

The complaint

This complaint is about a buy-to-let mortgage Mr K holds with Santander UK Plc. The essence of the complaint is that Mr K believes that Santander failed to provide clear information on two aspects of his mortgage, relating to the annual overpayment allowance. These are:

- that overpayments cannot be made whilst an application for a new interest rate product made online is in progress; and
- the annual allowance isn't reinstated in full when a new interest rate product takes over from the preceding deal.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll provide a brief description of the complaint, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr K's fixed rate mortgage deal was due to expire on 2 August 2023. In June 2023, he applied online for a new fixed rate, to take effect on 3 August 2023. Both the existing and the new products included a feature that allowed Mr K to overpay up to 10% of the capital balance in any one year, without incurring an early repayment charge (ERC).

Mr K had already used part of his overpayment allowance for 2023 when he applied for the new deal, but was told by Santander he couldn't make any further overpayments in case it invalidated the new product application. When the new product took effect, on 3 August 2023, Mr K was further upset to find that it had "inherited" the residue of the allowance for 2023 from the expired product instead of coming with a fresh 10% of its own.

Our investigator wasn't persuaded Santander had done anything wrong, Mr K has asked for his complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

That includes not just Mr K's detailed submission of 20 February 2024 but also the enclosures he sent us on 4 March 2024. I haven't disregarded the latter simply because Mr K sent them after the due date for responding to the investigator's view. However, the weight I attach to them is limited, chiefly because they are materials that Mr K received in 2024, and therefore not something on which he relied in June 2023 when carrying out the transaction at the heart of the complaint.

As a prelude to the two main issues, Mr K appears to have been unclear about whether the agreement he entered into with Santander in 2023 was a new mortgage or merely an amendment to his existing one. To be clear it was the latter, not the former, and I'm satisfied the document Santander issued to him on 9 June 2023, headed "MORTGAGE PRODUCT TRANSFER OFFER", set this out.

Turning to part one of Mr K's complaint, the starting point here is that this was a non-advised sale, one where it was for Mr K to decide what was suitable for his needs and circumstances, based on the information Santander provided. It's not in dispute that Santander's online portal told Mr K that he couldn't make certain changes to the mortgage - overpayments being one of several listed - at the same time as arranging a new rate online. He was also told that he may be able to do so if he phoned up. Mr K did phone up, but was still told that the particular change he wanted to make - an additional overpayment - wasn't allowed.

I've given a lot of consideration to Mr K's argument that a layperson wouldn't necessarily take "at the same time" to mean "between starting the application and it taking effect", which is now Santander applies it. I don't think it's at all unreasonable to interpret that phrase in the way Santander does. Overall, I think it more likely that a lay person would take it to mean that, rather than Mr K's suggestion that it should, in effect, mean "In the moment of him hitting "send" to submit the application".

In any event, Mr K spoke to Santander on the phone after he had hit "send", and in my view, it's safe to infer from what he told us in his complaint form - which pre-dates his submission of 20 February 2024 by several months - that Mr K was on notice in June 2023 that the moratorium on making over payments ran until the new product took effect. He might not have agreed with it, but I'm satisfied Mr K knew or should have known that was Santander's position.

As to part two of Mr K's complaint, my impression is that Mr K sees this as a conflict between the 10% overpayment allowance applying to the mortgage and the specific mortgage product. That takes me, in part at least, back to my earlier finding that the June 2023 offer wasn't a new mortgage, but an amendment to the existing one. However, one thing that the new offer didn't amend was the overpayment allowance.

The facility to make overpayments is only relevant when a mortgage is on an interest rate product that includes an ERC provision. If a mortgage is operating at a lender's standard variable rate, or on a product with no ERC provision, then there is no limit to the amount a borrower can overpay without having to pay an ERC.

In Mr K's case, both the outgoing and incoming fixed rate deals included ERC provisions. The outgoing product expired on 2 August 2023 and the new one took effect on 3 August 2023. So there was never a day in 2023 when Mr K's mortgage wasn't subject to a limit on how much he could overpay without incurring an ERC.

In both cases, that limit (the allowance) was 10% of the outstanding balance *at the start of the year*. The key point here is that regardless of which product is in place, the allowance is annual. That's why, when Mr K's mortgage switched to the new product on 3 August 2023, it brought with the unused residue of the allowance that had begun on 1 January 2023.

I explained earlier why, whilst not disregarding it, I would attach limited weight to the enclosure Mr K sent us on 4 March 2024. That said, when considering that enclosure, I noted that it supports Santander's case rather than Mr K's. That's because the enclosure states, with regard to the 10% overpayment allowance:

"The amount you can overpay is reset each year on 1 January."

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 August 2024.

Jeff Parrington

Ombudsman