

Ombudsman determination

CIFO Reference Number: 16-000368

Complainant: [The complainant]

Respondent: [Company V]

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 complainant] complained about an unauthorised change to a higher interest rate to the one agreed for her mortgage, causing financial loss.

Background

[The complainant] obtained a mortgage for £325,000 arranged through [Company V] with a private lender, [redacted for anonymisation purposes]. This was an interest-only arrangement for 3 years with an interest rate of 7%.

When this arrangement ended, [the complainant] believed that a new interest-only mortgage had been arranged, continuing with an interest rate of 7% for the next year – the fourth year in total - but dropping to 6% for the final, fifth year.

The year five rate change to 6% did not happen. [The complainant] felt that she had been coerced into continuing with a 7% interest rate for the fifth year or else she would have had to pay off the outstanding loan amount owed on the property.

As a fair and reasonable resolution to her complaint, [the complainant] sought £30,000 as compensation for being compelled to find new lenders and as payment of her legal fees.

Findings

Chronology of events

The loan agreement began on 2 June 2011 and ended on 2 June 2014. A two-month extension of this arrangement was agreed until 3 August 2014 while [the complainant] considered the possibility of an alternative loan.

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

A two-year extension of this arrangement was discussed in July 2014. [The complainant] was unable to obtain a conventional mortgage at the time and on 13 July 2014 a request was made via [the] Managing Director of [Company V], to the private lender's lawyer, [redacted for anonymisation purposes], as to whether [the private lender] would consider an interest rate of 5.5% in the new agreement.

[The complainant] indicated that she was not in a position to pay [the private lender's lawyer's] legal fee of approximately £1,500 in July 2014 in relation to this extension; however, on 22 July 2014 a proposal was made to [Company V] by [the private lender's lawyer], which suggested that [the private lender] would cover his legal fees, the existing loan would be extended for two years (i.e. until 2 August 2016) and for the period 3 August 2014 to 2 August 2015 the interest rate would be 7% per annum. The rate would be 6% per annum from 3 August 2015 to 2 August 2016.

[The complainant] told [Company V] that she did not agree with this arrangement and asked him to look elsewhere for a more affordable loan. Given that no position was agreed by 3 August 2014 (the date of expiry) a further extension of 3 months was mooted by [the private lender's lawyer], on the condition that fees incurred for the repayment or extension of the loan by [the private lender] would be borne by [the complainant].

On 7 August 2014, [Company V] wrote a letter to inform [the complainant] of the loan extension proposal from [the private lender's lawyer]. He advised that the simplest option would be to continue the mortgage arrangement with [the private lender] for the two-year extension period, paying 7% interest for the first year followed by 6% for the second. Alternatively, the existing loan could be continued on the same terms for up to three months with the option to pay back at any time.

On 3 September 2014, [the complainant] emailed [Company V] and recounted a meeting in the supermarket where she believed [the managing director of Company V] had told her that he would speak to [the private lender's lawyer] or [the private lender] again and get back to her. [The complainant] also raised how she needed the rate lowered to 6% throughout the new loan period to assist her financially.

On 5 September 2014, [the complainant] emailed [Company V] again and suggested a drop in the interest rate to at least 6.5%. She asked [Company V] to refer this proposal to [the private lender].

On 15 October 2014, [Company V] followed up on his letter of 7 August 2014 and emailed [the complainant] asking if she had given the letter any thought.

On 6 November 2014, [Company V] emailed again following up on his earlier email to [the complainant] of 15 October 2014. In reply, [the complainant] indicated that she did not want to commit until the next Easter. On 17 November 2014 [Company V] replied, advising that he would suggest to [the private lender's lawyer] an extension for twelve months with the option to continue year-by-year after that. He made this suggestion to [the private lender's lawyer] a day later. [The complainant] queried whether the rate of 6% was still available, so [Company V] contacted [the private lender's lawyer] again to this effect on 8 December 2014.

