



complaint

Mr B complains that he was mis-sold a fixed rate loan by Santander UK Plc. Mr B says he was not made aware of the potential magnitude of the break costs if he exited the arrangement early.

background

Mr B is a property developer. Around March 2006 Mr B took out approximately £450,000 of borrowing with Santander. The term of this borrowing was 15 years, with the interest rate fixed for the entire period.

Around 2013 Mr B approached his relationship manager to discuss the possibility of transferring this borrowing from his sole trader business to one of his limited companies. It was at this point that Mr B was informed break costs of around £60,000 would be incurred by exiting the existing arrangement early.

Unhappy with the situation, Mr B says his relationship manager raised a complaint with Santander on his behalf. In light of Santander not upholding the complaint, the matter was referred to our service.

An adjudicator has already considered this complaint. He was not satisfied that hedging or fixing the interest rate was a condition of the lending. He was also not persuaded Santander had provided Mr B with clear, fair and not misleading information to allow him to make an informed choice about entering into the fixed rate loan. The adjudicator proposed Santander reconstruct Mr B's accounts as if his borrowing had remained on a variable interest rate from the outset, with a lending margin of 1.35% above base rate.

Mr B was prepared to accept this adjudication. However Santander was not and they have asked that this complaint be referred to an ombudsman to review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I find that I have reached the same conclusions as the adjudicator, for materially the same reasons.

Taking everything into account I believe the key questions I need to consider are:

- was hedging or fixing the interest rate a condition of the lending, and if so, was this a legitimate condition?;
- did Santander provide Mr B with information that was clear, fair and not misleading so that he could make an informed choice about the product he was taking out?; and
- did Santander give advice to Mr B about the fixed rate loan (and if so, did they take adequate steps to ensure that this advice was appropriate?)

was hedging or fixing the interest rate a condition of the lending, and if so, was this a legitimate condition?

I note an email dated February 2006 to Mr B referred to *“some indicative terms”* and underneath stated *“Loan to be fixed for the whole term...”* However it is unclear exactly what was meant by this and whether this did actually become a condition of the lending. Mr B has advised our service that this email was sent after an earlier discussion when both variable and fixed rate facilities were offered to him. Whilst the adjudicator made reference to this in his adjudication, Santander has not commented in respect of this particular point.

The credit memorandum (application) stated Santander was *“looking to provide a loan over 15 years which will be fixed for the entire term.”* However I have not seen any evidence to show fixing was a requirement of the lending or that this was fully explained to Mr B.

Having considered all the evidence which has been provided to our service, I am not persuaded that hedging or fixing the interest rate was a condition of the lending.

did Santander provide Mr B with information that was clear, fair and not misleading so that he could make an informed choice about the product he was taking out?

The loan facility agreement stated *“In addition to any prepayment costs payable under paragraph 9, the Company shall indemnify the Bank on demand against any cost, loss, expenses or liability (including loss of profit and opportunity cost) which the Bank incurs as a result of the repayment of the loan during the Fixed Interest Period.”*

I do not consider this reference to be particularly helpful to Mr B. I do not think this gave him the information he required in order to make an informed decision about the risks involved with taking a fixed rate loan and the potential scale of the break costs.

Whilst Mr B accepts he understood the early repayment fees associated with prepayment (from the table in the loan facility agreement), I do not think he was provided with clear information in respect of possible break costs.

did Santander give advice to Mr B about the fixed rate loan (and if so, did they take adequate steps to ensure that this advice was appropriate?)

I do not think I need to decide this. I say this because, even if I was to find that Santander had given advice to Mr B and that this advice had not been appropriate, it would take me no further forward. I would still need to consider what Mr B might have done differently if he had been provided with information that was clear, fair and not misleading.
what might Mr B have done differently?

I have already explained that I am not persuaded hedging or fixing the interest rate was a condition of the lending.

I am not satisfied Mr B would have fixed the interest rate on his borrowing for a term of 15 years if he had known the potential magnitude of break costs he could incur by exiting the arrangement early. Whilst I am sure Mr B had some concerns over potential rises in interest rates, I think it likely he was more concerned (given the nature of his business) about maintaining as much flexibility as possible. Mr B has told our service he had expected to sell a number of his properties within a maximum period of five years.

I think, if properly informed about the potential break costs under the fixed rate loan, he would have decided to leave his borrowing on a variable interest rate basis from the outset, with a lending margin of 1.35% above base rate.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend Santander Bank Plc to pay the balance.

determination and award: I uphold the complaint. I consider that fair compensation requires Santander to carry out the steps I specify below. I order the bank to do this - up to a maximum financial effect of £150,000.

recommendation: If the financial effect of carrying out in full the steps I specify exceeds £150,000, I recommend that Santander carry them out in full.

This recommendation is not part of my determination or award. It does not bind Santander. It is unlikely Mr B can accept this final decision and go to court to ask for the balance. Mr B may wish to consider getting independent legal advice in this respect.

the specified steps

Santander should reconstruct Mr B's accounts as though he had not agreed to the fixed rate loan and instead his borrowing had remained on a variable interest rate from the outset, with a lending margin of 1.35% above base rate. The award should reflect the following practical considerations:

- Account reconstruction should run from when the fixed rate loan commenced to the date of settlement.
- No break costs should be incurred by Mr B as a result of the account reconstruction.
- If the reconstruction results in Santander returning payments Mr B made using some form of borrowing facility, it should refund any interest or fees applied to those payments with effect from the date they were paid. Similarly, for payments made from an account with a credit balance, Santander should pay Mr B the interest he would have received if the funds had remained in his accounts.
- Overdraft interest, charges and fees, plus any loan fees, which would not have arisen on the re-worked accounts, should be refunded with effect from the date they were paid.
- Santander should also review in full Mr B's accounts and reconsider any discretionary actions such as margin renegotiations or placing the accounts into any other special measures. I do not propose to interfere in Santander's legitimate commercial decisions in this regard but it is fair that the conduct of the re-worked accounts be the relevant factor in the application of that discretion.
- If Santander believes it is legally obliged to deduct tax from any interest, it should send a tax deduction certificate with the payment.

Robyn McNamee

ombudsman