

The complaint

Mr N is unhappy that Santander UK Plc issued him a mortgage offer when he made an application to purchase a new property – but they then withdrew it. Mr N said he had applied multiple times with Santander, but he kept getting declined so he had no choice but to go to another lender. This resulted in him paying an early repayment charge (“ERC”) of £18,000 which he would like refunded.

What happened

Mr N took out a mortgage with Santander in November 2019 for £450,999 over a term of 35 years on a capital repayment basis. The mortgage had a fixed interest rate of 2.44% until 2 January 2025.

In March 2023, Mr N decided to purchase a new property which was to be joint with his partner. He made the application via a broker, but this application didn’t go through as there were some concerns about Mr N’s income as it had just increased and Santander weren’t happy with the income evidence they had received.

Mr N made a second application on 20 August 2024 which was in joint names but not a porting application, instead it was a new mortgage for the amount of £676,748. Santander accepted this and issued a mortgage offer which was later withdrawn.

Mr N was getting worried as he said he was running out of time as he had already sold his property, so he placed a third application with Santander which was for a full port with no additional borrowing – just in his sole name. Santander issued a mortgage offer which again, was withdrawn shortly after.

Mr N said he had applied to various lenders for a mortgage, but he kept getting declined. He said he was eventually able to obtain a joint mortgage with another high street lender who issued him with an offer of £637,495 over a term of 37 years on a capital repayment basis. This was for a five-year fixed rate at 4.19%. He said he completed on 26 November 2024.

Mr N complained to Santander as he wanted the ERC of £18,000 refunded to him, but Santander said that after a review of the evidence provided at application stage and a further review they were satisfied they were allowed to withdraw the mortgage offers based on their terms and conditions.

Mr N wasn’t happy with this, so he brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator upheld the complaint and noted that Santander had placed inconsistency fraud markers on Mr N’s credit file based on the evidence they had seen, and she didn’t think this was fair. She said that had Santander of asked Mr N for more information regarding his income, she thought they would have been satisfied so wouldn’t have withdrawn the mortgage offers. She also didn’t think Santander should have withdrawn the mortgage offers in the first place.

She said that Santander should remove the fraud markers from Mr N’s credit file and pay him £350 for the distress and inconvenience caused. She also compared the mortgage offer that Santander had issued and worked out whether Mr N would be at a loss if compared to the offer from the new lender on a like for like basis and she thought there would be. She said that Mr N would have saved £13,555.80 by taking out a lower interest rate and lower amount with the new lender over the term of the mortgage – so she thought that Santander

should refund Mr N £4,555.20 which is what he would have lost based on the total ERC amount.

Santander didn't agree with this and said that they would never have lent to Mr N and they were entitled to make a commercial decision based on the information they had, not to do so. But they agreed to withdraw the fraud markers and pay Mr N £350 as recommended.

Mr N also didn't agree and said that although he has made a saving overall, he would rather have the £18,000 in his account now rather than saving it over the term of the mortgage.

As neither party has agreed, the case has been passed to me to decide.

I issued a provisional decision on 20 November 2025. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander have already agreed to pay Mr N £350 for the distress and inconvenience that has been caused and they have agreed to remove the fraud markers from Mr N's credit file. I note that our investigator said there were three showing, but after looking at Mr N's credit file, I believe there may be four. Santander should ensure that all of them have been removed.

For completeness, I agree that these markers should not have been placed on Mr N's credit file. I will explain why as this links into what I have thought about in terms of putting things right for Mr N which I will explain below.

Santander had concerns regarding Mr N's income as they said he was earning a higher salary which then dropped significantly. And a few months prior to the first application he made in March 2024, his income increased again. They felt that his income was not a true reflection and that it may be possibly staged.

Our investigator asked Mr N for an explanation, something that Santander didn't do. Mr N said that in 2019 – before he initially took out the mortgage with Santander – he was given a new role but in March 2020 he sustained an injury, and he had to take some time off work. He said when he returned, he took on a lower position which is why his income then dropped again. He said in early 2023, he had surgery and when he returned in 2024, he was promoted to a new role where his income went back up to what it was before.

Mr N has provided evidence in the form of a letter to confirm his surgery and the dates match based on what he has said and the income fluctuations that Santander could see. I think it's reasonable for Santander to have asked Mr N for more information around this as I'm persuaded by what he has said and what I have seen, that there is a valid reasonable explanation to the change in income. So this is the reason why I think Santander should remove the markers on Mr N's credit file which they have agreed to do.

