

## The complaint

This complaint is about a mortgage Mr O holds with Santander UK Plc. Mr O is unhappy that Santander told him, in response to an initial enquiry, that his request to reduce the term of his mortgage would not meet its affordability criteria. He thinks the decision is fundamentally wrong, and that Santander has been less than transparent about the decision and the criteria that sit behind it.

## What happened

By way of a provisional decision dated 30 October 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

“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. In addition, our decisions are published, so it’s important I don’t include any information that might lead to Mr O being identified.

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

Mr O took the mortgage out in 2022; it was for a little under £473,000, repayable over 35 years, on an initial fixed rate of 2.84% until August 2027. The offer, issued on 27 October 2022, shows that the mortgage was recommended to Mr O by a third party intermediary. In February 2024, Mr O called Santander asking to reduce the mortgage term to 30 years. He was told in the call that, based on the income figures he had given, his request didn’t meet Santander’s affordability criteria.

It was also explained to Mr O that Santander’s criteria had evolved since he took the mortgage out. The call handler explored the possibility of Mr O making a lump sum reduction in the balance, to improve the likelihood of a term reduction meeting affordability.

Mr O complained, and Santander issued a final response on 27 February 2024, rejecting the complaint. In a follow up response dated 19 March 2024, Santander paid Mr O £30 compensation for not having provided a call back from the case handler’s manager. Mr O referred the complaint to us. In a phone call on 3 April 2024, he said Santander had refused to disclose the criteria it relied on when it turned him down. He told us he was seeking damages for regulatory breaches, stress and inconvenience, to put him in the position he’d be in if his request had been accepted.

Our investigator didn’t recommend the complaint be upheld. Taking into account the stress test that lenders apply to factor in the impact of possible interest rate increases, the information Mr O had provided about his income, and information from

the Office of National Statistics (ONS) about typical expenditure patterns, she thought Santander's preliminary assessment had been fair. She also thought the call handler had explained the reasoning in a reasonably clear way, and that a suggestion that he consider making overpayments was a sensible one.

In a follow-up view, the investigator explained that she considered Santander's use of ONS statistics in a preliminary assessment to be fair, and consistent with regulatory requirements. She didn't agree with Mr O's opinion that Santander suggesting he make overpayments contradicted the notion that the term reduction was unaffordable. Nor did she consider that it was wrong of Santander not to disclose all aspects of its lending criteria.

Mr O asked for the case to be reviewed by an ombudsman. In doing so, he made the point that Santander had never offered him the option of making a formal application that would involve a full assessment of his actual expenditure as opposed to ONS estimates.

When the case came to me, I arranged for the investigator to put the latter point to Santander. It came back to explain that even when a formal application is made, its policy is still to use ONS rather than applicant-specific data. However, Santander said that as an exception to its normal policy, it would be willing to ask its underwriters to consider a formal application for a term reduction from Mr O based on his actual expenditure. This would require Mr O to submit a minimum of 12 months' bank statements, and if he was agreeable to that, the application would be assessed based on current criteria, which have evolved since February 2024.

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

I'll start with some general observations. 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 work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We have no power to sanction, punish or fine businesses – that's also the role of the FCA. Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit 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.

Having done so, and taking into account the recent development of the proposal from Santander that I outlined above, I am setting out my conclusions on how the case should be resolved in a provisional decision first. This allows both parties the opportunity to comment before I finalise my decision.

Having no regulatory function means that it's not open to me to determine what Santander's lending criteria, policy requirements and appetite for lending risk should

be in cases like Mr O's. My role is to determine if Santander has applied its criteria fairly and consistently.

I'll start with Mr O's argument that Santander hasn't been transparent. Lenders' criteria are commercially sensitive and not typically made public. That doesn't mean a lender must *never* disclose information about its criteria; it's a matter for the lender's discretion. Nor does it mean that if a lender exercises its discretion by disclosing *some* information, it must then disclose *all* of it. The position is not that binary. That said, a lender needs to provide an explanation that supports a consumer's understanding of why their application has been declined.

As far as the decision itself is concerned, my starting point is the regulations in place that flow from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This 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.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

However, the transitional arrangements don't apply to Mr O, as his mortgage started in 2022.

