

The complaint

Mr K and X complain about how Santander UK Plc has applied an early repayment charge to their mortgage.

What happened

In 2014 Mr K and X took a mortgage with Santander. They borrowed £255,000 on part interest only and part repayment terms over 14 years. Their interest rate was fixed at 2.44% for two years. The terms of their mortgage allowed them to make up to a 10% capital overpayment in each year without paying an early repayment charge ("ERC"). Overpayments in excess of this would attract an ERC of 3% on the balance redeemed. The mortgage offer said that the maximum ERC payable in the event of a full redemption of the mortgage was £7,929.85.

In 2016 Mr K and X signed up to another two-year fixed interest rate deal on their mortgage and they did the same again in 2018. The overpayment and ERC terms on these mortgage agreements were the same as their 2014 agreement.

In 2020 Mr K and X signed up to a new mortgage deal. This time they opted for an interest rate that was fixed for five years until 2 November 2025. The terms of their mortgage allowed them to make up to a 10% capital overpayment in each year without paying an ERC. Overpayments in excess of this would attract an ERC of 5% on the balance redeemed. The mortgage offer said that the maximum ERC payable in the event of a full redemption of the mortgage was £12,083.80.

In March 2025 Mr K and X redeemed their mortgage with Santander and were subject to an ERC of £7,683.94.

Unhappy about this Mr K and X complained. They say that there was a lack of transparency in how the ERC terms were presented to them at the time of their remortgage in 2020. They say that having paid a £1,000 product fee and receiving an advised service, they should have been told that their ERC terms had changed.

Mr K and X also say that they were misled into thinking that their annual overpayment window reset in November each year – but instead it reset in January. Having made a 10% overpayment on 1 November 2024 they later found out that they had to wait two months before making a further fee free 10% overpayment to reduce their mortgage balance and the interest payable.

As a resolution they want Santander to refund the ERC amount they feel they've been unfairly charged. They also want a full explanation of why their ERC liability escalated to over £10,000 by November 2024, despite the fact that their mortgage balance had almost halved since the original borrowing. And they ask for a review of Santander's communication practices regarding ERC terms and overpayment restrictions, as they feel these placed unnecessary limitations on their ability to manage their mortgage effectively.

Santander thought the ERC had been charged fairly and in line with the mortgage terms and so it didn't agree to refund any part of it. In its final response letter to the complaint, it said:

- Mr K and X completed the remortgage on a non-advised basis – meaning they selected the product themselves. It's unclear whether the process took place over the phone or online.
- The rate selected was a five-year deal and as such this was a long-term benefit, and a higher ERC is applied to these rates to offset this.
- A recording of the call that Mr K and X say took place in 2020 to discuss the remortgage is no longer available. So, Santander can't review how the ERC was explained during the call.
- In any event, it says information about the ERC is presented in the mortgage offer. The layout of the mortgage offer is set by the regulator to be clear, fair and not misleading.
- This is the fourth product on the account since it was opened in 2014, all of which included an ERC which was presented in the same way in the mortgage offers. This information was also reiterated to Mr K and X when they changed their payment method in 2022 and in their annual statements.
- The mortgage offer confirms the overpayment allowance resets annually on 1 January each year. Mr K and X made an overpayment in November 2024. They were able to make a further overpayment after 1 January 2025 to further reduce their balance.

Unhappy with Santander's response, Mr K and X brought their complaint to our Service. An investigator looked into things and didn't recommend the complaint be upheld.

Mr K and X didn't agree and asked for their case to be decided by an Ombudsman. In summary they say that:

- They accept the ERC clause was presented in the mortgage paperwork and that they should have read the offer more carefully. But their complaint is that Santander didn't comply with the regulatory duty which requires it to highlight prominent features of a mortgage that may have significant adverse implications.
- Santander deleted the 2020 call – the only contemporaneous record capable of evidencing whether the required disclosure ever took place. It was the single compliance call for which they paid a £1,000 product fee for.
- The investigator says that Mr K and X should have assumed that the ERC would increase with a longer-term mortgage. This was Mr K's first mortgage and to say that he should have assumed this to be the case reverses the regulatory burden.

The investigator considered Mr K and X's comments but explained why his opinion remained unchanged. The case has now 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.

When considering what is fair and reasonable in all the circumstances of this case, I'm required by DISP 3.6.4R of the FCA Handbook to take into account the relevant law, regulations, regulators' rules guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr K and X. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

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 a fair outcome.

Mr K and X say that they applied for their new deal in 2020 over the phone with a Santander advisor. In its file to our Service Santander says it now knows the application was made online without the involvement of Santander staff.

Our Service decides cases on a balance of probabilities basis. Where the available evidence is incomplete, contradictory or missing – as some of it is here, our rules require me to reach my conclusions on the basis of what I consider is most likely to have happened – rather than requiring absolute proof beyond reasonable doubt. That's broadly the same test that the courts use in civil cases and what I have applied here when reaching my decision.

I've looked at the information available to decide on balance whether this mortgage was arranged on an advised basis or not. That's important because the obligation on the business differs between an advised and a non-advised sale.

An advised sale is where a business recommends a mortgage to a consumer. Unlike a non-advised sale, where it is for the consumer to decide whether the mortgage meets their needs; in an advised sale, the business is expected to take the necessary steps to make sure the mortgage being recommended is suitable for the consumer based on their personal circumstances.

The evidence suggests that on 13 August 2020 Mr K and X applied for and accepted their remortgage deal online. The mortgage offer says that the mortgage was not recommended by Santander and I've seen a record of the mortgage being accepted online.

