Ombudsman determination
CIFO Reference Number: 17-000060
Complainant: [The complainant]
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 complainant, [redacted for anonymisation purposes], complained that [Bank X] had failed to keep records of meetings with him, had acted improperly as a responsible lender and, when advised of the errors, had again failed to act properly. [The complainant] also complained that [Bank X] had made threats against him. He claimed that, as a result of [Bank X's] behaviour and actions, he had felt compelled to change lenders. [The complainant] says that it cost him approximately £20,000 to make the change and resulted in [the complainant] paying a higher rate of interest on the new loan.

[The complainant] disagreed with the conclusions of the case handler who did not uphold the complaint so the matter was referred to me for determination.

Background

In 2008 [the complainant] took out a £1,300,000 loan over 5 years with [Bank X]. The loan, secured by his property known as [redacted for anonymisation purposes], was due to expire on 31 March 2014.

In 2012 the complainant met with [redacted for anonymisation purposes] of [Bank X]. There appear to have been no minutes or notes taken at that meeting. [The complainant] believed, from his recollection of that meeting, that he would be allowed to extend the loan over [the property] after the expiry of the current term to enable him to repay it by the time he had reached the age of 75.

Analysis

I agree that contemporaneous notes of the 2012 meeting would have been helpful in order to establish whether an agreement was made between the complainant and [Bank X] to extend the loan. However, in the absence of any notes from either party, I must have regard to the circumstances surrounding, and subsequent to that meeting in order to be satisfied whether or not such an agreement was made.

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

According to the documentation provided by all parties, I note that there was no formal paperwork from [Bank X] produced after the meeting to confirm an agreement. I would have expected such written confirmation had an agreement been made. I also note that [the complainant] did not contact [Bank X] requesting such confirmation of an agreement. Again, I would have expected some correspondence between the parties shortly after the meeting had an agreement been made.

Furthermore, I have taken account of the notes from a meeting held on 6 December 2016 between [the complainant], his wife and [Bank X]. On that occasion [the complainant] discussed the 2012 meeting with [Bank X]; reporting that he knew that [Bank X] could not commit to a promise to extend the loan. At that meeting it is recorded that [the complainant's wife] said:

> "*We wanted to extend the mortgage to 75 years of age, we were told that wasn't possible*".

I find that there is no evidence that [Bank X] made any promises to [the complainant and his wife] or made any agreements with them in 2012. The evidence of the 6 December 2016 meeting suggests, on a balance of probabilities, that whatever had been discussed between the parties at that meeting in 2012 was not understood by either party to be an agreement or binding promise.

On 2 January 2014, [Bank X] wrote to [the complainant] to advise him that the loan would not be renewed or extended when the agreement expired on 31 March 2014. On 4 March 2014, a meeting was held between [the complainant and his wife] and [Bank X]. [Bank X] said that it would work with the complainant to agree a repayment plan. A new payment plan was agreed.

The decision to renew or extend a loan and to initiate collection activity to recover an amount owed by [the complainant] is a commercial decision of [Bank X] and is generally not reviewable subject to reasonable and sufficient notice. I am satisfied that [the complainant] was given reasonable and sufficient notice of the decision not to extend the loan in 2012, and again in January 2014, and that the disclosure of reasons for its actions were clear and understandable. I am satisfied that [Bank X] was fair and reasonable in the exercise of its commercial judgment.

I note that [Bank X], who were not obligated to work with a customer on a capital repayment plan, appeared to do so with [the complainant] on a goodwill basis. Notwithstanding its previous decision not to extend the loan, I note that the repayment plan did have the effect of extending the loan period for a further 4 years.

[The complainant] telephoned [Bank X] on 10 February 2016 and spoke to [redacted for anonymisation purposes]. The purpose of the call was to ask if the payment schedule agreed on 4 March 2014 could be varied. [Bank X] again agreed to [the complainant's] request, although it was again under no obligation to do so.

On 15 February 2016 [Bank X] wrote to [the complainant] to confirm the details of the revised repayment plan. The new agreement was for [the complainant] to repay:

- £60,000 in December 2016;
- £40,000 in December 2017; and,
- £100,000 in December 2018.

The letter from [Bank X] contained the sentence:

> '*Your home is at risk if you do not keep up repayments on a mortgage or other loan secured on it'.*

This sentence is subsequently cited by [the complainant] as being the catalyst for his decision to find an alternative lender.

