

The complaint

Mr A complained to Santander UK plc (Santander) that he was given unsuitable advice to take out a pension mortgage in 1989.

What happened

Mr A applied for a pension mortgage in January 1989 on advice from Abbey National (now Santander). The mortgage term was 35 years and the initial capital loan was £80,000. There was a mortgage guarantee policy, the premiums for which were included in the monthly payments.

Mr A complained to Santander in July 2020. He was approaching the end of the mortgage term and, as he still had a balance of around £70,000 to repay, he thought the pension mortgage had been mis-sold.

After looking into what had happened and obtaining some further information, Santander wrote to Mr A on 21 September 2022. Santander apologised for the time taken to respond. Santander said it was unable to demonstrate that the advice had been suitable for Mr A and so upheld his complaint. Santander had calculated that Mr A was due compensation of £92,844.22. Details of how that had been worked out were given. Mr A raised some queries about the calculation and Santander provided some further details and explanations. Santander also offered £250 in recognition of the fact that there'd been a long delay in providing Mr A with an outcome to his complaint.

Mr A didn't accept Santander's offer. He referred his complaint to us in December 2022. Santander wrote to Mr A on 10 January 2023 to confirm some aspects of the calculation, that £250 was the final offer for stress and inconvenience and that the calculation included all of Mr A's premiums and redress for the mortgage guarantee policy.

One of our investigator's looked into Mr A's complaint. The investigator said that, as Santander had accepted that the advice was unsuitable, the issue to determine was if the redress offered by Santander was fair and in line with what we'd expect.

The investigator set out Mr A's concerns about the offer. But the investigator explained why he considered Santander's offer did take those matters into account. The investigator's view was that Santander had acted in accordance with guidance from this service and the regulator's expectations in respect of the redress offered. He thought £250 for distress and inconvenience was fair, taking into account that Santander had admitted that its timescales weren't in line with what they should've been. The investigator didn't think Santander needed to do anything more.

Mr A remained unhappy. His outstanding mortgage was £70,488.72. That should've been paid off in 2014. He remained concerned about the interest he'd paid since then, the application of 25% of the value of his pension fund and the offer of £250 for over two years' delays in resolving his complaint.

The investigator said he'd ask Santander if it would be prepared to update its calculation to take account of the further interest which had become payable since Santander's offer had been made. But he maintained that what Santander had offered was what we'd expect. Notwithstanding the interest paid since the offer had been made, the offer did put Mr A effectively in the position he'd have been in if he hadn't had the pension mortgage in the first place. The investigator said that examples of compensation were available on our website.

Mr A said he didn't think the offer of £250 for distress and inconvenience was sufficient, taking into account what we said on our website (some of which Mr A quoted), and the impact the matter had on him and his family, including the effect on his health. He thought compensation should be £1,500 or more.

The investigator maintained that the substantial offer of compensation coupled with the £250 for the additional administrative errors was fair and reasonable. He told Mr A that Santander wasn't willing to update its offer. Its position was that it had upheld the complaint and made an offer to Mr A which he'd chosen to reject. He'd then referred the matter to this service, seeking a higher amount of compensation. But we'd concluded that what Santander had offered was correct. Santander had said it wouldn't be fair that Mr A should gain financially from delaying in accepting an offer which had been correctly calculated.

Mr A queried why the payments made to Santander from December 2022, when the complaint was referred to us, hadn't been included in the final calculations when we'd said they would be. Mr A suggested, if Santander wasn't expected to refund those payments, this service should accept liability as no explicit warnings of possible financial risks involved in referring a complaint were given. Mr A said he was in a worse financial position than in December 2022.

The investigator said Santander's final response letter had set out Mr A's options to repay his mortgage in full with Santander covering all the charges involved. The letter also said that, if Mr A didn't convert the mortgage to the capital repayment basis, then no adjustments would be made and the mortgage would remain on the pension basis. The investigator also clarified what he'd said at the outset – that if he recommended alternative redress then he'd ask for that to be brought up to date. On the basis that the calculation was carried out correctly and the position Mr A had been put into was that of someone who'd taken out a repayment mortgage over the correct term, the offer made was fair and reasonable.

