

## The complaint

This complaint is about a mortgage Mrs L and Mr Y hold with Santander UK Plc. The core of the complaint arises from how Santander handled a request Mrs L and Mr Y made to put the mortgage on a new fixed rate deal and to borrow more money. The new lending was completed, but the rate switch for the existing borrowing was delayed, as a result of which interest was charged at Santander's standard variable rate (SVR) in the interim. Mrs L and Mr Y seek redress for the financial loss this caused them.

## What happened

By way of a provisional decision dated 7 April 2025, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll give a brief summary, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mrs L and Mr Y's mortgage was comprised of two components, which I'll refer to as sub accounts. They were on a fixed rate that was due to expire on 2 March 2024. Mrs L and Mr Y were looking for a new rate, and they also wanted to borrow more money. Santander explained that these could happen separately in either order, but not at the same time.

Notwithstanding that the existing fixed rate expired on 2 March 2024, Mrs L and Mr Y opted for the further borrowing first. The offer for the further advance was issued on 30 April 2024, and accepted. It created a third sub account, and the interest rate product attached to this was a fixed rate of 5.27% running until 2 September 2025. Meanwhile, the existing sub accounts were now on a follow-on variable rate (VR) following the expiry of the existing fixed rate

The plan was to put the existing mortgage sub accounts onto the same fixed rate product as the further advance, to which end Mrs L and Mr Y had paid a product fee of £499 on 17 April 2024. Santander issued a product switch offer on 15 May 2024, but this wrongly said that the fee hadn't been paid. Mrs L and Mr Y complained, and Santander agreed over the phone to re-issue the offer. This was on 24 May 2024, and a final response to that effect was issued the same day. The new offer was issued on 12 June 2024. This offer was valid until 26 June 2024, but Mrs L and Mr Y say they didn't receive this; nor, seemingly, did they receive a reminder that Santander sent on 21 June 2024.

The new rate product wasn't applied to the existing sub accounts, interest continued to be charged at the VR, and Mrs L and Mr Y referred their complaint to us in August 2024. In November 2024, before the case had been assigned to one of our investigators, Mrs L and Mr Y re-engaged with Santander and selected a different rate deal for the two original sub accounts. This was a fixed rate of 4.19% fixed until February 2027.

When the case was assigned to one of our investigators, he considered that Santander was at fault for issuing the first product switch offer wrongly, and that if that initial error hadn't been made, Mrs L and Mr Y would have accepted that offer and the rate would have taken effect. He recommended Santander apply the 5.27% rate retrospectively and pay Mrs L and Mr Y £200 compensation.

Mrs L and Mr Y initially accepted this, even though it would mean removing the 4.19% fixed rate and replacing it with the 5.27% fixed rate, leaving them needing to renew the rate again in September 2025 instead of February 2027. Later, they suggested keeping the mortgage as it is now, but refunding the £499 product fee and the extra interest charged during the period the mortgage was on the VR.

Santander asked for the complaint to be reviewed by an ombudsman.

### **What I've provisionally decided – 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 don't replicate the work 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. But in doing so, we have to work within the rules of the ombudsman service.

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 a different conclusion from the investigator on how this dispute should fairly be resolved. I'm setting out those conclusions, and the reasons for them, in a provisional decision first, so that both parties have the opportunity to comment before it is finalised.

My starting point here is the same as the investigator's; that is, Santander made a mistake when it issued the product switch offer on 15 May 2024. Mrs L and Mr Y complained, quite reasonably, and Santander agreed to put things right for them. So far, good; it's in relation to what happened next where I differ from the investigator.

There's some disagreement over whether Mrs L and Mr Y received the corrected offer. They say not; Santander argues that it was sent to the same email address that had been used for other documents that were received, as was the reminder. I can't know, and won't speculate on, whether Mrs L and Mr Y did or didn't receive the corrected offer. What I can say with some certainty is that they were expecting it. So I have to think about what they did, or didn't do in the light of, in their understanding, its non-arrival. In more specific terms, I have to consider mitigation.

The general position is that where another party has made an error causing loss, mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have

been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. In my view, that's relevant and appropriate here.

As I've said, I'm satisfied Mrs L and Mr Y were expecting to receive an amended offer for the 5.27% product switch. If they did receive it, then it's reasonable to expect they'd have accepted it and the rate would have taken effect. But if I take them at their word that they didn't receive it, then it's also reasonable to expect that they would have contacted Santander to chase it up. That's mitigation. From the evidence supplied by both parties to this dispute, it's not apparent that they did that. Rather, it seems that they referred the complaint to us in August 2024, and elected to take a different product, with a lower rate, starting in November 2024.

I'm not currently persuaded that Mrs L and Mr Y did enough to mitigate their impact of Santander's error and ensure that the 5.27% fixed rate deal could be applied to the existing sub accounts on their mortgage, to correspond with the further advance sub account. It follows from that provisional conclusion that I don't consider Santander should be required to re-work the mortgage in order to apply the 5.27% rate to the existing sub accounts retrospectively.

I think the fair and reasonable resolution is for the mortgage to remain as it is, with the further advance on 5.27% fixed until September 2025, and the other two sub accounts on 4.19% fixed until February 2027. That means that the VR interest charged in the interim should remain, but the £499 product fee paid on 17 April 2024 should be refunded to Mrs and Mr L (unless it has been used, fully or partly, to offset any fee associated with the 4.19% deal taken in November 2024) and they should still be compensated for the time, trouble and upset."

Santander broadly agreed with the provisional decision, with one caveat. It pointed out that whilst not attached to the existing accounts, the 5.27% fixed rate *was* attached to the further advance. Accordingly, Santander reasoned, the fee should not be refunded. At my request, the Investigator contacted Mrs L and Mr Y to let them know that I was minded to agree with what Santander had said. As this would mean the only award I was now minded to make was a compensation payment of £200, for their time, trouble and upset, we gave Mrs L and Mr Y more time to provide their response.

We've now heard from Mrs L and Mr Y; they don't accept the proposed outcome. They say they paid the fee for the 5.27% rate, didn't get it, and should have that rate applied to the entire mortgage, and the fee for the 4.19% rate and the extra interest incurred whilst on VR to be refunded. That would allow them to move lenders when the 5.27% rate expires.

### **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'm satisfied Mrs L and Mr Y received two mortgage rate products; the 5.27% rate that was applied to the further advance when they borrowed the extras money, and the 4.19% rate that was applied to the existing sub accounts in November 2024. Each product came with a fee, which is why I asked the Investigator to let Mrs L and Mr Y know that I had changed my mind about ordering a refund of one of the fees.

Having read their closing comments, I'm persuaded that's the right and fair approach. The 5.27% product could have been applied to all parts of the mortgage if Santander had issued the 15 May 2024 product switch offer correctly. Equally, it could have been applied to all parts of the mortgage if Mrs L and Mr Y had taken steps to mitigate the effect of Santander's omission, as set out in the provisional decision.

It's for much the same reason that I don't think it would be appropriate to require Santander to reconstruct the mortgage as if the 5.27% rate had been applied to all of its component parts, the intervening period when the existing mortgage was on VR hadn't happened, and the 4.19% rate had never been taken out. For completeness, we did ask the business if it would consider doing so voluntarily, but it declined to do so.

### **My final decision**

My final decision is that I uphold this complaint in part, by ordering Santander UK Plc to pay £200 compensation.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mrs Y to accept or reject my decision before 9 June 2025.

Jeff Parrington  
**Ombudsman**