

## The complaint

Ms B and Mr S have complained about the early repayment charge (“ERC”) they incurred when they repaid their buy to let (“BTL”) mortgage with Santander UK Plc. They said the amount charged is unfair as they only had seven months left of the preferential interest rate.

## What happened

Ms B and Mr S took out this BTL mortgage in 2022 through an independent mortgage broker. The mortgage offer dated 22 December 2021 indicated they were borrowing around £222,000 over a 20-year term on an interest only basis. The rate was fixed at 1.10% until 2 February 2024, with an ERC being due if the mortgage was repaid before that date.

In May 2023 Ms B and Mr S complained to Santander about the ERC. They said given the huge rise in interest rates they’d be at a financial loss after the next renewal which was due in February 2024. As a result they’d decided to sell the property and, upon obtaining a redemption statement, were shocked to see an ERC of around £6,660. They said they hadn’t realised it was a fixed charge across the entire preferential rate period, as their previous mortgage with a different lender had an ERC that decreased each day.

Santander didn’t uphold the complaint and so Ms B and Mr S referred the matter to us.

In the meantime Ms B and Mr S made a lump sum payment of around £22,200 at the end of May 2023, and they then redeemed the remaining mortgage of around £199,800 when they sold the property for £565,000 in July 2023 incurring an ERC of around £6,000.

One of our Investigators looked at the complaint. He said:

- the mortgage had been introduced by a broker and they were responsible for ensuring the mortgage was suitable and for explaining the features of it, including the ERC,
- the mortgage offer clearly explained the ERC would be 3% of the amount repaid on or before 2 February 2024, and showed the ERC would be the same irrespective of whether the mortgage was repaid in January 2022 or January 2023,
- a flat percentage (rather than one that decreases over time) isn’t an unusual or uncommon way for an ERC to be calculated,
- the ERC isn’t just to cover any lost interest on that individual mortgage, there are other costs and factors involved, and
- while he understands the reason for paying the mortgage off, it was still a choice Ms B and Mr S made at that time, rather than waiting until the end of the ERC period and the decision wasn’t due to anything Santander had done wrong.

Ms B and Mr S didn’t agree. They said:

- They had contacted the mortgage broker specifically about this mortgage as they’d found the details on the internet, so it wasn’t “recommended” by the broker. The details on Santander’s website do not mention the ERC in the initial search results despite the ERC being significantly more than the overall cost of the mortgage over the two years.
- They didn’t have much of a choice. Interest rates were rising rapidly and increased

several more times since they contacted Santander. The sales market is terrible and typically declines further over the winter. It is highly unlikely they could have sold in January so in practice there was no choice unless they wanted to take a huge gamble.

- They had offered Santander various alternatives including depositing the money with it or transferring the loan to their main property. The alternatives they offered were reasonable options which would have allowed them to complete the loan period.
- They wanted evidence in the form of the calculation to show Santander wasn't making any money itself from this ERC.
- A simple online search reveals similar complaints about ERCs with regards to Santander so it's clear that something is wrong here and the consumer is not being protected. The ERC should be clearly displayed on the Santander website alongside the search results. This should apply to all banks and organisations that advertise mortgages. It would clearly have changed their decision to take out such a mortgage.
- Selling products where the key features are not fully advertised and then holding advantage over the consumer by some term in the contract is unethical. We have seen exactly the same previously with the PPI scandal. Otherwise you could say that PPI was never a scandal because the details were always present in the contract. While the ombudsman continues to allow these sorts of practices, consumers will continue to be stung by them.

As an agreement couldn't be reached the case was passed 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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at. For that reason, I won't be answering all Ms B and Mr S' points nor will I be ordering Santander to do so.

Ms B and Mr S have talked about products being sold where key features are not fully advertised, and that the ERC wasn't clear on Santander's website. But Ms B and Mr S didn't apply through Santander's website so none of that is relevant to this complaint. Whilst Ms B and Mr S may have been attracted to the product based on what they saw, and that may not have made it clear how the ERC would work (and I'm not saying that is the case, as it isn't something I need to decide here) the fact they then went to an independent mortgage broker renders all that moot, as the responsibility then fell on the broker to ensure the mortgage was suitable and that Ms B and Mr S understood it.

Had an application been made through Santander's website then further, more detailed, information would have been shown on the subsequent screens but as they didn't apply that way then I can't consider what the online process would and wouldn't have shown.

Whilst Ms B and Mr S have said they chose the mortgage themselves and contacted the mortgage broker specifically about it, that doesn't alter the fact the application was made on the basis the mortgage broker gave independent mortgage advice to Ms B and Mr S about the suitability of this mortgage to their individual needs. The broker was also responsible for ensuring Ms B and Mr S understood the mortgage terms, including that a flat percentage ERC would be due irrespective of when the mortgage was redeemed in the preferential interest rate period. If Ms B and Mr S feel the mortgage was unsuitable for them, or it wasn't

fully explained, then that would be a complaint they'd need to make to their mortgage broker directly. It isn't the responsibility of Santander.

Ms B and Mr S have said if the information about the ERC had been shown then it would clearly have changed their decision to take out such a mortgage. But it was clearly shown, in the mortgage offer (which is the legal contract they entered into). It would also have been clearly shown in the illustration their mortgage broker should have issued to them as part of the application process.

We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms. I have to consider this complaint by reference to Ms B and Mr S' particular situation. When I do that, I'm satisfied the terms of the ERC were set out in the mortgage offer in a way that should have been readily understandable to Ms B and Mr S; certainly, the information about the ERC was set out in a manner that met the regulator's requirements. So I'm persuaded Ms B and Mr S knew – or at least should have known – how much they'd have to pay if they repaid the mortgage before 2 February 2024.

