

The complaint

This complaint is about a mortgage Mr and Mrs H hold with Santander UK Plc. They successfully switched to a better interest rate in 2023, but say this could have happened several years earlier if they'd been given the right information. Mr and Mrs H believe they've paid more interest than they needed to, and would like to be put in the position they'd be in if their rate had been switched when they say they first asked.

What happened

The broad circumstances of this complaint are known to Mr and Mrs H and Santander. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr and Mrs H being identified.

Instead I'll give a brief summary in my own words 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 and Mrs H's mortgage was taken out with a different lender (I'll call it A here) that was later taken over by Santander; after an initial fixed rate at inception, the mortgage had been on a life-time tracker rate since 2012. Mr and Mrs H say they twice attempted to obtain a new rate (the first time in 2017 and the second in either 2020 or 2021) but were told it would require them applying for a new Santander-branded mortgage.

On the second attempt, Mr and Mrs H say they were discouraged from applying because their income was disrupted at the time and the application would probably have failed. They made another attempt in early 2023, and discovered that switching to a new rate was quite simple and straightforward. It didn't require re-mortgage to a Santander-branded mortgage at all.

Mr and Mrs H challenged Santander on why they hadn't been allowed to do the switch when they'd asked previously. In response, Santander agreed that the switching process had been the same in previous years. As far as 2017 was concerned, Santander's contact history showed that this related to Mr and Mrs H seeking Santander's consent to a second charge loan rather than a request for a new rate, and the contact was conducted by a mortgage broker acting as intermediary between it and Mr and Mrs H.

Santander said it had no record of any contact from Mr and Mrs H in 2020 or 2021 to discuss a new rate. But it said it would take them at their word that they'd been misled. It paid £60 compensation but didn't think there was enough evidence to justify backdating a better interest rate.

Mr and Mrs H brought their complaint to us; the investigator didn't recommend it be upheld, and so Mr and Mrs H asked for an ombudsman to review it.

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 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. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

The starting point here is Santander's contact records. The value of such records is that they're contemporaneous; so they should reflect what was said and agreed at the relevant times. They're not fool-proof, of course; there's always the possibility of information being recorded incorrectly, or missed altogether.

But omissions are very rare, and contemporaneous notes are typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be degraded by the passage of time or more generally influenced by hindsight. So unless there's a compelling reason to believe the contact notes are inaccurate, or incapable of being relied on for some other reason, we'll generally attach some weight to them. I'm satisfied I can do that here.

I'm persuaded, from looking at all the evidence, that the enquiry Santander dealt with in 2017 was with an intermediary, rather than with Mr and Mrs H directly, and that it related to Mr and Mrs H taking out a second charge loan, rather than a request for a new interest rate.

As far as the second attempt is concerned, here, there is a clear conflict between the parties' evidence about what did or didn't happen. On the one hand, there's no entry in the Santander's call logs for an enquiry in either 2020 or 2021 on any topic, not just on access to new rates. On the other hand, whilst Mr and Mrs H openly admit they're unsure as to exactly when it happened (and to be clear I draw no adverse inference from this) their testimony on the content of the discussion is fairly consistent.

It's important to remember that consumers' testimony is evidence, and whilst a lack of corroboration reduces the weight we attach to it, it doesn't mean we discount it altogether. As I said earlier, it's about considering everything and deciding what is most likely to have happened on the balance of probabilities.

The first point to make is that the switching process Mr and Mrs H were able to use in 2023 has been in place without significant alteration since 2010. In that context, whilst not impossible, it doesn't seem likely that a call handler would be sufficiently unaware of such a well-established policy that they'd tell a borrower something so different from, and contrary to, the true position.

Much of Mr and Mrs H's case to us is built on Santander having admitted that a call did take place sometime during 2020 or 2021 during which it misled them about getting access to a

new rate. They say, in an email to this service dated 27 June 2023, that Santander confirmed this in their “last conversation” with it. They also point to Santander’s final response dated 23 April 2023, where it accepted their word that this had happened.

I can see why this is important to Mr and Mrs H; it would reasonably and logically follow that if Santander was accepting it misled them on the second attempt, then it would have to do more than just pay them £60 compensation for their time and trouble. However, I don’t think the decision I reach on this case can be based on a presumption that liability has been accepted. I’ll explain why

From assessing the evidence, that “last conversation” referred to in the 27 June 2023 email looks to have been with Mr H on 14 April 2023, a few days before the final response was issued. I’ve listened to that call and didn’t hear anyone from Santander admit to Mr H that a conversation had taken place in 2020/21 in which it had given them wrong information about access to rates. That takes me to the final response itself, and what Santander said there.

The words used were. *“I am taking your word for the incorrect advice that was provided”*. To me, taking someone’s word for something is to give them the benefit of the doubt, but falls short of an outright admission of liability. In any event, in its submission to this service dated 31 May 2023, Santander said there was no evidence of the call having taken place and that the goodwill payment of £60 hadn’t been justified,

I can’t say whether Santander might be legally bound by what the final response said; only a court could decide that. My remit is to consider what is fair and reasonable in all the circumstances, and I don’t consider it fair or reasonable to work on a *presumption* that a call took place in 2020/21 during which Santander misled Mr and Mrs H. All I can do is decide *how likely* it is that this happened. Taking everything into account, I’m not persuaded the evidence allows me to find in Mr and Mrs H’s favour, however much they think I should.

I’ll close by saying that I’m satisfied Mr and Mrs H have acted in good faith throughout and that their evidence genuinely reflects their recollection of what happened. I don’t rule out the possibility that they had a conversation in 2020/21 along the lines they’ve indicated, but with a third party such as a broker rather than with Santander directly. I’m not saying that is what happened, but it would at least fit the evidence.

My final decision

My final decision is that I don’t uphold this complaint or make any order or award against Santander UK Plc.

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs H to accept or reject my decision before 3 April 2024.

Jeff Parrington
Ombudsman