

## **The complaint**

Mr A complains that Santander incorrectly applied a fixed-interest rate product to his mortgage account instead of the base rate tracker product he had applied for and accepted.

## **What happened**

Mr A approached a broker (Broker 1) to arrange a remortgage on his existing Santander mortgage in or around early 2023. Broker 1 recommended Mr A take out a five-year fixed rate at 3.99% and submitted an application for this rate to Santander. Santander issued a Mr A and Broker 1 a mortgage offer for the rate in mid-March 2023.

Mr A decided he did not want to take out a fixed interest rate as he thought interest rates would fall across the five-year period and because he was looking to move house within the same time frame so did not want to be tied in with an early repayment charge (ERC). He notified Broker 1 that he would be going to a new broker, Broker 2, with the aim of taking out a tracker rate. Broker 1 says it notified Santander that Mr A wanted to cancel the application for the fixed rate.

Broker 2 submitted an application to Santander for a tracker rate and a mortgage offer was issued on 28 March 2023 and accepted the same day by Mr A.

On 3 April 2023, the day Mr A's existing interest rate was due to expire, Santander sent him an email notifying him that he had not yet accepted his new interest rate product and that, if he would like to do so, he would need to click the link on the email to complete acceptance. Mr A says he assumed this email related to his tracker rate and that something had gone wrong with his previous acceptance on 28 March 2023, so he clicked through and accepted the rate. However, it later transpired that the email and associated links related to the original fixed rate product Mr A had tried to cancel, and not the tracker rate.

Santander sent Mr A two letters on 4 April 2023 confirming that the tracker rate and the fixed rate had been accepted and had gone live on his mortgage account – Mr A says he only received the letter referring to his tracker rate. Broker 2 received online confirmation that the tracker rate had gone live. Santander also charged Mr A two booking fees of £995, one for each rate.

In July 2024, Mr A was in the process of selling his house when he was notified by the solicitor involved that he was liable to pay a notable ERC. Mr A queried this was Santander, explaining that he thought he was on a tracker rate and therefore not subject to an ERC. Santander confirmed that as he had accepted the fixed rate product on 3 April 2023, this superseded his earlier acceptance of the tracker mortgage and that he had been on the fixed rate ever since. Mr A complained to Santander.

In response, Santander acknowledged it had taken two booking fees in error so issued a refund for one of the fees. It also accepted that sending Mr A two letters saying he had completed on both a fixed rate and a tracker rate would have been confusing, so it awarded £250 to recognise the distress and inconvenience caused. But it did not agree to re-work Mr A's account as though he had taken the tracker rate from the outset. It maintained that

Mr A chose to go ahead with the fixed rate on 3 April 2023 and even if he did so in error, it had made it clear at the time what product he was accepting. It said that if Mr A did not want to take the fixed rate, he should have ignored its email reminding him that he had not accepted the product.

Dissatisfied with Santander's response, Mr A referred his complaint to our Service.

I issued a provisional decision in April 2025 partially upholding the complaint. In summary I said:

- It was clear from the timeline of events that Mr A intended to take out a tracker rate. He did not accept the fixed rate mortgage offer when it was first issued, and he ceased relations with Broker 1 specifically because he did not agree with its recommendation that he take out a fixed rate.
- Given Santander was notified that Mr A no longer wanted to go ahead with the fixed rate application and that he had accepted its offer for a tracker rate, it was not reasonable that Santander sent a reminder email to Mr A relating to the fixed rate. Doing so caused unnecessary confusion.
- I agreed that the screens Mr A would have seen when mistakenly accepting the fixed rate made it clear the type of interest rate product he was accepting. And given this was a mortgage transaction, it is reasonable to expect Mr A to have read the information being presented to ensure he knew what it was he was agreeing to – even with the time pressure he has alluded to.
- So, while I intended to conclude that Santander was responsible for setting in motion the chain of events that led the parties to the current position, I also intended to conclude that Mr A missed an opportunity to mitigate his losses at this point in time. And this was to be reflected by awarding Mr A 50% of the ERC he was charged rather than the full sum.
- I also directed Santander to re-work the mortgage account as if the tracker rate had been taken out in April 2023 and that it could deduct the extra Mr A would have had to pay towards his mortgage each month under the tracker from the partial ERC award.

In response Santander said:

- Mr A did not read the information it provided, and as a result, accepted the fixed rate product.
- Mr A did not raise his concerns to Santander either in April 2023 or at any point during the term of the mortgage before he redeemed it – despite the payments being lower than the tracker rate he says he wanted and the payments remaining static.