It seemed Mr A had paid considerably less overall than if he'd been advised to take out a repayment mortgage. Even though the advice was unsuitable, Mr A had saved around £38,829.18 over the term. The investigator said, had he recommended a different method of redress, that might have been taken into account and impacted on the calculation. As to timescales, our introductory email makes it clear how long it may take for the complaint to reach an investigator.

Mr A said the investigator had told him very clearly that any further interest payments made from when the case was referred to us would be included in the calculations. Mr A maintained Santander's offer wasn't fair as he'd have paid off his mortgage nearly ten years ago. That had been compounded by the fact that when he'd raised his complaint with Santander he'd been ignored. He didn't accept that he'd paid considerably less overall than if he'd had a repayment mortgage. He said, on the one hand, Santander had admitted that the product he'd been sold was unsuitable yet the regulator said it didn't really matter as he was allegedly better off. Mr A didn't think Santander or this service had clearly demonstrated how he'd purportedly saved around £38,829.18.

Mr A supplied a spreadsheet which showed interest payments he'd made from March 1989 to July 2023 towards the outstanding mortgage of £70,530, including direct payments

received by Santander under the MIRAS (Mortgage Interest Relief at Source) scheme. He said, as Santander had admitted liability and concluded he should've paid off his mortgage by March 2014, he expected a full refund of the interest he'd paid from April 2014 up to date.

Again the investigator considered Mr A's points before responding. The redress calculation showed two losses. The first was in respect of Mr A's position until 2014 and showed a loss of £70,488.73. The second represented overpaid interest from 2014 to the date of the loss calculation, which was £14,287.02 after subtracting 25% of the pension fund value. That was a refund of the interest paid since 2014, when the mortgage should've ended. Mr A was effectively getting £29,472.94 back but reduced by 25% of his pension fund value which was in line with the guidance. If he accepted the offer, based on an outstanding mortgage balance of £70,530, the £92,844.22 offered would repay the mortgage in full (with no charges as detailed in the offer) and leave Mr A with £22,314.22 in compensation to account for the overpaid interest. That was on top of being able to retain 25% of his pension fund value which would've previously been used to repay the debt.

There were some further exchanges. The investigator provided Mr A with copies of our correspondence with Santander during our investigation of the complaint. Mr A wasn't happy with some of the investigator's communications with Santander.

As agreement couldn't be reached the complaint was referred to me to decide.

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'd first point out that we aren't the regulator – that's the Financial Conduct Authority (FCA). Our role isn't to fine or punish businesses. We determine individual complaints by reference to what we consider is fair and reasonable in all the circumstances of the complaint. Our aim in awarding redress in a complaint that unsuitable advice has been given is to try and put the consumer, as far as possible, back in the position they'd be in if they'd been given suitable advice.

Santander accepts that a pension mortgage wasn't suitable for Mr A and that he should've had a repayment mortgage instead. So, like the investigator, I've focused on whether Santander's offer as to how Mr A should be compensated is fair and reasonable and puts him in the position he'd be in now if he'd had a repayment mortgage instead.

I've concentrated on the methodology that's been adopted as we don't have access to the details used to complete the calculation, such as historic interest rates over the term of the mortgage and Mr A's payment history. So, we don't check the detail of the calculation but whether it's been done on the basis we and the regulator would expect – our approach follows guidance introduced by the then regulator in 2001 for mortgage endowment complaints.

There are two parts to the calculation. The first involves considering if there's been a capital loss. Here Santander has calculated that Mr A has suffered a capital loss of £70,488.73. The second element is whether the pension mortgage was more expensive than a repayment mortgage – that is whether Mr A's monthly payments were higher because he had a pension mortgage. But here that wasn't the case and a repayment mortgage would've been more expensive – Mr A would've paid some £38,829.18 more.

In line with the guidance that notional 'saving' should be ignored. Santander has done that – the £38,829.18 hasn't been taken into account. That's because Mr A wouldn't have been

aware at the time that he was saving money by not having a repayment mortgage and he'd have arranged his day to day expenditure based on his known outgoings. So it wouldn't be fair to deduct the money he'd unknowingly saved. Santander has also taken into account 25% of the value of the pension fund. It can do that as it was intended that money – the tax free cash – would've been used to repay the mortgage. The offer includes a refund of the interest payments that have accrued since March 2014 to when the offer was made with interest at 8% pa (less tax) on top.

