

The complaint

Ms M and Mr P's complaint is about a mortgage they hold with Santander UK Plc.

The essence of the complaint is that Santander sought to impose an early repayment charge (ERC) when they tried to replace the mortgage with one from another lender whilst their fixed interest product was still running. Ms M and Mr P decided to stay with Santander and take a new interest rate product (Santander allowed this without charging the ERC) but the rate is higher than that which they'd agreed with the new lender.

Ms M and Mr P don't dispute that an ERC would have been payable if they'd gone ahead with the redemption, but consider it would have been unfair of Santander to charge it so close to the end of the product. They don't believe the calculation of loss is rational or proportionate.

What happened

The broad circumstances of this complaint are known to both parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Ms M and Mr P being identified.

Instead I'll give a brief summary of the key events, 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.

The mortgage started in 2022; it was arranged via a third-party intermediary, whose responsibility it was to ensure the mortgage was suitable for Ms M and Mr P, and that they understood the terms they were agreeing to. The mortgage was initially on a fixed rate product which was due to expire in September 2024.

In the summer, of 2024, Ms T and Mr P were moving house, and were offered a mortgage with a different lender, on a rate of 4.29% fixed for five years. Santander issued a redemption statement quoting an ERC of just over £11,500. To avoid paying this, Ms T and Mr P took a new mortgage from Santander, on a five-year fixed rate of 4.58%. However, this means they'll pay nearly £5,500 extra interest over the five years.

Ms T and Mr P complained that seeking to apply the entire ERC so close to the end of the original two-year deal ran contrary to the Consumer Duty provisions around price and fair value, and the cross-cutting requirements to treat customers fairly and ensure fair outcomes. Santander rejected the complaint and when it came to us, our investigator didn't think Santander had done anything wrong.

Ms M and Mr P have asked for the case to be reviewed by an ombudsman.

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.

The first point to make is that the ERC, and the circumstances in which it might be charged, were set out in the mortgage offer from 2022, in a manner consistent with Santander's regulatory obligations. It was then up to Ms T and Mr P's intermediary to ensure they understood the implications of the ERC clause, and how and when they might be required to pay it.

The start of the mortgage contract pre-dates the introduction of the Consumer Duty, and the terms of the ERC come under a provision in the Duty known as "vested rights". This means Santander did not have to surrender or waiver the right to charge an ERC on an existing mortgage contract when the Consumer Duty came into effect.

That brings me to the fairness of the ERC amount, given the mortgage was being redeemed so close to the expiry of the fixed rate period.

The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. In this case that is the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). 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 an ERC, and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Santander is entitled to set an ERC based not on the actual cost to it of Ms T and Mr 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.

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, the lender 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 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 its costs of setting up and servicing the mortgage, the cost of the capital it has to set aside, the cost of funding the fixed rate, the cost of financial instruments that could be used to protect its position (and unwinding those) and its future losses. I've looked carefully at what Santander has said and I consider it is a fair way to calculate the ERC.

As for the proximity of redemption to the product end date, some lenders apply a tapered ERC, with the percentage reducing year by year. Others apply a single percentage charge over the whole period of the product. Both are permitted, provided that the resulting calculation is fair, which I've found it to be for the reasons set out above.

My final decision

My final decision is that I don't uphold this complaint.

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 Ms M and Mr P to accept or reject my decision before 25 November 2025.

Jeff Parrington

Ombudsman