Santander's Contract Variation Team is responsible for assisting customers with switching their interest rate and providing advice if needed. Santander has provided evidence of the department's call records. This shows that neither Mr K or X contacted the Contract Variation Team by phone until 2022 when Mr K called to discuss a change of borrower application.

So, when considering everything I've seen enough to persuade me that Mr K and X applied for their product switch online on a non-advised basis without the involvement of Santander staff.

I've also looked at Santander's general contact notes and again I can't see any other calls made to other areas of the business in 2020 to discuss the mortgage. Whilst I don't doubt

Mr K and X's version of events, I've not seen anything to suggest that the 2020 call they refer to was made to the team responsible for providing mortgage advice to customers. This is also supported with the documentation that suggests an online product switch application took place.

Lastly, I note that Mr K and X say that they paid a £1,000 product fee for the benefit of having a call with a Santander mortgage advisor. That's not the case. The product fee is effectively the upfront price of a particular deal. A customer may choose to pay this fee to access a lower interest rate. Lenders often offer two versions of the same fixed term deal. One with a higher interest rate and no fee and one with a lower interest rate but a product fee. The fee offsets the lower rate – it's how the lender balances profit across different borrower preferences. In this case Mr K and X opted for the five-year fixed rate with a fee to secure a lower rate. The fee was not linked in any way to receiving advice from Santander or speaking to a mortgage advisor.

In these circumstances where a customer applies for a mortgage or new interest rate deal online on a non-advised basis, the lender is required to provide information for the customer to make in an informed choice about what's right for them and that information needs to be clear, fair and not-misleading.

A key part of Mr K and X's complaint is that Santander had a duty to draw their attention, in a prominent way, to any features with significant adverse implications.

When Mr K and X applied for their new interest rate deal online, they were issued with a mortgage offer which they accepted the same day. The mortgage offer included 14 sections relating to key features of the mortgage each set out under its own prominent heading. The ERC information was set out clearly under the heading 'Early Repayment'. So, I don't agree with Mr K and X when they say information about the ERC was provided to them in the small print. Information about the ERC was presented to them in the same way as the other key features of the mortgage in a compliant way as required in the rules set out in the Mortgage Conduct of Business (MCOB) rules.

As common with five-year fixed rate deals, a 5% ERC was applicable on the amount repaid (over the 10% annual overpayment allowance). So, I don't think Santander acted unfairly by applying the charge in the way that it did in line with the mortgage terms.

Given that a mortgage is likely to be a customer's largest financial commitment, I don't think it's unreasonable to expect them to have read the mortgage offer and the supplementary terms and conditions before agreeing to the terms of the mortgage. The mortgage offer cover letter also informs customers that:

"All parts of this mortgage offer, together with the mortgage conditions, will form the terms of your mortgage. It's very important that you and all other parties to the mortgage read all of the information provided."

As I've said, information about the ERC was presented clearly to Mr K and X. I can't reasonably hold Santander responsible for them not reading and understanding the terms before agreeing to the mortgage.

I appreciate Mr K and X feel that Santander should have gone further to highlight the difference in the ERC terms applicable on this mortgage – compared to the last. But I don't agree, I'll explain why.

As I've explained the bar for an advised and non-advised sale is not the same. Had this been an advised sale the mortgage advisor would have been expected to carry out a fact-

find to gather information about Mr K and X's circumstances before it recommends a mortgage to them. This would include understanding their goals to determine the type of product suitable to them, including whether it's advisable to commit to a longer fixed rate deal that carries a larger ERC. But as this was a non-advised sale that obligation did not exist.

Lastly, I note that Mr K and X say that it wasn't made clear to them that the annual overpayment window reset on 1 January each year and they were prevented from making a final overpayment for two months without incurring an ERC liability.

I've looked at the mortgage terms and conditions which say:

"Section 11 Early Repayment Charge...

11.2...

(b) where in any year, you make one or more capital repayments which have the effect of repaying not more than 10% of the capital (calculated at the beginning of the year) owing in respect of the loan or loan part to which the early repayment charge applies..."

So, I'm satisfied that Santander has acted fairly in line with the terms of the mortgage in the way it accepted overpayments to the account and it provided clear information to Mr K and X about how the process worked at the time they signed up to their new deal in 2020.

Conclusion

Under the relevant rules, lenders are entitled to apply an ERC. And I'm satisfied that the ERC was set out clearly and prominently in the mortgage offer, which Mr K and X accepted when they took out the current mortgage deal. Because I don't find that Santander has acted unfairly in the circumstances of this case, I can't reasonably say that it can't apply the ERC that Mr K and X agreed to when they took out the mortgage.

When a lender offers a fixed rate mortgage product, both the lender and borrower are tied into the fixed rate for the duration of the term. The ERC reflects the pre-estimated costs a lender incurs across a range of mortgages where the borrower redeems the mortgage within the benefit period.

I need to consider what's fair and reasonable in the circumstances for both parties. The ERC forms part of the contract Mr K and X had with Santander, so I can't say it's been unfair or unreasonable in applying the ERC.

For the reasons I've given I don't uphold this complaint. I know this will come as a disappointment for Mr K and X, but I won't be asking Santander to refund the ERC paid, nor do I think it needs to do anything more to settle this complaint.

My final decision

My final decision is that I don't uphold Mr K and X's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and X to accept or reject my decision before 20 November 2025.

Arazu Eid

Ombudsman