That said, I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. The relevant rules for residential mortgages are set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). As this was a BTL mortgage it wasn't subject to those rules and guidance, however they are a good indication of what is good industry practice for ERCs so I will make reference to those rules and guidance here.

MCOB includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Santander is entitled to set an ERC based not on the actual cost to it of Ms B and Mr S ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Santander is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; Santander doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

The ERC is expressed as a cash value in the mortgage offer. So I've considered whether the ERC was a reasonable pre-estimate of the cost of the mortgage being repaid early.

Santander has provided us with evidence to show how it pre-estimated the costs of this group of mortgages being repaid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. I am satisfied that the information Santander has

provided is commercially sensitive and I have good reason to accept that in confidence and so I won't be disclosing it to Ms B and Mr S.

The information from Santander shows that it takes into account a number of factors when estimating the cost of a fixed rate mortgage being repaid. It has provided a breakdown of the figures it used and an explanation for the calculations and estimates it has made. It shows that the ERC reflects its costs of setting up and servicing the mortgage, the cost of the capital it has to set aside, the cost of funding the fixed rate, the cost of financial instruments that could be used to protect its position (and unwinding those) and its future losses. I've looked carefully at what Santander has said and I consider it is a fair way to calculate the ERC.

I appreciate that Ms B and Mr S were getting near to the end of the tie-in period (redeeming the mortgage around seven months before it was due to end) and that the amount of the ERC appears out of proportion to the number of payments that were remaining under the fixed rate, or even the total interest due over the preferential rate period. But I'm afraid that isn't a factor in how the ERC is calculated, nor is the actual cost to Santander of this individual mortgage being repaid at the exact time it was.

MCOB only requires Santander to make a reasonable pre-estimate of the cost to it of the mortgage being repaid early across a range of similar mortgages. I consider that is what it has done. And based on the information presented to me I consider it was reasonable for it to charge the ERC it did.

Ms B and Mr S put some offers to Santander, such as transferring the mortgage to another property they owned or depositing the money with them, and I understand why they feel Santander should have considered those. But this was a mortgage secured on this rental property. Once the property was sold there was nothing to secure the debt on, so the mortgage had to be repaid; that is the mortgage contract.

It wasn't an option for Ms B and Mr S to put the sum on deposit with Santander until the end of the term as that isn't how mortgages work. If the property is sold the mortgage must be repaid at the same time. It also isn't as simple as just transferring the mortgage to a different property; a full application would need to be done with a valuation being undertaken, full underwriting and a solicitor instructed to complete the legal work. This is called porting. But in any event Santander doesn't allow porting to a property that is already owned by the customer, only to a new property being purchased; that is its lending criteria and not at all an unusual stance for a lender to take.

I've sympathy for the position Ms B and Mr S found themselves in, but their situation wasn't as unusual as they might think. Many customers have to sell their properties (albeit for other equally valid reasons) and incur an ERC when doing so. It would be highly unfair for Santander to treat Ms B and Mr S any differently from how it would treat any other customer that sold their property whilst in an ERC tie-in period.

There was no reason for Santander to reduce – or waive – the ERC because it hadn't done anything wrong. I can only uphold a complaint and order compensation if a business has done something wrong. As I'm satisfied Santander did nothing wrong then there are no grounds for me to order it to refund the ERC, either in full or in part.

Ms B and Mr S have said that Santander could now re-lend their mortgage amount out at a higher rate, so they think Santander wouldn't make a loss. But Santander couldn't have known, in 2022, that Ms B and Mr S would choose to end their mortgage early, when they would choose to do so, and that interest rates would be at the level they are now at the point Ms B and Mr S chose to end the mortgage. Equally, things could have gone a different way,

with Ms B and Mr S choosing to end their mortgage at a point preferential interest rates were lower than when they took out their mortgage, and so any new mortgage lending Santander granted would be at a lower rate than Ms B and Mr S were paying. In that instance Santander wouldn't make Ms B and Mr S pay more to cover any additional potential losses, and equally Santander isn't expected to refund any difference if it goes the other way.

As I said above, in some instances the ERC will be "too much" and in others it will be "too little". That is allowed under the rules as long as, at the point it was set, the ERC was a reasonable pre-estimate of the potential loss the lender would incur upon early repayment in line with the regulatory guidance in MCOB. Here I'm satisfied it was.

Having considered everything, I'm satisfied:

- Santander was entitled to charge Ms B and Mr S the ERC set out in their mortgage contract when they repaid their mortgage early.
- There was no requirement for Santander to only charge an amount worked out based on Ms B and Mr S's individual loan and date of redemption, instead it was allowed to charge an amount based on its pre-estimate of the costs of early termination of a group of mortgages of similar type.
- Santander didn't have to treat Ms B and Mr S any differently to any of its other customers that redeem their mortgage whilst there is an ERC in force.
- Santander didn't have to offer a bespoke resolution to Ms B and Mr S, nor did it have to waive the ERC either in full or in part.

For all the reasons given I don't think Santander acted unfairly or unreasonably in this matter.

Ms B and Mr S have raised some other concerns, such as that they were charged a remortgage bonus of £150 and an account fee of £225. As those didn't form part of the original complaint to Santander I can't consider them here. Our rules state that a business must be given the opportunity to investigate and respond to any issues first, so Ms B and Mr S should pass this to Santander as a new complaint if they want it looked into. They may then be able to bring that as a new complaint to this service if they remain unhappy with the outcome (subject to our usual rules).

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr S to accept or reject my decision before 20 December 2023.

Julia Meadows

**Ombudsman**