

**Ombudsman determination**

**CIFO Reference Number: 16-001154**

**Complainants: [The complainants]**

**Respondent: [Company 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.<sup>1</sup>

[The complainants] complained that their mortgage had not been converted by [Company X] to full capital repayment in 2015 as requested.

**Background**

[The complainants] informed CIFO that they had a part capital repayment, part interest mortgage with [Company X]. They asked [Company X] to change this to a full capital repayment arrangement in letters dated 1 March 2015 and 18 March 2015. The reference number for this mortgage was [mortgage 1].

[The complainants] also had another mortgage which was full capital repayment (reference number [mortgage 2]).

As a fair and reasonable resolution to their complaint, [the complainants] sought compensation for the losses experienced as a result of not having the equity in their property which they expected at the end of the two-year agreement for full repayment they believed was in place with [Company X].

**Findings**

The letter to [Company X] sent on 1 March 2015 contained paperwork with details of their earnings. The letter dated 26 March 2015 from [Company X] to [the complainants] reads as follows:

*“...in order for us to proceed with your request to switch your repayment method to Capital and Interest, please could you complete and return the attached form, enclosing the following pending documents:*

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

- *Bank statements for the last three months from each person named on the account.”*

[Company X] acknowledged that they did not enclose the CIP form with this 26 March letter. They further acknowledged they were at fault for some errors but suggest that it was never confirmed in writing or on the telephone that the mortgage had been switched to full repayment.

In addition, [Company X] submitted in their letter to the case handler that [the complainants] should have noticed that the monthly payments had not changed over the subsequent 18-month period. However, the case handler noted in the documentation that the payments made by [the complainants] to [Company X] had indeed increased from May 2015, contrary to [Company X's] assertion.

Since the case handler completed his conclusions, [Company X] now claim in their 4 April 2017 email to CIFO that, although the monthly sum paid changed, the letter does not state anywhere that payments reverted to full capital repayment and [the complainants] would have received this letter regardless of any request to change their repayment method, because they chose new products.

I have seen two letters sent to [the complainants] dated 15 and 28 April 2015 from the lending team at [Company X]. I note these were provided to CIFO by [the complainants] rather than by [Company X], despite our request for [Company X's] file in this matter. The 15 April 2015 letter makes the following statements:

***“Mortgage Account Number: [mortgage 1]***

*Thank you for returning the choices form in respect of the above mentioned mortgage account.*

*We would advise you that the above mentioned mortgage account has been switched to [Company X's] discounted rate of 4.99% (1.81% below [Company X's] Standard variable rate, currently 6.80%) discounted for 2 years requiring a revised monthly payment of £1,438.65 from May 2015.*

*Revised payments will be collected by Direct Debit on the 10<sup>th</sup> of each month with effect from your May 2015 instalment.”*

It is not clear whether the reference above to the “choices form” is the CIP form required, but [Company X] appear to suggest to [the complainants] that they have already done what was required of them.

The 28 April letter refers to a second mortgage agreement and reads as follows:

***“Mortgage Account Number: [mortgage 2]***

*Thank you for returning the choices form in respect of the above mentioned mortgage account.*

*We would advise you that the above mentioned mortgage account has been switched to [Company X's] discounted rate of 4.99% (1.81% below [Company X's] Standard variable rate, currently 6.80%) discounted for 2 years requiring a revised monthly payment of £325.75 from May 2015.*

*Revised payments will be collected by Direct Debit on the 25<sup>th</sup> of each month with effect from your May 2015 instalment."*

I agree with the case handler that the above letters constitute confirmation from [Company X] of revised mortgage payments (contrary to [Company X's] assertion) and, given [the complainants'] previous correspondence with [Company X], it was reasonable for them to consider this would mean that the revision was to full capital repayment. I note [Company X's] assertion in their 4 April 2017 email to CIFO that they consider this is speculating on what [the complainants] were thinking at the time. With respect, I disagree. I do not consider this to be speculation because [the complainants] have complained to CIFO about this specific issue. They believed they were on full capital repayment for their mortgage from April/May 2015, given their documented request for the change and the subsequent correspondence they had received from [Company X] confirming changes to the mortgages.

