

The complaint

Mr and Mrs A complain that Santander UK Plc unfairly charged an early repayment charge (ERC) on their mortgage.

What happened

Mr and Mrs A had a mortgage with Santander. They decided to move home and downsize. However, they weren't able to move simultaneously and were expecting to have to spend some time in rental property between sale and purchase.

Mr and Mrs A spoke to Santander. They say it told them they could port their existing mortgage to a new property and avoid paying an ERC. They say that Santander didn't tell them there was a time limit on this at first, but later said they would need to take a new mortgage within three months of the end of the old one. Mr and Mrs A didn't think this was reasonable, as they'd have to commit to a six month tenancy on a rental property. Santander agreed to allow five months.

There were some delays with Mr and Mrs A's property sale, and they eventually completed the sale and repaid the mortgage on 23 March 2022. In doing so, they paid an ERC of around £16,500. Their fixed rate was due to expire on 2 April 2022. Mr and Mrs A complained that they'd had to pay such a substantial ERC when there were only a few days left.

Santander said that the ERC was properly charged. It said that Mr and Mrs A's mortgage offer set out what the ERC was and when it would be charged, and that was what had happened.

In the event, Mr and Mrs A completed on their property purchase in August 2022. Although this was within the five month window, because they didn't apply for a new mortgage they didn't receive a refund of the ERC.

Our investigator didn't recommend upholding their complaint, so Mr and Mrs A asked for it to be considered by an ombudsman. They said the ERC wasn't fair. And they said that Santander had promised to refund it when they complained – only then to go back on that.

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 understand why Mr and Mrs A were unhappy at having to pay the ERC, because they ended up selling their property only a few days before the expiry of their fixed rate term – after which no ERC would be payable. But the completion date was out of their control because of the chain their buyers were part of. That's unfortunate, but it's not always possible to control the date property sales complete.

However, I'm afraid I don't think the ERC was unfair in all the circumstances. The amount of

the ERC, and the date it would be payable until, were clearly set out in Mr and Mrs A's mortgage offer. So Santander charged the ERC as it said it would from the start.

I don't agree with Mr A that the ERC was a penalty fee. A penalty is a sum charged for breach of contract. Mr and Mrs A weren't in breach of contract. They'd agreed to a fixed rate – meaning they'd agreed to retain their mortgage for that period in return for the interest rate being fixed and certain. But it included the facility to end the mortgage early – in return for paying the ERC. The ERC isn't a penalty for breaching the mortgage contract, it's the agreed price for using the facility to end it early.

In order to fund fixed rates, mortgage lenders raise funds on the money markets to lend out. They incur costs in doing so, and expect to recoup those costs – and make a reasonable profit – from interest charged in lending the money on to customers. If fixed rates are repaid early, the lender risks not making enough income to cover its costs in raising the funds. But it's not possible to know whether any individual customer will need to exit a fixed rate early when taking it out, so the same ERC is set for all customers, on the basis that if the expected proportion of customers end their rates early, overall the lender will recover enough in ERCs to replace the lost interest income.

Therefore, it's not relevant that Mr and Mrs A ended their fixed rate only a few days before it expired. The ERC wasn't calculated on the basis of the specific loss to Santander because their own mortgage ended early, it was calculated on the basis of its estimated losses apportioned across all those customers who end early. That's how the regulator's rules say ERCs should be calculated. So I don't think Santander charged the ERC unfairly, even though it was only a short time before the rate ended.

Mr and Mrs A could have obtained a refund if they'd applied for, and completed on, a new mortgage within five months of the expiry of their old one. I appreciate they think this period was unreasonable because tenancy agreements are generally for six months – but the fact is that Mr and Mrs A did complete their new purchase within that five month window, they just decided to do so without taking out a new mortgage. So it wasn't the length of the window that prevented Mr and Mrs A being eligible for an ERC refund, it was the fact that they decided not to take a new mortgage.

Mr and Mrs A say they did so because they were downsizing, and Mrs A had received an inheritance. So, as they were approaching retirement, they felt they no longer needed a mortgage or wanted to incur the costs of having one. That's an understandable decision for them to have made. But they made it in the knowledge that by not taking a new mortgage with Santander, they'd lose the opportunity to have the ERC refunded.

I've listened to the call in which Mr and Mrs A say that Santander promised to refund the ERC. But I don't think that's what Santander did promise. The individual they spoke to said he would recommend a refund, but also said that he wouldn't be making the final decision – it would be referred to an internal panel within Santander to make a decision, and the ultimate answer was out of that individual's control. He said that Santander would let Mr and Mrs A know the outcome of that decision within a few days. That happened when, a week later, Santander emailed Mr and Mrs A to say it wouldn't be refunding the ERC. I think he was clear that he wasn't promising a refund, because the decision had yet to be taken.

Taking everything into account, therefore, I don't think Santander treated Mr and Mrs A unfairly. It charged them an ERC when they ended their fixed rate early – as the mortgage offer said it would, and in line with the rules about how ERCs work. It gave them the chance to have the ERC refunded if they took out a new mortgage, but Mr and Mrs A chose not to do that. And it didn't promise they would get a refund and then go back on what it said. In all the circumstances, I don't think I can fairly uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 18 June 2024.

Simon Pugh
Ombudsman