

## **The complaint**

Mrs W complains that Santander UK Plc (“Santander”) applied an Early Repayment Charge (“ERC”) when she redeemed her buy to let (“BTL”) mortgage.

## **What happened**

In October 2019 Mrs W got a 27-year buy to let mortgage with Santander. The mortgage offer shows the interest rate was fixed at 2.49% until 2 December 2024.

In July 2024 Mrs W sold the mortgaged property and redeemed the mortgage in full. She paid an ERC of more than £3,000. Mrs W complains that the amount she was charged was unfair and disproportionately high. She also feels the ERC was hidden and unclear in the paperwork she received.

Our investigator looked into the matter. She didn’t think Santander had made a mistake when it applied the ERC. She said the ERC was set out as she’d expect in the mortgage offer and annual statements Mrs W was sent. She said she’d seen evidence of how Santander calculated the ERC and was satisfied that it reflected a reasonable pre-estimate of its loss when the mortgage was paid early. She appreciated that Mrs W wanted to understand the way the ERC was calculated so that she could be sure it was justified. However, our investigator said that was commercially sensitive information so it wasn’t appropriate for her to disclose it.

Mrs W remained unhappy and asked for her complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

Mrs W made further points that I’ve considered below.

## **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’ve reached the same conclusion as our investigator. I’ll explain why.

I’ll begin by saying that the ERC was clearly documented in the 2019 mortgage offer that was sent to Mrs W before she took out the mortgage product. I’m satisfied that she accepted that offer and the ERC associated with it. So, my starting point is to say that when Mrs W redeemed her mortgage, it wasn’t unreasonable for Santander to charge the ERC that she’d accepted.

The regulatory rules that govern ERCs are set out in the Financial Conduct Authority’s Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). As this was a BTL mortgage it wasn’t subject to those rules and guidance, however they are a good indication of what is good industry practice for ERCs, so I will make reference to those rules and guidance here.

MCOB says 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. However, MCOB allows a lender to choose how it calculates an ERC, and to calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. That means Santander is entitled to set an ERC based on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type rather than the actual cost to it of Mrs W ending her own mortgage early.

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, it doesn't get back all the returns it expected, and so doesn'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 the 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 it doesn't tell a consumer to pay the difference if it goes the other way.

The ERC was expressed as a cash value in Mrs W's 2019 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 us with evidence to show how it pre-estimated the costs of this tranche of mortgages being repaid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. I'm satisfied that the information Santander has provided is commercially sensitive and I have good reason to accept that in confidence and so I won't be disclosing it to Mrs W – even though I know how keen Mrs W is to understand these costs in full.

However, I will say that the information from Santander shows that it takes into account a number of factors when estimating the cost of a fixed rate mortgage being repaid. It has provided a breakdown of the figures it used and an explanation for the calculations and estimates it has made. It shows that the ERC reflects behavioural analysis that has been carried out and a number of costs and risks including the cost of financial instruments that could be used to protect its position. I've looked carefully at what Santander has said and I consider it is a fair way to calculate the ERC.

As I'm satisfied that the amount charged in this case was a reasonable pre-estimate of loss, it follows that I don't think the ERC should be refunded.

For completeness I'll say here that I can see that Mrs W has asked the Financial Ombudsman Service to focus on a couple of other points she has made.

Mrs W has said that while the 2019 mortgage offer set out the details of the ERC in both percentage terms as well as a cash equivalent, only the cash amount of the ERC was set out in her annual statements. She thinks it's strange that such information was not provided. She has suggested that such an omission meant she wasn't in a position to make an informed choice about what she should do when she wanted to sell her property.

I don't underestimate Mrs W's strength of feeling about this point, but Santander wasn't required to set out the ERC in percentage and cash terms in its annual statements. So I

can't fairly say it did anything wrong here. It was open to Mrs W to refer to her original mortgage offer if she wanted more information about the ERC. In addition, she could have contacted Santander to enquire about the ERC before she sold her property so that she could be sure what her costs were likely to be. But I can't see that she did that.

Overall, I don't think it's fair to say that Santander put Mrs W in a position where she wasn't able to make an informed choice about the ERC/when she might sell her property.

Mrs W has said that she feels the ERC is like a fine/penalty that has been imposed on her ending her mortgage contract early as the amount she was charged was significantly more than the interest she would have had to pay on her mortgage if she'd kept it to the end of the fixed interest period (2 December 2024). I appreciate that Mrs W feels the way she does, but as I've explained above, the ERC is not a reflection of the interest Santander lost out on as a result of Mrs W ending her mortgage early.

Finally I'd like to say here that in her complaint form to the Financial Ombudsman Service Mrs W has set out the circumstances that led her to sell the property at the centre of this complaint when she did. I'm sorry to hear about the difficulties she has experienced. I appreciate she felt she had to sell when she did, and that has added to her feelings about the unfairness of the ERC.

I've sympathy for the position Mrs W found herself in, but her situation wasn't unusual. Many customers have to sell their properties (albeit for other equally valid reasons) and incur an ERC when doing so. It would be highly unfair for Santander to treat Mrs W any differently from how it would treat any other customer that sold their property whilst in an ERC tie-in period.

There was no reason for Santander to reduce – or waive – the ERC because it hadn't done anything wrong. I can only uphold a complaint and order compensation if a business has done something wrong. As I'm satisfied Santander did nothing wrong then there are no grounds for me to order it to refund the ERC, either in full or in part.

I appreciate that Mrs W is likely to be disappointed by the outcome of this complaint but for the reasons set out above, Santander doesn't need to do anything to resolve it.

### **My final decision**

For the reasons set out above, my final decision is that Santander UK Plc doesn't need to do anything to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 25 February 2025.

Laura Forster  
**Ombudsman**