

## The complaint

Mr K and Mrs K complain that Santander UK Plc (Santander) gave them unsuitable advice during a product transfer.

## What happened

Mr K and Mrs K wanted to extend the term of their interest only mortgage and take out a new interest rate product with Santander in 2021. As they wanted to apply for both changes at the same time, a mortgage appointment was set up for 1 September 2021 during which advice was provided by Santander.

The adviser initially recommended Mr K and Mrs K take out a two-year fixed interest rate at 0.94% as it met their stated need of wanting to have the cheapest option and provide stability. This was in the knowledge that Mr K and Mrs K did not have any plans to move within the two years and were hoping to stay in the mortgaged property until the end of the newly extended term. However, when the adviser highlighted that a 3% early repayment charge (ERC) would apply should the mortgage be redeemed early, Mr K and Mrs K asked for some time to think it over.

A call took place the next day in which Mrs K confirmed they would like to go ahead with a tracker rate of 1.14% instead of a fixed rate as they were not comfortable with the risk of potentially needing to pay an ERC. A product transfer offer was issued, setting out the terms of the tracker rate in mid-September.

In February 2024, Mr K and Mrs K raised a complaint about the advice they received in September 2021. They say they recently learned that fixed rate products could be ported which would prevent an ERC from being charged. On this basis, they believe they were given factually incorrect information by Santander in 2021. Mr K and Mrs K have said that had they been informed about the possibility of porting in 2021, they would have taken out the fixed interest rate instead of the tracker.

In describing their losses, Mr K and Mrs K say the tracker rate has cost them significantly more than the fixed rate would have done and that they felt forced to make an overpayment of £100,000 when interest rates started to rise. They want Santander to compensate them for these losses.

In response, Santander said that while more information could have been given in September 2021, it was right to say that an ERC would apply with a fixed rate. It also highlighted that Mr K and Mrs K have benefitted financially in the form of future interest savings due to the substantial overpayment they made – something they would not have been able to do had they taken out the fixed rate product. Dissatisfied with Santander's response, Mr K and Mrs K referred their complaint to our Service.

I issued a provisional decision not upholding the complaint earlier this month. In summary I said:

- I wasn't satisfied Santander had taken reasonable steps to gather sufficient

information about Mr K and Mrs K's needs and circumstances at the time. Had Santander taken such steps during the advice call, it would have identified that Mrs K's reservation with regard to the ERC was limited to the potential scenario of needing to unexpectedly downsize during the two-year fixed-period – not that they had any actual plans to redeem the mortgage during the ERC window.

- Armed with this information, I would've expected Santander to explain to Mr K and Mrs K that the rate they were applying for was portable – which may enable them to avoid some or all of the ERC.
- Santander not explaining that the rate was portable was not an automatic reason for me to uphold the complaint. Instead, I needed to consider what Mr K and Mrs K would most likely have done had they been given the full and correct information at the time. And having thought about this, I was not persuaded that they would've gone ahead with the fixed rate product even if they had been made aware that the rate could be ported, so I did not uphold the complaint.

Santander did not provide any further comments or information for me to consider in response to my provisional findings.

Mr K and Mrs K disagreed with my provisional decision and asked that I reconsider. In summary they said:

- They have extra information which categorically proves that they would have taken the fixed-rate product had they known it could be ported.
- They've taken out fixed-rate products on other properties during the same timeframe which came with ERCs. So, it is factually incorrect for me to say they were not willing to accept any risk of needing to pay an ERC. Instead, it was the enormity of hearing a figure of over £11,000 on the mortgage in question that caused them concern.
- Had they downsized it would have been in property size only, not price. So even a partial ERC would have been unlikely.
- Santander admits it could have given more information. They need to know why it did not do so. They fail to see how it can be found that Santander could've provided more information but not then take steps to put them in the position they would've been in had it done so. Not upholding the complaint on this basis is causing them a lot of stress and anxiety.
- Santander and the Investigator have said they have benefitted financially from being able to overpay on the tracker rate. But this doesn't take into account the losses associated with needing to use these funds to make said overpayment. And they consider there to be a financial loss not a financial gain.

As both parties have now responded to my provisional decision and the deadline to do so has now passed, it is appropriate for me to issue my final decision.

### **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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but

because I don't think I need to comment on it in order to reach the right outcome.

