

The complaint

Mr and Mrs M are unhappy that, when their interest-only mortgage term ended in 2014, Santander UK Plc would not extend the term. As a result, they took out an equity release mortgage, which they did not want.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat all the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs M being identified. So for these reasons, I will keep my summary of what happened quite brief.

In October 2005, acting on the advice of their own independent financial adviser, Mr and Mrs M took out a mortgage with Santander. They borrowed £160,000 over a term of nine years on an interest-only basis. At the time Mr and Mrs M were both aged 61, with Mr M described on the application as being self-employed, and Mrs M as retired. Mr and Mrs M did not disclose any repayment vehicle on the application, such as savings, investments, sale of another property or a pension fund.

The mortgage term came to an end in 2014, at which point Santander expected the outstanding balance to be repaid. Throughout the term of the mortgage Santander had regularly reminded Mr and Mrs M of the need to have a separate investment or other repayment vehicle to pay off the mortgage.

In August 2014 Mr M told Santander that they weren't able to pay off the capital. An endowment policy had been cashed in, and although Mr and Mrs M had two commercial and two residential investment properties, they didn't want to sell those as they'd lose income.

Mr M said that the plan had always been to downsize and sell the property but he wanted more time, about 18-24 months, to carry out work on the mortgaged property and sell it. Santander said during that call that the mortgage could not be left to run on interest-only; although the bank could look at switching to capital repayment, it would need details of income and expenditure, but thought this might be unmanageable because both Mr and Mrs M were now over 70 years old.

In January 2015 Mr and Mrs M obtained an illustration for a mortgage with another lender, but that didn't proceed to completion.

In August 2015, when they were aged 71, Mr and Mrs M wanted Santander to extend the mortgage on a capital repayment basis, over a term of 15 years, ending in 2030, when they would both be 86 years of age. Santander would only consider a repayment mortgage to its maximum lending age of 75, but thought this wouldn't be affordable. Mr and Mrs M didn't want this either.

In January 2017 Mr and Mrs M took out an equity release mortgage with another lender and repaid their mortgage to Santander.

In June 2021 Mr M, who has dealt with the complaint throughout, complained to Santander. He thought Santander hadn't acted fairly when the bank wouldn't agree to extending the mortgage on a capital repayment basis. Mr M thought that Santander's decision was discriminatory, because of his and Mrs M's ages at the time (70 years). He quoted the Head of External Affairs at the Building Societies Association (BSA) who, in November 2015, recommended its members adopted a more flexible approach to lending with no age limit.

Santander didn't uphold the complaint. In its final response letter Santander noted a conversation with Mr M from July 2016 when Mr M had said that a capital repayment mortgage wasn't affordable and that the advice from his accountant was to be on an interest-only mortgage.

Santander noted that Mr M had quoted Financial Conduct Authority (FCA) rules which allowed lenders to provide new mortgages or deals to existing customers, even if they didn't meet affordability requirements, if there was no new borrowing. However, Santander clarified that where the mortgage term has expired, any change to the mortgage would be a contract variation, allowing Santander to take into account its lending criteria.

Dissatisfied with Santander's response, Mr and Mrs M brought their complaint to the Financial Ombudsman Service. Mr M said that Santander had threatened them with court action and so they felt pressurised into taking out an equity release mortgage. Mr M also said that Santander had discriminated against them due to their ages.

An investigator looked at what had happened, He thought Santander could have looked at extending the mortgage beyond its maximum lending age. However, Mr and Mrs M had wanted a term extension of 10-15 years, which he didn't think was reasonable on a repayment mortgage.

The investigator thought that Santander could have given Mr and Mrs M a clearer explanation in 2016 about why it wasn't able to offer them another mortgage. He asked Santander to pay £200 for this. But he didn't think Santander had done anything else wrong.

Santander agreed to pay the £200 compensation recommended by the investigator. However, Mr M asked for an ombudsman to review the complaint. He's made some further points, which I summarise below:

- they were hoping Santander would extend the mortgage by 10-15 years;
- it was quite unreasonable for Santander to expect them to pay off £132,000 over five years;
- they were trustworthy and had impeccable credit scores, and in the last five years they've been able to pay off a loan at 4.3% interest;
- they were left with no choice but to take out an equity release mortgage, which they did not want and which has resulted in them owing more now than they owed Santander in 2017;

In addition, Mr M has quoted American legislation and asked if there is anything similar in the United Kingdom to assist, in addition to our service.