I do not agree with [Company X] that the lack of CIP form completion is the fault of the customer given [Company X's] previous admitted failure to enclose it with the 26 March letter; nor do I believe the onus is on the customer to request one in the absence of a specific request to complete such a form. Now, in their 4 April 2017 email to CIFO, [Company X] say the CIP form was sent to the customers but not completed by them:

*"I therefore feel that this leads onto the customer not making any attempt to contact us, nor filling in the CIP and returning this to us. To confirm, we have never received a completed CIP form and therefore this is the reason the change in repayment has not happened. I do not feel that [Company X] should be held responsible for reimbursing the customer when we never physically told them that the changes had been made..."*

On the balance of probabilities, I prefer the evidence provided by the complainants. I cannot envisage any circumstances where the customers would not complete the form when they wanted their mortgage to change and had complied with the steps required by [Company X] up to that point. For example, [the complainants] had already provided [Company X] with bank statements in response to the March 26 letter which indicated this as a requirement for proceeding with the requested mortgage switch. They also provided their earnings details. Furthermore, in their letters of 15 and 28 April 2015, [Company X] thanked the customers, incorrectly it would appear, for returning the choices form. This clearly suggests that the customers had completed the steps required of them by [Company X].

[Company X] has suggested that the customers should have taken "some reasonable responsibility in realising that their monthly payments had not changed over an 18 month period".

This is incorrect. Monthly payments from the customers did increase from May 2015 onwards. Based on bank statements and [Company X's] own statement of account provided by [the complainants], I am satisfied that the amount paid to [Company X] by direct debit increased from £1,297.95 per month to £1,438.65 per month effective 11 May 2015.

[Company X] suggests that because full capital repayment of the mortgage was not mentioned in their correspondence to [the complainant], the customers could not reasonably believe that the mortgage had changed to this arrangement. However, from reading the letters of 15 and 28 April 2015 sent from [Company X] to [the complainants], it is not clear what the new arrangement was. Given that [the complainants] had previously referred to the new full capital payment arrangement which they were seeking - and [Company X] had not disputed this in any of the correspondence which indicated a change had been made - on the balance of probabilities, I consider that [the complainants] were not unreasonable in believing their mortgage had changed in accordance with their stated wish.

Initially, the customers were not informed about the requirement for a CIP form to be completed. [Company X] then did not enclose a CIP form with their letter of 26 March 2015 when they asked the customer to complete an attached form. [Company X] then sent letters to the customers confirming a change in the mortgage amount payable. This lack of clarity was caused by [Company X] and, in my view, should not be interpreted against the complainants.

Having considered the above factors, I am of the view that [Company X's] position is inconsistent and does not always accurately reflect the position described in the documents before me. Therefore, on the balance of probabilities, I am satisfied that [the complainants] reasonably believed the part-capital/part-interest mortgage had changed to full repayment and nothing further needed to be done to effect this change.

## **Final decision**

My final decision is that I uphold this complaint.

[Company X] should reduce the capital balance on the part-capital/part-interest mortgage by £5,035.84, representing the difference in the sum between the payments made and interest charged, between 15 April 2015 and 15 April 2017.

[The complainants] must confirm whether they accept this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **12 June 2017**. The determination will become binding on [the complainants] and [Company X] 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 complainants] would be free to pursue their legal rights through other means.

If there are any particular circumstances which prevent [the complainants] confirming their acceptance before the deadline of 12 June 2017, they should contact me with details. I may be able to take these into account, after inviting views from [Company X], 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: 9<sup>th</sup> May 2017

## **Appendix**

### Payment Calculations

[redacted for anonymisation purposes]