Mr A replied to the provisional decision with notable comments. I have summarised them below:

- He strongly disagrees he shares any responsibility for how things transpired in April 2023.
- The events were solely caused by Santander's failure to cancel the fixed rate product despite being notified by Broker 1 that Mr A no longer wanted to go ahead. He

considers this to be a fundamental breach of process and trust.

- Santander's communications were misleading. Its reminder and confirmation emails did not set out which product it was referring to and the acceptance screen he clicked through to (which did set out the type of product) was only accessed once, in a moment of panic during the working day. He was operating under the impression that any correspondence from Santander would relate to the tracker rate given he was now going via Broker 2 and had taken steps to cancel the fixed rate application.
- The decision not to refund the full ERC would have a serious personal and financial impact on Mr A given both his circumstances and the time taken to try and resolve this issue. Had he been on the tracker he would have budgeted for the increase each month in his contractual monthly payments (CMP) rather than now be faced with a lump sum being deducted from the ERC.
- Santander should be made to take full accountability of its mistake and dishonesty. He cannot accept that after the efforts to uncover the truth, he is still substantially out of pocket and undercompensated.
- Further compensation should be offered for the distress and inconvenience caused by Santander's actions.
- Broker 1 did not have his permission to share personal details with Santander for the purpose of applying for the fixed rate product.
- He had taken active steps to ensure he was on the tracker rate. Any suggestion that he bears partial responsibility for what occurred overlooks the fact that the circumstances that led to his mistaken acceptance of the fixed rate were outside of his control.
- If there is any shortfall in the ERC refund, he believes Broker 1 should be held liable for the difference.

As both parties have now responded and the deadline for doing so has passed, it is appropriate for me to now 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, including the most recent submissions, 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.

Having reviewed this case again, I am going to uphold it in part for the same reasons as set out in my provisional decision. I have set out my reasoning for this below.

In his submissions, Mr A has reiterated the steps he took to cancel the fixed rate originally recommended to him by Broker 1, and the subsequent steps he took to secure a tracker rate. He believes taking these into consideration ought to show he bears no responsibility for ultimately ending up with a fixed rate product.

As I set out in my provisional decision, it is clear (and I accept) from the timeline of events

that Mr A intended to take out a tracker rate product and took active steps to make this happen. But that is not enough for me to uphold this complaint in full.

While Mr A did intend to take out a tracker rate product and had taken active steps to support this decision, it cannot be disputed that the last product he accepted before reverting to the SVR was a fixed rate product via Santander's online portal.

In accepting this product, Mr A entered a contract with Santander which allowed it to charge interest at a fixed rate on his mortgage for five years. And if Mr A wanted to end his mortgage with Santander during this period, he was contractually liable to pay an ERC as set out in the mortgage terms and conditions he agreed to by accepting his product. Albeit I accept he chose not to read this documentation at the point he accepted the product.

This means the starting point when considering this case is that Santander was contractually entitled to charge Mr A the full ERC when he redeemed his mortgage. What I need to decide, is whether it was fair and reasonable for Santander to rely on this contractual entitlement given the circumstances that I have set out above.

Santander says it's not its policy to cancel mortgage offers and it is instead for the consumer to let such offers expire if they no longer want them. Ordinarily this approach may be acceptable. But in this case, in addition to its policy, Santander sent Mr A an email notifying him that he had not accepted his interest rate product, despite being told that Mr A did not want to go ahead with said application and having processed Mr A's later acceptance for the tracker rate. Given the timeline of events, the actions Mr A had taken to ensure he was on a tracker rate and not a fixed rate in March, and the wording of the cover email, I am not persuaded Santander's policy has led to a fair outcome here.

Santander has also said the last accepted product will supersede any other open applications at the time. I could follow this rationale if Santander was referring to the most recent mortgage offer issued as it would be reasonable to assume that the most recent mortgage application and offer matches the consumer's intentions at the time. But to process acceptance of an old mortgage offer over the most recent application and offer, particularly one which relates to a different type of interest rate product without reaching out to the consumer first to check the disparity, runs the real risk of Santander processing an application that the consumer no longer wishes to continue – as is the case here.

Taking all of this into account, I am not persuaded Santander has acted fairly or reasonably when processing Mr A's mortgage application. In sending the reminder email when it did, Santander set in motion a chain of events that led to Mr A believing that his acceptance of the tracker rate had not gone through and that he was at risk of losing that rate if he did not act as implied by the cover email. Had it not sent the reminder email when it did, Mr A's product switch to a tracker rate would have gone live the next day – in line with Mr A's wishes and Broker 2's recommendation, so it needs to take steps to compensate Mr A for this.

