

The complaint

Mr P and Ms L complain about the interest rates and redemption charge on their mortgage taken out with Santander UK Plc ("Santander").

Mr P and Ms L took out their mortgage with Abbey National, which has since become Santander, so I will refer to Santander throughout this decision for ease.

What happened

Mr P and Ms L took out a mortgage with Santander in September 1994. They transferred to a new product which completed on 14 May 1999. The mortgage was redeemed on 28 August 2002.

Mr P complained to Santander about his mortgage in December 2002. He said that a capped rate was discussed with the mortgage advisor and, despite the fact that the interest rate was higher than others available, he chose this as it was sold to him as being a product where repayments would reduce when interest rates went down but only increase as far as the cap when interest rates went up. However, he said that the product hadn't operated in this way and when interest rates went down, the repayments did not.

Mr P therefore complained in December 2002 that the product had been mis-sold and mis-advertised as the repayments didn't go down when the base rate went down. He also complained that he had been charged a product-related charge (PRC) when he moved from the product upon redemption, which he believed to be invalid and inappropriate given that the product had been mis-sold in the first place. He said that he had previously raised his complaint verbally in branch and been told that some people didn't understand that the product was capped down as well as up. He said he did not as the advisor neglected to mention it and it was also not mentioned in the documentation supplied.

Mr P and Ms L have now complained to this service about the same issues raised in their letter to Santander in 2002, along with some further issues. As Santander's response at the time didn't explain that they had six months to refer the matter to this service, it was not considered a valid final response in line with the requirements of the relevant rules at the time the response was sent. This service has already provided a decision in relation to which parts of Mr P and Ms L's complaint we can consider and decided that we only have the power to consider the complaints raised in Mr P's letter of December 2002, as the rest were made out of time.

Mr P and Ms L say that they want the PRC of over £4,000 to be refunded in addition to interest on the whole of the loan since 1992.

Santander says that Mr P and Ms L were correctly advised that the maximum interest rate they would pay was the capped rate of 6.25% and if interest rates fell below that their repayments would reduce. It says that the SVR did not fall below the rate of 6.25% until 1 December 2001, when their repayments went down. The Bank of England base rate (BOEBR) remained static following this so Santander didn't amend its SVR again until 1 December 2002, when Mr P and Ms L's mortgage had already been redeemed. It also confirmed that the capped rate product only has a maximum interest rate and not a minimum interest rate.

In relation to the PRC, Santander says that this was charged upon redemption and that its PRCs are both proper and reasonable. It says that full details of the amount payable would have been included in the mortgage offer when Mr P and Ms L converted their mortgage to the capped rate mortgage.

Our investigator looked into the complaint and didn't think Santander needed to do anything in respect of the points we were able to consider. In relation to the applicable interest rate, she found that no cap was applied to Mr P and Ms L's mortgage in respect of rate reductions. As Mr P and Ms L's mortgage wasn't linked to the BOEBR, she didn't agree that their rate ought to have tracked in line with it. In respect of the PRC, the investigator was satisfied that this had been charged correctly in line with the terms of the mortgage.

Mr P and Ms L have disagreed with this, so the case has come to me to make a decision. They have said that the terms of the mortgage were unfair as the differential between the BOEBR and Santander's SVR changed. They say the mortgage agreement was therefore misleading.

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.

Having looked at the evidence I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

The interest rate

Mr P and Ms L have said that the mortgage was mis-sold as the repayments didn't go down when the BOEBR went down. They have also said that the fact the product was capped down as well as up wasn't mentioned by either the advisor or in the documentation when the product was sold to them.

Mr P and Ms L say that the BOEBR was 5.25% when they took out the mortgage and their mortgage rate was 6.25%. The BOEBR went up and then returned to 5.25% in May 2001. Mr P and Ms L say that the BOEBR reduced four times by a total of 1.25% between then and 1 December 2001 and this only resulted in Santander reducing their mortgage rate by 0.2%.

There is no record of what Mr P and Ms L were told in branch at the time of sale so it is impossible to establish now exactly what they were told at the time. However, I have looked at the documentation available from the time of sale.

I've looked at the mortgage offer sent to Mr P and Ms L in March 1999, which also enclosed the terms and conditions of the mortgage. The offer set out that until 30 April 2006, interest would be charged at Santander's standard variable rate (SVR) as varied from time to time but restricted to a maximum interest rate of 6.25% (the capped rate). It goes on to state that after 30 April 2006, the maximum interest rate will no longer apply and interest would be charged on the loan at the current SVR without any restriction.

Santander has said that its SVR only went down once below its capped rate of 6.25% between 14 May 1999 and 28 August 2002 and this was on 1 December 2001. Mr P and Ms L have also provided information showing that their interest rate went down to 6.05% as of 1 December 2001. So I'm satisfied that this was the only time when their rate reduced below 6.25%.

I am satisfied that the offer makes it clear that the interest rate applicable to Mr P and Ms L's mortgage would be Santander's SVR, and not the BOEBR. I also note that the mortgage offer states that Santander's SVR at the time was 7%. The BOEBR at that time was 5.25%, so I think it should also have been clear that Santander's SVR was different to the base rate.

So, whilst I appreciate that BOEBR may have reduced prior to 1 December 2001, there is nothing in the offer to suggest that Santander's SVR would be linked to the BOEBR. So I can't say that the interest rate applied to Mr P and Ms L's mortgage was incorrect or that Santander has done anything wrong in this respect.

Mr P and Ms L have said that the term is unfair as the mortgage agreement was misleading, due to the differential between the BOEBR and Santander's SVR changing. I disagree with this. Variable rates are not uncommon in mortgages. As set out above, I am satisfied that the applicable rate was made clear in the terms of Mr P and Ms L's mortgage offer, which made no reference to being linked with BOEBR. Likewise, for the reasons set out above, I am also satisfied that Santander applied the rate in line with the applicable terms.

In relation to there being a lower cap, there is no mention of a lower cap in the mortgage offer and Santander has confirmed that there was not a minimum interest rate. In any event, there was no point where Santander's SVR was lower than the rate being applied to Mr P and Ms L's mortgage, so I can't see that their rate was ever subject to a lower cap as suggested.

The PRC

Mr P and Ms L have also complained that they were charged a PRC when they moved from the product upon redemption, which they believed to be invalid and inappropriate given that the product had been mis-sold in the first place.

For the reasons set out above, I disagree that the mortgage was mis-sold. However, I have gone on to consider this point and whether it was reasonable for Santander to charge the PRC.

I have looked at the mortgage offer provided to Mr P and Ms L. This states "*The Capped Rate is provided on the basis that you will keep the Loan with us until at least 30 April 2006. If before 30 April 2006 you repay the whole or any part of the Loan (other than the agreed repayment of capital on a repayment mortgage) or transfer the whole or any part of the Loan from the Capped Rate then we will... charge a fee... which will be equal to 4.750% X the amount repaid or transferred.*"

I have also looked at the closing statement for Mr P and Ms L's mortgage which shows that the redemption amount (less fees) was £79,956.41. A PRC of £3,797.92 was added to this and that is equal to 4.75%.

As Mr P and Ms L redeemed their mortgage prior to 30 April 2006, I am satisfied that the PRC was charged in line with the terms of the mortgage. Therefore I am satisfied that Santander has done nothing wrong in this respect.

I know my decision will come as a disappointment to Mr P and Ms L, but I can't say that Santander has acted unreasonably in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr P to accept or reject my decision before 11 September 2023.

Rachel Ellis
Ombudsman