

Ombudsman determination

CIFO Reference Number: 15-000022

Complainant: [The complainants]

Respondent: [Bank X]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

The complaint relates to a mortgage sold by [Bank X] and a subsequent application by the complainants for further credit.

Background

In September 2014 the complainants met with a mortgage arranger at [Bank X] with a view to obtain a mortgage on a house they planned to renovate. The renovations would require additional financing of at least £150,000, so the complainants planned to apply for another loan after the mortgage was approved.

The complainants corresponded with the mortgage arranger on multiple occasions, and say they were assured [Bank X] would be able to provide further lending for the renovations.

The mortgage was approved by [Bank X], but a subsequent application for further lending was not. The complainants had decided to proceed with a larger renovation and therefore required increased funding of £250,000, not the £150,000 they originally thought. [Bank X] said the complainants did not meet the affordability and loan-to-value (LTV) criteria for this higher amount.

The complainants decided to move their mortgage to another bank which was prepared to offer the additional lending they required. This cost them approximately £10,000 in various transfer fees and delayed the renovation works.

The complainants say that the verbal assurances of the [Bank X] mortgage arranger misled them into obtaining their mortgage with [Bank X]. They say that they would not have proceeded if they had known that a subsequent application for further credit would not be approved, and that [Bank X] was therefore responsible for the fees they incurred in moving their mortgage to another lender.

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

The case handler did not uphold the complaint. The case handler noted that an email dated 18th September 2014 sent to the complainants by the mortgage arranger had stated that:

'With regards to home improvement loans we can look to agree additional lending once you have completed the upgrading subject to affordability & the value of the property having increased sufficiently'.

The case handler was unable to interview the mortgage arranger in question, who had since retired from [Bank X]. In the circumstances, the case handler did not consider it reasonable to rely on recollections of verbal assertions when written evidence was provided by the email of 18th September 2014.

The case handler considered that [Bank X] had not promised to extend any additional credit and therefore concluded that [Bank X] had not acted unreasonably in rejecting their subsequent credit application.

The complainants did not agree with the conclusion of the case handler. In a detailed response they considered that, regardless of any internal procedures that should have been followed, the mortgage arranger had clearly acted without authority and verbally misled them on multiple occasions in their meetings and over the phone saying that an application for further credit was likely to be approved.

They stated that too much reliance had been placed on the email disclaimer, and that the mortgage arranger had made further verbal assurances both before and after the 18th September 2014 email.

They considered the mortgage arranger to be a qualified professional, and as such they had acted reasonably by relying on her representations.

[Bank X] have stated that mortgage arrangers are 'non-advisory' and they tell customers that they are unable to provide any guarantees or recommendations. [Bank X] further stated that lending applications are always considered separately, and they need to agree, process the application, and confirm the valuation of the property before any credit commitments can be given.

Findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

I note that the case handler has spoken to both parties in this case, but was unable to interview the mortgage arranger. The case handler also confirmed with [Bank X] that telephone conversations between mortgage arrangers and customers are not recorded and they do not take notes of their meetings.

While I appreciate that the complainants say they were assured further lending would not be an issue, I note that the application for £250,000 in further lending was significantly higher than the £150,000 that was originally envisaged. [Bank X] was therefore free to independently assess the subsequent credit application.

In the absence of any recorded telephone conversations or notes from meetings with the mortgage arranger I am prepared to accept the verbal assertions made by the complainants. The complainants have acknowledged that the mortgage arranger did not guarantee further lending, but assert that she misrepresented the likelihood that [Bank X] would approve their application, and that they relied upon these statements to their detriment.

I have decided to rely upon these assertions and the email evidence which is not in dispute. I do not consider that the mortgage arranger guaranteed further lending, which is acknowledged by the complainants and supported by the email evidence.

Taking this into account, and also noting the complainant's increased credit requirements for the subsequent application, I consider [Bank X] did not act unreasonably when it decided to independently assess and subsequently decline the application for further lending.

I therefore cannot conclude that [Bank X] have acted unreasonably in the circumstances.

Decision

My final decision is that I do not uphold this complaint.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: _____