In response to my provisional decision, Santander has reiterated that Mr A would have known what he was accepting when he clicked on the link in the email on 3 April 2023 as the online screens would have told him that the product he was about to accept, was a fixed interest rate product.

I agree that the screens Mr A would have seen when accepting the product in April 2023 clearly show the type of interest rate product he was accepting. And while Mr A has spoken of being under a time pressure, being at work and operating under the assumption he could trust that the fixed rate product had been cancelled, this was a mortgage transaction. A significant contract secured over his principal asset. So, it is reasonable to expect Mr A to

have taken the time to read the information being presented to him to ensure he knew what it was he was agreeing to and how this would impact him financially.

As a result, while I maintain that Santander's actions have caused confusion for Mr A and set in motion the chain of events that led to Mr A mistakenly accepting a fixed rate, I also remain of the opinion that Mr A does share some responsibility here and in choosing not to read the information presented to him, missed an opportunity to mitigate his losses at the time. To reflect this, I am not going to direct that Santander refund the full ERC.

Santander has questioned why Mr A didn't query the reminder email at the time – either with it directly or via Broker 2 given he thought he had accepted a tracker rate. It also questions why Mr A did not raise this as an issue during the months that the interest rate product was live – particularly given the CMP was lower than he ought to have been expecting, and it did not vary in line with the Bank of England base rate as one would expect.

While it would have been prudent for Mr A to query the reminder email at the time, given Santander chose to send it on the day before his mortgage reverted to its SVR, I can understand why he thought time was of the essence and did not do so – particularly as the email itself did not put Mr A on notice that it related to his old fixed rate application.

Regarding the post acceptance points Santander has raised, none of the documents referred to or potential points of awareness speak to Mr A's intentions at the point of application. Nor do they speak to his ability to mitigate his losses or change the trajectory of the application in April 2023 as they all occurred after Mr A was already tied into the fixed rate and therefore, the ERC. So, Santander's comments on this point do not change my decision to partially uphold this complaint.

I am aware Mr A will be disappointed that I am not upholding his case in full, and he has spoken of the significant personal and financial impact this series of events has had on him. I do not doubt what Mr A has said in this regard and I acknowledge the difficulties he has experienced. But for the reasons set out above, I am satisfied it was reasonable to expect Mr A to read the information being presented to him before entering this contract with Santander. And in making such a finding, it follows that it would not be reasonable to uphold this complaint in full and find Santander solely responsible for the events that transpired.

I have also considered Mr A's request that compensation be offered for the distress and inconvenience he has experienced by virtue of both having to pay the ERC in the first place and the subsequent actions he has had to take to bring and support this complaint. I have considered this carefully but as I am directing Santander to refund 50% of the ERC it was contractually entitled to charge in recognition of its misleading actions and the impact this has had on Mr A, I am not going to direct it pay any further compensation.

I note Mr A wants Santander to be made to take full accountability and that it, as a large retail bank, should not be able to treat consumers in the way he feels he has been treated. But it is not my role to punish Santander or direct that it changes its policy – The Financial Ombudsman Service is not an industry regulator. We are a dispute resolution service with a jurisdiction to investigate individual complaints. So, I am unable to issue punitive damages or to make a direction that extends beyond Mr A's case.

Finally, I note Mr A also considers Broker 1 to be responsible for some of the events that have led the parties to where they are today. And as a result, he feels Broker 1 should be liable for any shortfall in the ERC refund. However, this complaint is about Mr A and Santander, so I am unable to comment on the responsibility of Broker 1 or make any award or direction against a business which is not the respondent business to the complaint. As a result, this decision focuses solely on Santander.

## **Putting things right**

Santander's actions in this case have led to Mr A accepting an interest rate product he did not want, despite him having notified Santander of this and trying to take steps to take out a tracker rate mortgage. So, Santander should:

- Re-work the mortgage account as if the tracker rate mortgage applied for in March 2023 had gone live and had been applied to Mr A's mortgage.
- Refund 50% of the ERC it charged Mr A when he redeemed his mortgage – recognising that had he had a tracker rate, he would not have been subject to such a charge.
- As the tracker rate was at a higher rate of interest, this means Mr A would've need to pay more each month toward the mortgage to ensure he was meeting his CMPs. Santander can deduct the extra amount Mr A would've needed to pay towards his mortgage from the ERC it levied against his account.

## **My final decision**

For the reasons set out above, I uphold this complaint in part and direct Santander UK Plc to compensate Mr A as I have instructed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 June 2025.

Lucy Witkowski  
**Ombudsman**