On 23 June 2016, just over 4 months later, [the complainant] contacted [Bank X] and advised [Bank X] that the £60,000 payment, which he had previously agreed to pay in December 2016, was now no longer available as he had loaned the money to his sons. [The complainant] requested a further variation to the previously agreed repayment schedule. I consider [the complainant's] decision to loan the £60,000 to his sons instead of using it to meet his repayment obligations to [Bank X] noteworthy.

[The complainant], in a second telephone call to [Bank X] that day, proposed to pay £5,000 per month but defer the £60,000, due in December 2016, to December 2018.

[Bank X] were, once again, under no obligation to vary the repayment agreement but on 24 June 2016 agreed to the terms, adding that there would be a review of the agreement in June 2017. [Bank X] made it clear to [the complainant] that the mortgage would have to be repaid in full by December 2018.

On 1 November 2016, just over 4 months from the above telephone calls, [the complainant] spoke with [Bank X] and told [Bank X] that he was unable to repay the agreed monthly amount of £5,000. He also expressed his dissatisfaction with [Bank X]. [The complainant] offered to pay [Bank X] £25,000 to conclude and settle the matter of his outstanding mortgage. A suggestion was made by [the complainant] that [Bank X] should pay him some compensation for his dissatisfaction and, if it did not pay him, he would make a complaint.

On 24 November 2016 [the complainant] emailed [Bank X] and disclosed to him that he had taken a new loan from [redacted for anonymisation purposes] to clear the [Bank X] loan.

On 22 December 2016, [the complainant] met with [Bank X], at which time he expressed his indignation and outrage by the words used in the sentence contained in the letter of 15 February 2016. The basis of [the complainant's] anger was that he saw the sentence as a threat. After handing [Bank X] a copy of the letter and highlighting the offending sentence, [the complainant] said:

> *"I agreed to the terms but after banking with you for 52 years, you put me in a position that I had no choice but to go to another finance company and repay earlier."*

I am satisfied that the wording of the sentence, in the letter of 15 February 2016, was the sole reason [the complainant] gave for moving his loan to an alternative lender. I note that [Bank X] tried to reassure him, but he refused to accept that it is standard wording where a loan was secured on a lenders home and walked out of the meeting.

I note that Rule 3b of SI 1999/2725 from the Financial Conduct Authority (FCA) in the United Kingdom requires that when a firm provides a quotation to a customer in connection with a prospective credit agreement, which would or might be secured on their home, the firm must include in the quotation the following statement:

> "YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT."

I am therefore satisfied that the inclusion of this sentence in the letter is a standard disclosure statement, and one legally required in the UK. I do not regard this statement to be a threat, nor do I think it was reasonable for [the complainant] to use it as a reason for his actions and demands.

It is clear that the repayment plan was amended twice at [the complainant's] request and, although under no contractual obligation to do so, [Bank X] accommodated his numerous requests to vary the repayment schedule. I consider that [Bank X] acted fairly and reasonably in its responses to [the complainant's] numerous requests to change the repayment agreements.

Conclusion

On the basis of the information provided, I am of the view that the complaint is not upheld in this matter.

I have noted in the course of examining the evidence in this case that [the complainant] has provided different reasons for seeking a new lender to different members of staff at [Bank X].

In some instances [the complainant] credited his decision to move to another lender to the alleged threatening sentence in the letter of 15 February 2016. I disagree with the assertion that the inclusion of the standard warning in the letter was a threatening statement. The inclusion in such warning disclosure statements are standard industry practice for lenders and, in the UK, is a regulatory requirement for lenders.

In an email on 7 January 2017 [the complainant] states that he sought a new lender because of promises that had been made but not kept. This appears to relate to the meeting in 2012 where notes were not kept. There is no regulatory requirement for notes to be kept of the meeting. On a balance of probabilities, having considered the evidence and surrounding circumstances, I find that no promises were made in the 2012 meeting.

I do not agree that [Bank X] treated [the complainant] unfairly with regard to his mortgage. The bank repeatedly accommodated requests to change the terms of the

repayment plan and, contrary to his claims that [Bank X] did not take into account his wealth, status and asset base, I consider that [Bank X] accommodated the numerous requests.

Finally, the decision to take out a new loan from [redacted for anonymisation purposes] was [the complainant's] alone. I do not consider [Bank X] to be responsible for him changing to a new lender or for any costs or inconvenience that may have arisen from that decision.

Final decision

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

[The complainant] must confirm whether he 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 **17 December 2017**. The determination will become binding on [the complainant] and [Bank 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 complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 17 December 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Bank 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: 17 November 2017