

The complaint

Mr and Mrs M complain they were given incorrect information by Santander UK Plc about being able to switch to a product without an early repayment charge (ERC). They ask that the ERC is refunded and compensation for the upset and financial impact.

What happened

Mr and Mrs M had a mortgage with Santander. They'd taken out a fixed rate product with an ERC which applied until early May 2023.

Mr and Mrs M wanted to move home and asked Santander about porting and taking out additional borrowing. Santander said this didn't meet its affordability checks. Mr and Mrs M applied elsewhere, via a broker, and received a mortgage offer in early December 2022.

Mrs M contacted Santander later in December 2022 about switching to a tracker product, which didn't have an ERC. She asked if they could switch to the new product early (before May 2023) without paying an ERC. Santander said they could call to request an early switch.

Mr and Mrs M proceeded with their sale and purchase. They exchanged contracts at the end of February 2023. But when they called Santander in early March 2023 and asked for an early product switch, Santander said this wasn't possible. Mr and Mrs M's sale completed in mid-March 2023 and they paid an ERC of £13,000.

Mr and Mrs M say if they'd known that the ERC would be applied, they wouldn't have exchanged contracts. They say they'd have waited until the fixed rate product expired or until Mr M received a bonus in March 2023 that would have meant they could re-apply to port their product with Santander.

Our investigator said Santander had given Mr and Mrs M incorrect information that they could switch products before May 2023 without paying an ERC. However, he thought Mr and Mrs M would have continued with the sale and purchase if it had told them they'd have to stay on the fixed rate product (and therefore pay an ERC). So the incorrect information didn't make a material difference.

Mr and Mrs M didn't agree. They said they'd have waited until the fixed rate product expired or Mr M received his bonus in March 2023 so that they could complete a porting application to Santander.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs M took out a fixed interest rate product in 2021. The product offer sets out the

amount of the ERC and when it applies. Mr and Mrs M accepted the terms of the product, including the ERC, when they took out the product. Mr and Mrs M repaid the mortgage while the ERC applied. So Santander was entitled, under the mortgage terms and conditions, to apply the ERC.

Mr and Mrs M say, in effect, that because of the incorrect information given to them by Santander it's unfair for it to apply the ERC. They say they acted on this information when they exchanged contracts for their sale and purchase.

Santander accepts it gave Mr and Mrs M incorrect information in December 2022 and in January 2023. It said they could book a tracker product and then call and ask to switch early. This was incorrect. Santander says it only allows an early switch in circumstances that don't apply here. Santander refunded the £999 booking fee Mr and Mrs M had paid and paid £250 compensation for the upset caused by the incorrect information.

I need to decide whether the offer made by Santander is fair or if, as Mr and Mrs M say, it should refund the ERC. When doing so, I've taken the following into account.

- Mr and Mrs M accepted an offer for their property in September 2022 and had an offer accepted to buy a property in November 2022.
- Santander said Mr and Mrs M's porting application (with additional borrowing) wasn't affordable. Mr and Mrs M say the only outstanding issue was that Santander needed evidence of Mr M receiving a bonus in March 2023.
- Mr and Mrs M's options were to wait until March 2023 and complete a porting application with Santander (with the delay and the risk this might not be successful). Or apply elsewhere and either pay the ERC or delay completion until May 2022.
- Mr and Mrs M say they wanted to stay with Santander and their porting application remained open pending them sending evidence of Mr M's bonus in March 2023. But if Mr and Mrs M were intending to port their mortgage product, I think it's unlikely they'd have paid a £999 product fee for a tracker product with a higher interest rate.
- Mr and Mrs M received a mortgage offer from another lender in early December 2022. This was before they were given incorrect information by Santander. So I think at this point they were either expecting to pay the ERC or to delay completion of their sale and purchase until May 2023.
- Mr and Mrs M say their purchaser and vendor were flexible about timing and there were no other parties in the chain. We asked Mr and Mrs M if they could provide any evidence that their vendor and purchaser agreed to completion in May 2023. They were unable to do so. Given the amount of time Mr and Mrs M would have been asking their vendor and purchaser to wait I'd expect some record of them being told about this and agreeing to it. I'd expect this to have been referred to in emails with the vendor or purchaser, the estate agents or solicitors.
- In late December 2022, Mrs M called Santander about taking out a new product. Santander asked Mrs M why they were looking at a tracker product. Mrs M said they wanted flexibility. She didn't say they were in the process of moving. Had she done so, Santander would have been able to give her information more suited to their circumstances.
- Santander told Mrs M the product switch would take place when the fixed rate product expired as the tracker rate was higher. Mrs M asked about switching early, but again she