I am now considering the ERC that Mr N has been charged and whether I think this should be refunded to him.

I have specifically compared the mortgage offer from August 2024 to see whether Mr N has suffered a financial loss as this is the closest mortgage offer compared to the new one he has taken out with the new lender. I have also taken into account that the October 2024 application was just in Mr N's name with a much lower amount as he was only porting without additional borrowing. So the offer that Santander provided in August 2024 is much closer to the offer that he ended up getting with his new lender.

The mortgage offer that Santander issued Mr N and his joint partner in August 2024 was for £676,749 over a term of 35 years with a fixed rate of 4.92% fixed for three years until 2 January 2027.

In trying to put things right for Mr N, I am going to ask Santander to work out the difference in the interest rate based on what he should have paid with Santander against what Mr N has taken out with his new lender. This isn't going to be precise but the closest way that we can get things back on track.

So Santander will need to compare the mortgage that Mr N took out with the new lender which was for £636,000 over a term of 37 years as this is the figure without the product fee of £1,495 which was added to the loan. The reason I am using the lower figures as opposed to the loan amount that Mr N would have taken with Santander is because he didn't end up borrowing the higher amount. So the calculation should only be based on the amount that he actually borrowed.

The three year fixed rate that Mr N was going to take with Santander had a product fee of £999 which was also going to be added to the loan. The comparison below is only going to be for three years because Mr N was only ever going to take out a three-year fixed rate with Santander and not five. So it's not possible to say what would happen after those three years.

Santander need to therefore do the following:

- Compare the mortgage of £636,000 against the interest rate of 4.92% over a term of 37 years, which is the rate that Mr N would have taken with Santander against the interest rate of 4.19% against the new lender. This needs to be compared for three years only as this is how long Mr N's fixed rate would have been with Santander. Whatever this figure is, it will need to be deducted from the £18,000 ERC that Mr N has been charged and Santander will need to refund this to Mr N with 8% simple annual interest.
- Santander will need to deduct the £999 product fee which would have been added to the loan with Santander against the £1,495 product fee with the new lender which will work out as £496 and refund this along with 4.19% interest which is what Mr N is being charged for on the new mortgage – as the fee has been added to the loan.

I have looked at the mortgage offers from both Santander, and the new lender and Mr N hasn't paid a valuation fee to either lender. So there isn't any loss here.

Our investigator asked Santander to refund this amount back to Mr N as she was satisfied that Santander should not have withdrawn the mortgage offer and they only did because of the concerns they had with Mr N's income – something that she said they didn't act fairly on.

But Santander said that they wouldn't have lent to Mr N and his partner because they would have made a commercial decision based on what they knew, to decline the application.

I've thought carefully about what Santander have said here. When a lender receives a mortgage application, they will need to carry out various checks and enquiries and consider that information to decide whether they will lend or not.

An application should be considered fairly and in line with relevant law and regulations. Of particular relevance to this complaint is the part of the mortgage rules that says that when a lender issues a mortgage offer it is a binding offer – which means that (subject to any lawful conditions included in the offer), the lender is bound by the offer and cannot withdraw it.

The mortgage offer shows the following conditions where Santander are entitled to withdraw the mortgage offer. It says:

(a) There's a significant change to the details of your mortgage application

- (b) *There has been a significant change in your situation since you applied for the mortgage. This only applies if this has an impact on whether you can afford the mortgage*
- (c) *A conveyancer we've instructed isn't able to confirm the title to the property*
- (d) *There's a change to the property's condition, value or title. This only applies if this significantly impacts the property's suitability as security to us*
- (e) *We discover you've given us false or inaccurate information on purpose. This includes where you didn't give us the information we asked for*
- (f) *We reasonably believe you're involved in fraud or other serious criminal activity*
- (g) *Completion/settlement of the mortgage offer does not take place by the deadline given at the start of this mortgage offer*

If any of the above apply, we'll only withdraw this mortgage offer if we wouldn't have made it had we been aware of the true circumstances. This includes if we'd have made an offer of a lower amount or on different terms.

In this case, Santander issued a binding mortgage offer subject to various conditions set out in the offer. They said they were entitled to withdraw the offer relying on one of those conditions.