A term reduction *is* a material change to the mortgage contract. In the circumstances, Santander was entitled to consider whether and how comfortably Mr O would be able to afford the increased mortgage payments that would come with a shorter term. Also, that consideration was not confined to assessment of the circumstances prevailing at the time of the request. That's where the stress test comes in; that is, the requirement for a lender to superimpose a higher interest rate in place of the actual rate (even where the actual rate is presently fixed) and consider how comfortably a borrower would still be able to afford the required payments.

The use of ONS data on expenditure isn't something that is confined to Santander; it's commonplace practice in the wider industry, and in the circumstances, I don't consider it to have been unfair or unreasonable of Santander to use it in Mr O's request for a term reduction.

Mr O maintains that it's contradictory of Santander to, on the one hand, say he can't afford the higher payments that come with a term reduction and then, on the other hand, suggest he make overpayments. I don't agree that there's any contradiction there; again, the position is not that binary.

Making overpayments is something Mr O can *choose* to do for as long as his circumstances allow him to. The conditions of the fixed rate deal in the mortgage contract allow overpayments, provided that in aggregate, they don't exceed 10% of the balance in any given year. Anything above 10% would trigger an early repayment charge.

Doing this would give Mr O broadly the same benefit of a term reduction, but it doesn't commit him to the higher payments contractually in the way that a term reduction would. As things stand, if Mr O were to experience a downturn in disposable income, he could simply stop making overpayments; he wouldn't be able to do that if he was contractually obliged to make the higher payments required under a term reduction.

I've very carefully read everything that Mr O has said about the preliminary decision, and why he believes Santander wasn't justified in reaching it. I understand his frustration, and his strength of feeling, but in the end, this is a dispute about Santander's commercial judgement on what constitutes affordable. Mr O clearly has a different opinion from Santander on this, but what he's effectively asking me to do is substitute my commercial judgement (or indeed his own) in place of Santander's. It's not in my remit to do that.

I turn next to Santander's recent proposal, which Mr O is learning about for the first time through this provisional decision. Insofar as a formal application would, ordinarily, use the same ONS data that was used in the preliminary assessment, Santander wasn't then, and isn't now, obliged to offer Mr O the option of having a formal application assessed by reference to his specific circumstances. What Santander is proposing now is a concession, outside its standard practice, and in my view is more than fair.

Mr O may not wish to submit the information Santander has said it would need to see, and to be clear, that is entirely his prerogative. No criticism of him will be implied if he chooses not to provide the bank statements, and none should be inferred.

By the same token, and for the avoidance of doubt, I do not imply, and it should not be inferred, that if Mr O were to make a formal application for a term reduction and supply the statements Santander has asked for (and indeed any further information it might subsequently require) Santander would then be obliged to agree to the reduction. What Santander would be obliged to do is assess any new application in a fair manner that reflected its lending criteria at the time as well as Mr O's situation at the time.

#### Other matters

Mr O's belief that Santander is in breach of its obligations extends to the Consumer Duty; that is the new regulatory standard introduced in July 2023 on how, amongst

other things, lenders communicate with their customers, inform them and support them in reaching their financial goals. I've listened to a recording of the conversation between Santander and Mr O.

Obviously, the call handler didn't tell Mr O everything he thinks he was entitled to be told. I've already explained why that was the case, in broad terms at least. From listening to the call, I'm not entirely satisfied Santander explained to Mr O why he had not met its affordability criteria and why he would not be able to contractually reduce his mortgage term. Santander is not obligated to disclose the full details of its lending criteria beyond giving a reasonable explanation for why a consumer's application was unsuccessful. However, I think it would have been helpful if the call handler had mentioned the stress test, as this would have provided a little more context to the affordability test.

Lastly, Mr O is unhappy with how Santander replied to the complaint. Aside from the fact that it didn't agree with his view that the term reduction was affordable and should have been granted, he was dissatisfied with the level of detail (or the lack of, as he sees it) in Santander's explanations.

The way in which complaints are handled by financial business isn't, of itself, a regulated activity covered by our scheme rules. But we can consider how effectively a business explained the reasons for its decision and/or actions to a consumer and this extends to considering the complaint response.

I mentioned earlier why it would have been helpful if Santander had mentioned the stress test in the phone call; for much the same reason, a reference to the stress test should have been included in the final response.

