage with Santander in 2008. The term expired in 2016 with an unpaid balance.

Mr and Mrs H say they couldn't sell or re-mortgage the property due to damage to the party wall. They say the owner of the adjoining property caused the damage and is responsible for repairing it.

In 2019 Santander agreed to extend the term on a fixed interest rate until 31 December 2021. Mr and Mrs H say they agreed to this to avoid court action. They expected the problem with the party wall to be sorted out before the extended term expired.

However, the balance remained outstanding in 2022. Santander applied its Follow-on Rate. Mr and Mrs H stopped paying interest in mid-2023. Santander started legal action for possession.

Mr and Mrs H say their original mortgage contract specified an interest rate of bank rate +0.59%. They say Santander should have applied this rate after the agreed two-year fixed interest rate expired, rather than its Follow-on Rate which is higher. Santander says Mr and Mrs H agreed to the Follow-on Rate when they accepted the term extension and fixed rate product. Mr and Mrs H say they didn't receive the documents setting out the terms Santander said they agreed to.

Mr and Mrs H made payments in late 2023 to repay the mortgage. They paid the amount stated as the mortgage balance in documents submitted to the court on behalf of Santander. However, Santander said they still owed about £5,000.

Our investigator said Santander didn't make an error when applying interest to the account. He said the lump sum payments made by Mr and Mrs H were not enough to repay the balance and Santander made them aware of this. He said they could have asked for a redemption statement.

Mr and Mrs H didn't agree. They said Santander's evidence to the court showed that the original interest rate applied and it should re-calculate the account on this basis.

Mr and Mrs H said the redemption amount shouldn't be different from the amount stated in court documents. They said they didn't need to ask for a redemption statement when they could check the balance on their banking app. Mr and Mrs H also said Santander didn't apply the lump sum payment just to the capital balance. They say it wanted to retain its charge on the property.

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.

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.

Mr and Mrs H say that Santander's evidence to the court suggested the lower interest rate in their original mortgage contract should be applied to their mortgage. They say it should redeem the mortgage on the basis of the balance stated in documents submitted to the court. And they say Santander provided inconsistent information and evidence to the court and to this service.

We provide an informal dispute resolution service, separate to the courts. It is for the court to decide if it's satisfied with the information and evidence provided to it. If Mr and Mrs H have concerns about the evidence provided to the court this is something they need to raise with the court. My role here is to decide if Santander made an error or treated Mr and Mrs H unfairly. In doing so, I take relevant law, regulation and good practice into account. But, ultimately, only a court can decide if a contract has been breached.

When Mr and Mrs H took out a mortgage in 2008 they agreed to the terms set out in the mortgage offer, including the interest rate. This was a variable rate of 0.59% above the Bank of England base rate. The rate applied for the mortgage term, which expired in 2016.

Santander issued a mortgage product transfer and term change letter in 2019. This included a mortgage offer which set out the terms, including a fixed interest rate of 2.99% until December 2021, when the term expired. The mortgage offer says "At the end of the mortgage term, if any part of the capital remains unpaid by you, the interest rate charged on any outstanding capital will be charged at our prevailing Follow-on Rate."

The letter included an acceptance form (on page 9) for Mr and Mrs H to sign and return, and an execution only acceptance form (on page 11).

Mr and Mrs H say the term extension and interest rate were agreed over the phone. They say there was no discussion about what would happen when the term expired, and they didn't ask because they expected the damage to the party wall to be repaired before this. Mr and Mrs H say Santander only sent two pages for them to sign. They say there are differences between the copies recently provided by Santander (such as the page numbers and a paragraph for office use only). Mr and Mrs H say this suggests Santander recently manufactured the agreement.

I don't know how or why Mr and Mrs H have a copy of the acceptance form with these differences. But I don't think it's because Santander has falsely manufactured this evidence. I find it unlikely that Santander would send only two pages – numbered 9 and 11 – to Mr and Mrs H in 2019 rather than the whole product transfer and term change letter.

Mr and Mrs H don't dispute signing the acceptance forms. Santander provided a copy of the acceptance form signed by Mr and Mrs H and stamped with the dates it was received and scanned in 2019. When Mr and Mrs H signed the form they confirmed that they accepted the offer as set out in the mortgage product transfer offer and that they acknowledged receipt of the mortgage conditions. If, as they now say, they hadn't received these documents, or only received certain pages, they could have contacted Santander.

Mr and Mrs H said they accepted the offer in 2019 to avoid court action. Their term had expired in 2016 and they say Santander was threatening legal action. Mr and Mrs H said they expected the problem with the party wall to be fixed well before the new loan term expired, meaning they'd be able to sell the property or re-mortgage.

When Mr and Mrs H agreed to the product transfer and term change in 2019, they agreed to the terms, including that the Follow-on Rate would apply when the product expired. I think Santander made them aware of this. But, in any case, Mr and Mrs H had limited options in 2019. They didn't at that time expect to find themselves in the same position when the term expired more than two years later. I think, most likely, they'd have accepted the product transfer and term change regardless of the change to the reversion/Follow-on rate.

Santander says it applied its Follow-on Rate once the extended term expired and the evidence it provided supports this. I don't think it made an error or treated Mr and Mrs H unfairly in doing so. This is what they agreed to in 2019, and the basis on which Santander offered the term change and fixed rate product. I don't think it's fair and reasonable to require Santander to re-calculate the account as if the interest rate set out in the original mortgage contract applied from late 2022.

In late 2023 Mr and Mrs H made lump sum payments to their mortgage account of £400,000 and £12,500. They say they expected this to clear the balance, based on the stated balance in one of the documents submitted to the court.

The witness statement submitted on behalf of Santander said the mortgage balance was about £412,500 at 31 October 2023. However, the attached particulars of claim for possession said the amount required to repay the mortgage in full on 18 September 2023 would be £414,000. And interest was accruing at almost £3,000 per month. Mr and Mrs H say Santander should accept the amount specified in the court documents (presumably they mean the lower amount and without any accrued and unpaid interest). I don't think that's reasonable. I appreciate the different amounts stated in the documents could have been confusing. But if Mr and Mrs H weren't sure how much they needed to pay, they could have asked Santander for a redemption statement.

I don't think I can fairly find that Santander was responsible for Mr and Mrs H not being aware of the amount they needed to pay to redeem the mortgage. When Mr H called Santander to make the payments it offered to issue a new redemption figure, which Mr H declined. Mr and Mrs H say they didn't need to ask for a redemption statement as they could check the balance online. But there could have been costs not yet included in the balance – such as legal fees, court costs or accrued interest. Santander wrote to Mr and Mrs H to confirm receipt of the payments and to confirm the remaining unpaid balance.

Santander used part of Mr and Mrs H's first payment to clear their arrears. I don't think this was wrong. The mortgage terms and conditions say that Santander will apply credits to reduce the capital *after* paying off any arrears and interest which is due. I wouldn't expect Santander to remove its charge until all sums secured by the charge (whether capital, interest, arrears, fees or otherwise) were repaid.

Mr and Mrs H told us they have severe financial difficulty. I'd urge them to contact Santander with the aim of agreeing an affordable arrangement to repay the remaining balance on their mortgage account. I appreciate that Mr and Mrs H are in a difficult position – they say they need Santander to remove its charge as they have a new secured lender. But I don't think Santander made an error or treated them unfairly. It follows that I don't think it's fair and reasonable in the circumstances to require Santander to refund interest, write off the remaining balance or take further steps regarding 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 Mrs H and Mr H to accept or reject my decision before 25 September 2024.

Ruth Stevenson
Ombudsman