I've considered what they have said about that, but I don't agree. The offer was withdrawn because of the outcome of Santander's underwriting checks and the concerns that they had about Mr N's income.

I've already said that I don't think Santander acted fairly in applying the fraud markers to Mr N's credit file because like the investigator, I think it's more likely that had they of asked the relevant questions to get a full understanding about why Mr N's income fluctuated as it did over the years, they may not have had the concerns that they did. I must also bear in mind that Santander have agreed to remove those fraud markers from Mr N's credit file which I agree is the right thing to do under these circumstances.

A lender doesn't have an obligation to lend, and our service cannot tell a lender to lend, but what I have to think about here is whether Santander acted fairly and reasonably in withdrawing the mortgage offer in the first place – and I don't think they were. They only withdrew the offer because of the concerns they had – concerns that they could have got sensible and reasonable explanations about had they of asked Mr N more information. So based on this, I don't think Santander would have withdrawn this offer so his mortgage from August 2024 would have gone ahead.

In the circumstances, I don't think it was fair for Santander to withdraw a binding offer when nothing had changed and seeing as they have said themselves that they already had some concerns from March 2024 as they had already applied a fraud inconsistency marker by this point – so nothing had changed.

I appreciate that Mr N would like the full amount of the ERC refunded but I don't think that's fair in these circumstances. He has ended up borrowing less with the new lender so as I've explained above, he will end up paying less interest over the term of the five-year fixed rate - so I don't think it's fair to compensate him twice.

Developments

Mr N responded to the provisional decision and made the following comments:

- The mortgage offer from Santander was for two years and not three. Mr N's ideal scenario would have been for a two-year fixed rate. Mr N said he was already in a five-year fixed rate and the general census from the mortgage broker was that rates would decrease in two to three years' time – which is why he wanted a two year fixed

rate.

- Mr N said it's impossible to fairly compare a rate given by two high street lenders for a two-year period against a five-year period and should be done on a like for like basis. Mr N said the point of a two-year fixed rate is that you can renew it after two years, but he can't do that now and he doesn't have £18,000 in the bank.
- Mr N accepts the interest rate he is on now is lower but said he should have been on 4.92% with Santander for two years then he could have remortgaged for another two years on a rate of around 3.7% and then would have been able to obtain a new rate of around 3.5% for the last year. He said Santander and the new lender follow the same trends as they always follow the Bank of England base rate so the interest rates differ by 0.2-0.8% depending on the product.
- Mr N says he would have obtained a five-year fixed rate with Santander had they of allowed him to do the same as the new lender. He is currently on 4.19% with the new lender and Santander's interest rate would have been 4.15-4.25% fixed for five years in November 2024.
- Mr P wanted clarification on what I meant when I said that *"he will end up paying less interest over the term of the five-year fixed rate – so I don't think it's fair to compensate him twice."*

Mr N also reiterated some of the same points he had made before regarding the delays and the fraud markers placed on his credit file. He said a fair outcome would be for Santander to refund him £18,000 for the ERC, remove all fraud markers and pay him £350. He said you cannot compare a five year interest rate to a two year one.

Santander also responded and wanted some clarification. They asked if we were asking them to:

- Compare the new mortgage of £636,000 on a repayment basis over 37 years on an interest rate of 4.19% against a mortgage of £636,000 on a repayment basis over a term of 37 years on an interest rate of 4.92%. Then deduct the savings from the ERC of £18,000 – and pay 8% on top of this. Santander asked from what dates this would be from and to.
- Refund £496 in the difference in the product fee along with 4.19% interest but Santander said there is no mention of the dates of when this should be applied from and asked if it was for three years as there would be no way of knowing what the interest rates would be and they suspect that Mr N could have paid the fee up front and chose to have it added instead.

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 thank both parties for their recent comments and will explain what I think below and also provide Santander with the clarification they seek.

I'd firstly like to say that in my calculations, I mentioned the Santander fixed rate being for three years, but I do apologise as this was in fact a two-year fixed rate. I've looked at the mortgage offer again and can confirm this. So any calculations that I now provide will be on this basis.

Mr N has said that he doesn't believe it's reasonable to compare a five-year interest rate to a two-year interest rate and he would rather have a full refund of the £18,000 ERC that he has been charged. But I don't agree with him here.

While I understand the point that he is making in that he will be tied into a product for five years which means he can't change the interest rate earlier than that, he is on a lower interest rate than he would have been with Santander and that cannot be ignored.