I think Santander should have explained, both during the phone call and in the complaint response, that it is obligated to carry out a stress test, what this was and that Mr O had not met the affordability criteria when applying said test. The need to carry out a stress test is not commercially sensitive.

So, Santander didn't do quite enough to support Mr O's understanding, in the way it should have. However, I'm not persuaded this alone has caused Mr O any notable distress or inconvenience, as it is clear he strongly disagrees with the lending decision in any event. He knew it was related to affordability and knowing the specifics of why, would not have alleviated his frustration and disagreement.

For the failure to provide a phone call from a manager, Santander's payment of £30 seems reasonable to me. I think Santander's latest offer to carry out a bespoke affordability assessment is a fair resolution to the complaint overall and I am not minded to award anything further.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr O feels. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. My remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome."

I gave the parties two weeks to add anything further before I finalised my decision; both have done so, and I summarise the responses below.

Santander told us that it had been in touch with its underwriting team, which had said it rarely works off personal rather than ONS data, and where it has done so, it often finds that the applicant's spending is higher than the ONS figure. Santander also said that I had omitted to mention in my provisional decision its suggestion that Mr O increase his direct debit.

Mr O's response was more detailed, citing regulatory references and previous decisions from this service. But he concluded it with a summary of what he was seeking in order to consider the matter closed. That is, that I should amend my decision as follows:

- to make clear that Santander's level of communication was inappropriate and fell below the standards expected of it, was unfair and unreasonable as a result, and had consequently caused him stress and inconvenience; and
- to award him compensation for the stress and inconvenience caused in line with a figure consistent with previous decisions from this service, which he puts at £300.

### **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 done so, I'm not persuaded to depart from my provisional decision; I'll explain why.

Starting with the response from Santander's underwriters, I made it quite clear in the provisional decision that it should not be inferred, that if Mr O were to make a formal application for a term reduction and supply the statements Santander has asked for (and indeed any further information it might subsequently require) Santander would then be obliged to agree to the reduction.

To be clear, it's not for me to second guess the outcome of an exception-based re-application, assuming Mr O makes one. It is enough that Santander offered to make the concession. As an aside, dealing with something Mr O said about why the concession wasn't offered sooner, the whole point of a concession is that it need not have been offered at all. Lastly on Santander's comments, my provisional decision dealt quite comprehensively with the potential for Mr O to pay more than his regular contractual amount.

Turning to the amendments Mr O has asked me to make to my decision, I assure him that I am fully apprised of my obligations when deciding how a complaint should fairly be determined. That doesn't extend, generally speaking, to following his instructions. Were I to do so, it would compromise my independence and impartiality.

On the specifics, of what Mr O thinks my decision should say, I have already found that Santander did not provide him with the level of information it should have. So, to that extent, I have already done what Mr O thinks I should do. And I've no doubt he has found the experience of complaining to be stressful and inconvenient.

But where my view differs from his is over the primary cause of the complaint, and the resulting stress and inconvenience for which he is seeking to be compensated in line with previous decisions. Mr O's position is predicated on the basis that it was Santander's communication failure over the stress test that formed part of its lending decision that drove the complaint.

Having carefully considered everything Mr O has said and provided, I'm not persuaded by that. In all the circumstances, the conclusion I've reached on the balance of probabilities, is that the lending decision itself (not the way it was communicated) was the primary driver of Mr O's complaint.

Even if Santander had better supported Mr O's understanding by sharing more about the stress test it is required to apply, I consider it more likely than not that he would still have put himself through the experience of pursuing a complaint about being declined a term reduction. Insofar as I have found that decision to have been fairly made, I don't find that a compensation award for the stress and inconvenience caused by the complaint is warranted.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome.

My remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

If Mr O ultimately rejects my final decision, then subject to any time limits or other restrictions a court might impose, his recourse to a legal remedy of his own against Santander over the subject matter of this complaint won't have been prejudiced by our consideration of it. But of course he will need to weigh up the likelihood of a successful outcome and the potential cost implications of engaging in litigation.

### **My final decision**

My final decision is that this complaint should fairly be resolved by Santander agreeing to consider a fresh application for a term reduction from Mr O based on an assessment of his specific financial circumstances, subject to Mr O providing Santander with his twelve most recent monthly bank statements and any other information that its underwriters might consider necessary.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 30 December 2024.

Jeff Parrington

**Ombudsman**