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'll begin by explaining that, although I've noted what Mr M said in his original complaint about the BSA's recommendations to its members, Santander is not a building society and so isn't a member of the BSA. Santander is a bank and is regulated by the FCA.

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aim at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, however, although Mr and Mrs M didn't want to borrow any more money, they did want to make a change to the mortgage that was material – switching from interest-only to capital repayment, and extending the mortgage term. Given this, I'm satisfied that Santander was entitled to consider both affordability and whether or not a new mortgage on the basis requested by Mr and Mrs M would be in their best interests.

No formal application was made; instead Mr and Mrs M were told that Santander didn't think a repayment mortgage over five years – to its maximum age limit of 75 – would be affordable. I agree with the investigator that Santander could have been clearer in explaining why it didn't think this would be affordable, or why extending the term beyond the age of 75 wasn't something the bank would consider.

In the circumstances, I agree with the investigator that Mr and Mrs M should have had a better explanation, and I also find his recommendation of compensation of £200 to be fair and reasonable. I am glad to note that Santander has also agreed to this.

But as far as extending the mortgage is concerned, I think Santander was right not to agree to switch the mortgage onto a capital repayment basis and extend the term. Over five years, on an average interest rate of 3.5%, this would have cost £2,365 per month. I think Santander was justified in having concerns about the affordability of this.

As far as lending past its maximum age limit is concerned, I don't think Santander was under any obligation to do this for Mr and Mrs M. Financial services providers are entitled under the Equality Act 2010 to apply age limits to financial products. Santander is also allowed to set its own lending criteria, based on its risk appetite and commercial consideration. Santander has provided me with some information about its policies, which I am entitled to keep confidential, as it is commercially sensitive. However, I am satisfied that Santander can set an upper age limit for its mortgage lending.

In the circumstances, I think that, even if Santander had considered a full application for a term extension on a capital repayment basis, it would not have been agreed; a shorter term extension of up to five years (to maximum lending age) would not have been affordable (and I note Mr M acknowledges this). A longer term extension (which is what Mr and Mrs M wanted) over 10-15 years would have been outside Santander's lending criteria. Given that Mr and Mrs M were asking for the term to be extended into their mid-80s, I don't think it could be said that this would have been in their best interests.

I appreciate that it was worrying for Mr and Mrs M to be told by Santander that it could take legal action against them. However, where a mortgage term has expired and the balance hasn't been repaid, and where there are no firm proposals to clear the mortgage, Santander is entitled to explain to borrowers the potential consequences of non-payment. MCOB requires Santander to explain to borrowers in default that legal action might be taken. Given this, I'm unable to find Santander has done anything wrong here.

It was Mr and Mrs M's choice to take out an equity release mortgage, and I can't hold Santander responsible if Mr and Mrs M now regret having done this. Mr and Mrs M had had a mortgage illustration from another lender in 2015, and they also explained to Santander that they had other property interests, and they'd also told Santander about selling the property. So I'm not persuaded that Mr and Mrs M were without options other than an equity release mortgage. If Mr and Mrs M are unhappy about the advice they were given to take out the equity release mortgage, they'll need to speak to the adviser who arranged it.

Mr M has asked about other organisations that can look at his concerns. If Mr and Mrs M decide not to accept this decision, it won't be legally binding on them or Santander, and they will be free to pursue their complaint against Santander in court.

Putting things right

I think Santander could have given Mr and Mrs M a better explanation about why the bank wasn't able to offer them another mortgage. This has caused Mr and Mrs M some worry over

the years and so I think a payment of £200 for distress and inconvenience is fair and reasonable in all the circumstances.

My final decision

My final decision is that in full and final settlement of this complaint Santander UK Plc must pay Mr and Mrs M £200 compensation. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 4 January 2023.

Jan O'Leary
Ombudsman