

## **The complaint**

Mrs L complains that she hasn't been charged a fair rate of interest on her mortgage with Santander UK Plc.

## **What happened**

Mrs L has a mortgage with Santander. She took it out in 2001 with a predecessor of Santander, and took further borrowing in 2007. She redeemed the mortgage in 2019.

The mortgage was on a discount rate – meaning the interest rate was discounted from the standard rate by 1.5% - until 2004. In January 2004 the mortgage reverted to the standard variable rate (SVR) and remained on the SVR until Mrs L paid it off in 2019.

In late 2020, with the help of a representative (who is no longer involved in the complaint), Mrs L complained to Santander. Her representative said that:

- The term of the mortgage which allowed Santander to vary the interest rate was not a fair term;
- The explanation of the interest rate was unclear and Mrs L was misled into believing her interest rate would track the Bank of England base rate, which did not in fact happen;
- Mrs L was unable to move her mortgage elsewhere because of fees which would apply;
- As a result, the interest rate she was charged on her mortgage was unfair and should be replaced with a "reasonable rate" reflecting the Bank of England base rate.

Santander didn't agree it had acted unfairly. So Mrs L brought her complaint to us. Our investigator said that we could only consider the fairness of the interest rate charged for six years up to when Mrs L complained. And he didn't think the complaint should be upheld. So Mrs L asked for an ombudsman to review both the period we can consider, and the outcome of her 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.

The mortgage offer says that Mrs L's mortgage was to be at a variable rate of interest, with a discount of 1.5%. It goes on to say that the discount would only apply for the first two years. During the initial two year period, interest would be charged at the variable rate less the 1.5% discount, and from then charged at the variable rate – the SVR. The 2007 further advance was charged at the SVR from the start.

The terms and conditions of the mortgage set out the circumstances in which Santander

(and its predecessor) could vary the interest rate. I don't agree with Mrs L's representative that the terms and conditions don't form part of the contract because they are not in the same document as the mortgage offer. There's nothing unusual about that – it's not unreasonable that standard terms (applicable to all customers) are in a different document to bespoke terms (such as the amount borrowed and the method of repayment. Both are part of the mortgage contract.

I've thought first about the period we can consider. The rules of the Financial Ombudsman Service say that there are time limits for making a complaint. It must be brought within six years of the date of the event complained of – or, if that gives more time, within three years of when the complainant knew (or ought reasonably to have known) of cause for complaint. If a complaint is outside the limits we can't consider it unless there are exceptional circumstances which explain why it wasn't made in time.

Each time Santander charged Mrs L interest, it had to do so in line with the terms of the contract, and do so fairly. So each monthly interest charge amounts to a separate cause for complaint.

Therefore, any charges made more than six years before Mrs L complained are out of time on the first part of the rule. And I think they're out of time on the second part too – I'm satisfied Mrs L ought reasonably to have known of cause for complaint about the interest she was charged at the time she was charged it. If she was misled into thinking the mortgage interest rate would track the Bank of England base rate, it would soon have become clear to her that wasn't in fact happening. And so she ought reasonably to have realised she had cause to complain about that.

As I haven't seen any exceptional circumstances which prevented her complaining any sooner, that means I will only be considering the fairness of interest charged in the six years leading up to Mrs L's complaint – that is, from December 2014 to the redemption of the mortgage in 2019. In doing so, I will take into account all the circumstances of the complaint. This means that, where relevant, I will consider things that happened before December 2014 to the extent that they impact the fairness of the interest rate charged after that date.

I'm satisfied that Mrs L's mortgage was properly on the SVR. I think the mortgage offer and terms and conditions are clear about that. While the terms and conditions are a detailed document, I'd expect a reasonably diligent borrower undertaking such a substantial commitment to have read them and understood what they were agreeing to – or queried them if they didn't.

As I say, the mortgage offer and terms are clear that after the two year discount the SVR would apply. There's nothing to suggest that the Bank of England base rate is linked to the SVR, or that the SVR would track base rate in any way. So I don't think – from the mortgage documents – that Mrs L could reasonably have expected that it would do so.

The terms and conditions set out when Santander could vary the SVR. They limit its ability to do so – in other words, Santander could only vary the SVR if one of the conditions was met. They include changing the SVR to reflect changes in the cost of funding Santander's business. I've taken into account what the term says, as well as the law on unfair contract terms. And I've thought about whether Santander has used the term fairly.

Santander has given us evidence of how it funded its mortgage business and changes to its cost of funding over time. That evidence is commercially sensitive so we've received it in confidence, as we're entitled to do under our rules. But in summary, it shows that Santander's costs changed over time, and that when it changed the SVR it did so to reflect changes in the cost of funding.

In particular, it's shown that between 2007 and 2009 – at the time of the global financial crisis – its costs reduced, but did not reduce to the same extent that Bank of England base rate reduced. So while Santander reduced the SVR at this time, it didn't reduce it by as much as the fall in base rate. I'm aware from my knowledge of the mortgage market that the same was true of most mortgage lenders at this time, and Santander's SVR was not out of line with SVRs charged by similar lenders.

And Santander has also shown that there was an increase in its costs in 2012, which justified an increase to the SVR at that time even though there was no concurrent change in base rate.

Although the changes in 2007 – 2009, and 2012, are out of time, to the extent that changes made at that time influenced the interest rate charged from December 2014 onwards I don't think that resulted in an unfair interest rate. And I'm satisfied that changes Santander made from 2016 onwards reflected changes to the Bank of England base rate.

I also note that from 2004 onwards, there was no early repayment charge, so Mrs L was free to move her mortgage elsewhere if she wasn't happy with what Santander was charging her. Her representative said she wasn't able to do so after 2008 because of changes to her circumstances – I haven't seen any evidence of that, but if it was the case, that's not something Santander could have foreseen when the mortgage was taken out. And she could also have applied to Santander for a new preferential interest rate if she wasn't happy paying the SVR.

Taking all that into account, I'm not persuaded that Santander treated Mrs L unfairly and so I don't uphold this complaint.

### **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 Mrs L to accept or reject my decision before 28 September 2023.

Simon Pugh  
**Ombudsman**