On 25 January 2015, [the private lender] contacted [Company V] to advise he had instructed [his lawyer] to draw up a new loan agreement.

On 23 February 2015, a new agreement was provided. The new agreement contained provisions for [the complainant] to pay [the private lender's lawyer's] fees. This obligation would be discharged through an increase in the monthly interest payments.

In response, [the complainant] advised [Company V] that she could not afford to repay at the current rate of 7%. Interest payments had been missed in February 2014 and February 2015, and [the complainant] explained to [Company V] her belief that she was to revert to a lower rate of 6% from August 2015 as previously suggested.

[The complainant] informed [Company V] that she had been waiting to hear back from him some time earlier and, contrary to a suggestion made by [the private lender's lawyer] and [the private lender], the delay was not caused by her.

[Company V] advised [the private lender] that there was not a lengthy delay on the part of [the complainant], because [the private lender's lawyer] had advised on 25 January 2015 he was drawing up an agreement. He also forwarded an email which [the complainant] had written to [the private lender] apologising for any delay in previous payments. In her email, [the complainant] thanked [the private lender] for agreeing to the interest rate of 6% "for the fifth year".

[The private lender] advised in his response to [Company V] that - given the interest was not paid in February 2015 and he was paying the lawyer's fees - the lower interest rate of 6% was not on the table as it was not taken up at the time. [The private lender] considered that a new offer should be placed on the table which took account of these factors and further advised that he would instruct [his lawyer] accordingly.

On 29 March 2015, a new proposal was sent to [Company V] by [the private lender], who set a deadline for [the complainant] to respond of 10 April 2015. When this proposal was forwarded to her by [Company V], [the complainant] denied any previous delay had been due to her. She mentioned that she had approached [Company V] and asked what was happening and was told that nothing had been heard from the lender. In [their] return email, [Company V] denied making any late reply.

Agreement to the new loan terms

The initial loan was offered on the basis that [the complainant] would be responsible for all costs on both sides. This was communicated to her through an Estimate of Costs, of which she confirmed receipt on 24 May 2011 by signing a Terms of Engagement letter with [Company V].

Based on the above timeline, I am of the view that there was no agreement to the new loan terms offered at the time of the expiry of the previous loan, nor in its immediate aftermath. I do not see any evidence that she communicated her agreement to [Company V] until she suggested in an email of 18 November 2014 to [Company V] that she thought the rate of 6% had already been agreed. Following expiry of the previous loan, it appears

that she looked to obtain a more advantageous, alternative arrangement at the material time in the summer of 2014.

In addition, I consider that in response to [Company V] letter of 7 August 2014 [the complainant] made counter-proposals, rather than indicating acceptance of [the private lender's] offer of a 7% interest rate for the first year and 6% for the second.

Furthermore, [the complainant] informed [Company V] on 6 November 2014 that she did not want to commit until the next Easter. Therefore, I consider [Company V] did not make an error at this stage as it is clear from the communication that the previous offer from [the private lender] had not been accepted.

I acknowledge that [the complainant] may not have received a response from [Company V] to her query in September 2014 regarding renegotiation of the interest rate with [the private lender] or [his lawyer], but no acceptance was communicated to [Company V] of the terms which [the complainant] then sought to rely on at a later date.

I further acknowledge [the complainant's] comments in her email in response to the case handler's conclusions of 25 January 2017 and the stress which the situation has placed her under but, in the circumstances, I cannot conclude that there was an agreement for a loan on the terms claimed by [the complainant]. I, therefore, do not consider that [Company V] has made an error causing financial loss.

Final decision

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

[The complainant] must confirm whether she accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **13 March 2017**. The determination will become binding on [the complainant] and [Company V] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue her legal rights through other means.

If there are any particular circumstances which prevents [the complainant] confirming her acceptance before the deadline of 13 March 2017, she should contact me with details. I may be able to take these into account, after inviting views from [Company V], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 13 February 2013