didn't explain why she wanted to do this.

- Mrs M says Santander knew they wanted to move because they'd been in contact about porting and this would be in their mortgage notes. This didn't prevent Mrs M from mentioning this on the call.
- Even if the call handler had read through the notes on Mr and Mrs M's mortgage account, they wouldn't have known Mr and Mrs M were proceeding with a different mortgage lender. There were opportunities for Mrs M to mention this, but she didn't do so. In fact, Mrs M asked how they'd move things forward if they wanted to stick with Santander and go onto the tracker.
- Having listened to the calls, I think Santander provided information on the basis Mr and Mrs M were remaining with Santander and I think Mr and Mrs M must reasonably have known this.
- Santander told Mrs M they couldn't switch early if they moved to an alternative lender. Given Mr and Mrs M were moving to an alternative lender, this ought to have alerted them to the risk their request for an early switch could be declined.
- Santander said Mrs M could request an early switch, and if this was because her preference was for a different type of product this would be allowed. It seems this wasn't correct. But in any case, this wasn't the reason Mr and Mrs M wanted an early switch.
- Mr and Mrs M exchanged contracts on 28 February 2023 with completion agreed for mid-March 2023. So when they asked for an early switch on 2 March 2023, they'd already exchanged contracts to sell their property with completion about two weeks away. The reason Mr and Mrs M wanted an early product switch was to avoid paying the ERC when they repaid the mortgage.

Like our investigator, I think it's likely Mr and Mrs M would have proceeded with their sale and purchase if they'd been told they couldn't switch products early in order to avoid paying the ERC. They haven't provided evidence they'd discussed delaying completion with the other parties involved in the sale and purchase. I think it's unlikely they'd have chosen to incur the cost of a product fee for the tracker product and the trouble and cost of applying to a new lender if they had the flexibility to wait until Mr M received a bonus in March 2023 to complete a porting application.

Mr and Mrs M hoped to switch products early to avoid paying an ERC when they sold their property before their product expired. I can understand they were disappointed when Santander declined their request for an early switch, having previously said this was possible. But having listened to the calls, I think Mr and Mrs M must reasonably have known this was a risk. If Mr and Mrs M wanted certainty they could have been open with Santander about their plans and why they wanted to switch to a tracker product.

I don't think, in the circumstances, it's fair and reasonable to require Santander to refund the ERC.

Santander did give Mr and Mrs M incorrect information and I think it's right that Santander refunded the product fee. I don't think Mr and Mrs M would have paid this if they'd known they wouldn't be able to switch products early to avoid paying the ERC.

I also think it's right that Santander paid compensation for the upset caused by the incorrect information. Mr and Mrs M say finding out after exchanging contracts that they had to pay the ERC meant they had to take out loans at short notice. They say this caused financial

strain, especially with interest rate rises.

Mr and Mrs M took mortgage advice and applied for a mortgage before they discussed switching products with Santander. I'd have expected them to take the cost of repaying the Santander mortgage (including the ERC) into account. As I said, I think Mr and Mrs M ought reasonably to have known there were risks with their plan to switch products early to avoid having to pay the ERC. Nonetheless, I can understand that hoping to avoid paying the ERC and then being told they would after all have to pay it was upsetting. I think the £250 paid by Santander is fair and reasonable compensation for the upset caused.

My final decision

My decision is that I do not uphold this complaint. That's because I think the steps taken and compensation paid by Santander UK Plc is fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 9 January 2024.

Ruth Stevenson
Ombudsman