I accept that he has paid an ERC of £18,000 but he would have made a saving over the two years because the interest rate with the new lender is 4.19% and the one he would have been on, would have been 4.92%. So I have to take that into consideration. And I can only compare it for two years because we don't know what the interest rates will be after the two-year period so that's not a reasonable comparison.

Mr N has also provided interest rates that he believes he would be able to obtain after the two-year interest rate would have expired and what it would have been on average, after that. But it's not possible to know what the interest rates would be. I appreciate that Mr N has provided information from both his new lender and Santander's website, but these are interest rates as they are today. The bottom line is we can't know what the interest rates would be in the future, especially based on how things are economically now.

Mr N has also said that he would have taken a five year fixed rate with Santander and has given the interest rates that he thinks he would have been able to obtain. But this is contrary to what he has said all along, that he only wanted a two year fixed rate as he thought rates may decrease and therefore wanted the opportunity to secure a new rate after the two year period.

I don't think it's reasonable to therefore just refund Mr N £18,000 for the ERC when he is making a saving in the first two years so this will need to be factored in.

Mr N has also questioned the following paragraph which was in the provisional decision:

"I appreciate that Mr N would like the full amount of the ERC refunded but I don't think that's fair in these circumstances. He has ended up borrowing less with the new lender so as I've explained above, he will end up paying less interest over the term of the five-year fixed rate - so I don't think it's fair to compensate him twice".

What is meant by this is that Mr N has ended up borrowing less money with the new lender than he would have obtained with Santander. So if he kept his mortgage with Santander, he would have paid much more interest over the term of the mortgage because he borrowed more money. But as he has ended up borrowing less with the new lender, over the term of the mortgage, he won't be charged as much interest. I accept that Mr N really just wants the £18,000 back as he would rather have that in the bank than a saving over the mortgage but I have to think about what is fair and reasonable in all the circumstances of the case, and I think the way to resolve this matter is based on the way I have already explained.

Santander have understood correctly what I have asked them to do. But the only difference now being is that the comparison between the interest rates should be over a term of two years and not three.

This will need to be based from when Mr N would have taken the mortgage out with Santander. Mr N completed with the new lender in November 2024 so it's probably reasonable to start the comparison from 1 November 2024. The mortgage offer says that the interest rate of 4.92% is charged until 2 January 2027 – so will need to be worked out on this basis, for this period of time against the interest rate of 4.19%. This figure will need to be deducted from the £18,000 ERC and then refunded to Mr N along with 8% simple annual interest.

With regards to the product fee, £496 is the difference that Mr N paid in the product fee which was added to the loan. I note that Santander have said that Mr N may have been able to pay this up front – but he didn't. So this will still need to be worked out on the basis that it was added to the loan. Santander should add interest of 4.19% from 1 November 2024 until 2 January 2027.

Like I said in the provisional decision, there is no straight forward way to put things right that is fair to both parties so this was never going to be exact, but it's the closest way to do it that is fair and reasonable to both parties.

My final decision

For the reasons given above, I uphold this complaint and direct Santander UK Plc to:

- Compare the mortgage of £636,000 against the interest rate of 4.92% which is the rate that Mr N would have taken with Santander against the interest rate of 4.19% with the new lender. This needs to be compared for two years only as this is how long Mr N's fixed rate would have been with Santander. It should start from 1 November 2024 until 2 January 2027. Whatever this figure is, it will need to be deducted from the £18,000 ERC that Mr N would have been charged, and Santander will need to refund this to Mr N with 8% simple annual interest.
- Santander will need to deduct the £999 product fee which would have been added to the loan with Santander against the £1,495 product fee with the new lender which will work out as £496 and refund this along with 4.19% interest which is what Mr N is being charged for on the new mortgage – as the fee has been added to the loan. The interest should be worked out from 1 November 2024 until 2 January 2027.
- Remove all fraud markers that have been applied to Mr N's credit file if they haven't already done so.
- Pay Mr N £350 for the distress and inconvenience caused.

If Santander considers that it's required by HM Revenue & Customs (HMRC) to take off income tax from the interest, it should tell Mr N how much it's taken off. It should also give Mr N a certificate showing this if he asks for one, so he can reclaim the tax from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 5 January 2026.

Maria Drury
Ombudsman