As I set out in my provisional decision, this was an advised sale. This means Santander had to take reasonable steps to ensure the product it was recommending to Mr K and Mrs K was suitable for them. To do this, it had to gather sufficient information about their needs and circumstances at the time and any reasonably foreseeable changes to those circumstances. Having listened to the calls between Santander and Mr K and Mrs K, I am not persuaded it did this. And Santander also accepts it could have done more.

Santander was made aware that Mr K and Mrs K had no plans to move from the mortgaged property until the end of the newly extended term. But upon being notified that if they did have to redeem the mortgage early, they would need to pay a 3% ERC, Mrs K became uncomfortable with the recommended product. At this point, Santander should have asked more questions to understand more about the circumstances that could lead to the mortgage being redeemed within two years and why, given Mr K and Mrs K had no plans to move, this was making Mrs K uncomfortable. Had it done so, it would've found out that Mrs K's uneasiness came from the potential, albeit unplanned, need to downsize should a family member's health deteriorate during the two-year period.

Had the adviser gathered this information, I would have expected them to explain that the fixed rate was portable (subject to meeting the lending criteria at the time of the port) and that could mean Mr K and Mrs K may potentially avoid some or all of the ERC. This would've enabled Mr K and Mrs K to make an informed choice about whether to proceed with the recommended fixed rate product, or to switch to the available tracker rate.

I note Mr K and Mrs K question why my finding that Santander did not do everything that it should have done is not leading to their complaint being upheld and compensation falling due. Our Service does not operate to punish businesses and instead we seek to put consumers in the position they would *most likely* be in had everything happened as it should have. This means, it would not be appropriate for me to automatically uphold their complaint by virtue of Santander's error. And instead, I need to consider what they would most likely have done had Santander asked more questions during the advice call and given them more information upon which to base their decision.

Mr K and Mrs K say they would have taken the fixed rate product had they known they could port the rate. And in response to my provisional findings, they've said this is evidenced because they took out fixed rates on other properties during the same timeframe so were clearly comfortable with the risk of an ERC. And that had downsizing become a reality in those two years, it would have been to a bungalow which would have been for the same value, or more than their existing property, so they would have known that even a partial ERC would have been unlikely. I have considered Mr K and Mrs K's full response to my provisional decision carefully. But having done so, I am not going to uphold this complaint.

I don't find that Mr K and Mrs K's willingness to accept the risk of an ERC on their other properties means that they would apply the same attitude to risk when it came to their residential home. There were different considerations at play when it came to the property Mr K and Mrs K were living in. So, a consumer choosing to take a fixed rate on one property does not lead me to find that they would always take a fixed rate when possible or that they were averse to having different types of interest rate products across their various properties.

In regard to this mortgage, Mr K and Mrs K went into the advice call with the intention to stay in their property unless the unforeseen should happen. Despite this plan, and therefore knowing the likelihood of needing to pay an ERC was fairly remote, they chose not to take the risk of incurring this charge upon hearing that it would be approximately £11,000.

Mr K and Mrs K made this decision in the knowledge that a tracker rate could go up as well as down, did not offer the stability of a fixed rate and was more expensive from the outset. But despite these downsides associated with a tracker rate, they still preferred this option over the risk that they may face an ERC if the unexpected was to happen within the two-year ERC period.

Had things happened as they should have done, and Santander had disclosed the option of porting, Mr K and Mrs K would still have had to decide whether they were willing to risk potentially needing to pay an ERC of up to 3% of their outstanding mortgage balance. Having considered this, I am not persuaded that had they been informed that the rate could be ported, but that porting would instead be subject to an application and Santander's lending criteria at the time so was not guaranteed, that they would have deemed the still present risk of a potential ERC to be acceptable.

It follows therefore, that while Santander did not do everything it needed to do during the sale of this mortgage, I am not persuaded that had it done, Mr K and Mrs K would've made a different decision and that they would be in a different position to the one they are in now. For this reason, I do not uphold this case.

I am aware Mr K and Mrs K have also raised questions as to how Santander and our Investigator have concluded that there is no financial loss in this case. But as I have not upheld the complaint and I am not directing Santander to compensate Mr K and Mrs K, the calculations of whether Mr K and Mrs K have or have not made a saving on future interest payments or a loss on their savings and investments falls away. Such considerations would only be relevant if I had concluded that the complaint should be upheld.

If Mr K and Mrs K would like to accept the £250 offered by Santander earlier on in the complaints process, they should contact Santander directly to arrange payment if they have not already done so.

### **My final decision**

For the reasons detailed above, I do not uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 27 February 2025.

Lucy Wilson  
**Ombudsman**