

## **The complaint**

Mr S complains about his commercial mortgage with Santander UK Plc.

## **What happened**

Mr S had a commercial mortgage with Santander, secured over two business premises. He acts both as a sole trader and as the owner of a limited company, and qualifies as a micro-enterprise under our rules.

Mr S first took out his loan in 2007. In 2017 he asked Santander to agree further borrowing. Mr S says the process was frustrating and subject to much delay, but the further borrowing was finally agreed towards the end of the year. It was a new, larger, mortgage to replace the old one rather than an extension of the existing loan.

In 2022, Santander got in touch with Mr S and asked him about his proposals for repayment of the loan, as it was coming to the end of its five year term.

Mr S complained. He said he'd understood he was taking a loan over a 12 year term. He accepts that the loan documentation he signed says that the term was only five years. But he says that that wasn't what was discussed or agreed in 2017 and if it had been explained to him that the term was only five years he wouldn't have gone ahead. He says he was so frustrated by the delays and difficulties in 2017 that in the end he "signed anything they put in front of me" to get things resolved. Mr S asked Santander to extend the term to what he'd understood it would be, but it refused. Mr S brought his complaint to us, saying he'd had to re-finance the loan elsewhere on more expensive terms.

Santander said that the member of staff Mr S dealt with in 2017 has since left the bank. But the paperwork Mr S signed at the time makes clear this was a five year loan, and there isn't any evidence that any other term was discussed at the time.

Our investigator said that the loan agreement was for five years, and thought that was made clear at the time. Mr S didn't agree and asked for an ombudsman to review his complaint.

## **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've looked very carefully at what Mr S has said, as well as the evidence from the time. I understand Mr S's strength of feeling – he feels he's been treated very unfairly. He didn't appreciate the loan was only over five years; that wasn't what he wanted or what he discussed at the time, and had he realised he wouldn't have agreed. This loan replaced a loan taken out in 2007 over a 20 year term, and the new loan ended in 2022 – before the old one would have ended, in 2027.

The evidence from the time is limited. There is an email from March 2017 which appears to be initial discussions. One of the options mentioned in that email is extending the term of the

existing borrowing (which had around ten years left at that point).

If there was further discussion after that email, the evidence of it hasn't survived. But it seems the terms of what Santander was prepared to offer were finalised in April 2017.

Mr S has provided us with a copy of an email from his relationship manager from April 2017, in which she refers to a loan amortised over 12 years. That email says that heads of terms are attached for further discussion prior to producing formal loan documents. Santander has given us a copy of the heads of terms attached to that email, which sets out the broad terms on which Santander was prepared to lend. It says:

**Term** Term Loan: 5 years with a 12 year amortisation profile

The next document is the loan agreement itself, from December 2017. It says:

**Termination Date:** 60 months from the date of drawdown

Clause 2 of the loan agreement sets out the regular monthly payment, and clause 2(f) says:

The borrower must repay any remaining balance of the loan, together with any interest ... by no later than the Termination Date

So while the loan agreement also says that the monthly payments are calculated based on a 12 year amortisation profile, it also makes clear that the actual loan term is five years not 12.

I don't have any other evidence of the discussions from 2017. Neither Mr S nor Santander have been able to provide further evidence. But the evidence I do have is clear. While in the initial stages Santander was considering options – which may have included a longer as well as a shorter term – by the time it finalised what it was prepared to offer in April 2017, it required a five year term and for Mr S to repay his debts elsewhere as a condition of taking this further borrowing.

I'm satisfied Mr S would have seen the heads of term document at the time. It was attached to an email he's given to us. The heads of term document makes clear, in plain language, that the loan was for a five year term. Although it was calculated with a 12 year amortisation profile, that doesn't make it a 12 year loan. This profile means the monthly payments are lower, and there is a final balance outstanding at the end of the term – as clause 2(f) of the loan agreement says – but the length of the loan is separate to the amortisation profile.

I've taken into account Mr S's recollection. But there is no documentary evidence to support his recollection that he was told that the loan was over anything other than a five year term. I don't doubt the honesty of his recollection. But memory is fallible, and it may be that he was remembering a discussion about the amortisation period rather than the loan term, or remembering the term of the previous loan this one replaced. The fact is there is no documentary evidence from the time that suggests there were discussions – other than at a very early stage – about borrowing over anything other than a five year term.

And while Mr S might have been frustrated by the time taken between April and December 2017, he accepted in his complaint form to us that the loan documentation clearly says it was over a five year term and that he "should have read the terms properly". This is a commercial mortgage, entered into by Mr S as part of his business, and therefore there is an onus on him as a reasonably diligent businessman to read and understand the terms before agreeing to them.

I'm satisfied that Santander made clear, during the negotiations and when Mr S signed the

loan agreement, that the loan was being offered over a five year term. And it follows that it wasn't unreasonable for Santander to expect repayment at the end of the term. I can't fairly hold Santander responsible for the costs Mr S has incurred in refinancing.

### **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 S to accept or reject my decision before 14 November 2023.

Simon Pugh  
**Ombudsman**