Santander's offer is in line with what I'd expect to see.

I think Mr A has two main concerns about the offer. The first is the interest payments he's made since 2014. The second is the £250 offered for distress and inconvenience which he doesn't think is sufficient.

Looking first at the interest payments Mr A has made since 2014, I do of course understand his argument that, if his mortgage had been paid off in 2014, then no further payments would've been due. But, as I've said, Santander's offer does take into account those payments. Or at least payments up to the date of Santander's offer. Santander isn't prepared to refund the interest payments Mr A has made after then.

On the one hand, I can understand why Mr A may have been unsure if Santander's offer was fair and such that he should accept it. The calculation is complex and a consumer may not find all aspects easy to understand. So I can understand there might be some initial reluctance to accept the offer. But, from Santander's perspective, I can see why, having made an offer which we've agreed was in line with what we'd expect but which Mr A didn't accept, Santander wasn't prepared to increase its offer to cover further interest payments which wouldn't have become due if Mr A had accepted the offer and paid off the mortgage.

On balance, I'm not going to say that Santander should recalculate its offer up to date. It made an offer which was in line with guidance from the regulator as to how redress should be calculated. I don't think it would be fair to say Santander should cover the further interest payments that have accrued in the interim.

Mr A has said we didn't explicitly warn him that might happen. And he's said he was given to understand by our investigator that the calculation would be updated. I think there may have been some misunderstanding about that. The investigator has said that would only have been if he'd thought that a different approach to redress should prevail. I'm sorry if there was some confusion. But I'm not looking here at how we dealt with Mr A's complaint. My role here is to assess what Santander has done and whether what Santander has offered is fair and reasonable.

Mr A is also dissatisfied with the £250 offered for distress and inconvenience. He's understandably unhappy with the time it took Santander to look into his complaint and issue its offer. He's said he had to speak to different members of Santander's staff about the same complaint for over two years. He's also concerned that he's still making interest payments some 33 years later and he's still got an outstanding mortgage of over £70,000. He's referred to the stress having impacted on his health.

I do of course accept that this matter would've been very worrying for Mr A. Although it might be difficult to establish that the health condition he's referred to was directly and solely caused by this issue, it certainly won't have helped. I can understand why Mr A considers higher compensation than the £250 Santander has offered is merited. As Mr A has pointed out, we say on our website that an award of over £750 and up to around £1,500 could be fair where the impact of a business's mistake has caused substantial distress, worry and upset. So I've thought very carefully about if £250 is adequate here.

On balance I think it was. I bear in mind that Santander did include in its offer compensation for the further interest payments Mr A had made while his complaint was being looked into – from March 2014 up to when Santander’s offer was made. So he was directly financially compensated for the time Santander took to look into his complaint and the further payments he had to make in the interim.

Mr A might say that didn’t negate the stress and worry he suffered while Santander was considering the matter. But I take into consideration that, while the extra costs Mr A would’ve incurred if he’d had a repayment mortgage haven’t been deducted from his losses, the money he saved was very substantial. I don’t think it’s unreasonable to allow for that when assessing fair compensation for distress and inconvenience. And Santander’s offer meant Mr A’s mortgage could be repaid in full so he’d no longer have a shortfall and the worry of how he was going to meet it.

Against that background, I’m not going to say that Santander needs to offer more compensation for distress and inconvenience.

I know Mr A is likely to remain disappointed. But from what I’ve seen the redress offered by Santander is fair and reasonable and in line with what we’d expect. So I’m not going to say that Santander needs to do anything more.

My final decision

Santander UK plc has offered to settle Mr A’s complaint as set out in Santander UK plc’s letter of 21 September 2022 and follow up correspondence. I think that’s fair in all the circumstances.

So my decision is that Santander UK plc should settle Mr A’s complaint as offered. Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 8 January 2024.

Lesley Stead
Ombudsman