

The complaint

Mr and Mrs P are unhappy that Santander UK Plc have charged them an early repayment charge (ERC) when they redeemed their mortgage. They say that their mortgage was on a fixed rate at 1.44% and the ERC was charged at 5% therefore it's not a reasonable pre-estimate of the costs involved.

What happened

Mr and Mrs P took out a mortgage with Santander in January 2021. They borrowed £357,999 on an interest only basis for 20 years. They took out a five-year fixed rate of 1.44% which was due to expire 2 February 2026.

Mr and Mrs P said their personal circumstances changed and they wanted to sell their property and relocate overseas – which they have now done. But they have been charged a 5% ERC which was for £17,899.95.

They have said that Santander has treated them unfairly as the ERC is a flat rate of 5% and hasn't been tapered down over the years. They believe that under the mortgage rules, this cost isn't a reasonable pre-estimate of the cost of ending the mortgage early.

Santander issued a final response letter on 3 December 2024, and they explained that they referred Mr and Mrs P's case to senior management to see if the ERC could be reduced, but it was declined. Santander didn't uphold the complaint and said the ERC was charged in line with the mortgage offer.

Mr and Mrs P brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. He didn't uphold the complaint and thought that the ERC had been applied fairly.

Mr and Mrs P didn't agree with this and made the following comments:

- They understand that the ERC was an agreement and when they took the mortgage out, they didn't have any intention of relocating overseas. Life circumstances which were very personal, forced their move abroad.
- They made two other offers to Santander to pay the remaining interest due on the loan or to allow them to substitute the property for a term deposit held in an interest-bearing term deposit account with Santander, but Santander rejected both of these.
- Mr and Mrs P believe that Santander could have accepted a lower ERC but chose not to do so showing no flexibility at all.

As Mr and Mrs P disagreed with the investigator, the case has 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.

I'd firstly like to say how sorry I am to hear about the challenging circumstances that Mr and Mrs P have told us about. I understand from what they have told us that they didn't have any intention of moving when they originally took out the mortgage.

I've looked at the mortgage offer which was dated 11 January 2021.

This offer confirmed the interest rate at 1.44% for five years which was due to expire on 2 February 2026. Section 8 of the offer confirmed the level of ERC that would need to be paid if Mr and Mrs P decided to repay the mortgage before the expiry date. It confirmed that the ERC would be calculated at 5% of the balance repaid and cash examples were also provided. So, I think this offer made it clear what the ERC would be and it also made it clear that it wasn't a tapered ERC – which it didn't need to be.

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 a similar type, rather than for individual loans. Santander is entitled to set an ERC based not on the actual cost to them of Mr and Mrs P 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.

Santander sets their ERC at a product term and type level, so here that is all five-year fixed rates and not just the 1.44% five-year fixed rate that Mr and Mrs P 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 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 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 have 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 and Mrs P.

The information from Santander shows 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 have used and an explanation for the calculations and estimates they have made. I have 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 and Mrs P the ERC set out in their mortgage contract when they repaid their mortgage early. And there was no requirement for Santander to only charge an amount worked out based on Mr and Mrs P's individual loan and redemption, instead they were allowed to charge an amount based on their pre-estimate of the costs of an 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 and Mrs P will be disappointed with my decision, but I'm 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 P and Mrs P to accept or reject my decision before 10 July 2025.

Maria Drury
Ombudsman