

**Ombudsman Decision**

**CIFO Reference Number: 17-000417**

**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 decision 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>

A decision shall constitute an Ombudsman Determination under our law.

[The complainant] complained to CIFO about the failure of [Bank X] to notify him of changes in mortgage rates.

**Background**

[The complainant's] complaint relates to alleged misinformation given to him regarding the possibility of switching the rate on his buy-to-let mortgage.

In February 2015, [the complainant] arranged a standard variable rate mortgage with [Bank X]. The arrangement fee he paid for this mortgage was £5,000 and the interest rate bespoke to him was 3.79% plus the Bank of England base rate of 0.50%. This meant that [the complainant's] interest rate was 4.29%.

In an email dated 1 December 2015, [the complainant's] [Bank X] Relationship Manager at the time, [redacted for anonymisation purposes] informed him as follows:

*"Good morning [the complainant],*

*I have just heard from my [jurisdiction 1] team that they may be introducing 'rate switches' for clients next year.*

*I will keep you informed as I hear more.*

*[redacted for anonymisation purposes]"*

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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)

In June 2016 [the Bank X Relationship Manager] left [Bank X's] employment. [The complainant] was not kept updated when bank rate changes occurred during 2016 and he was not advised about any opportunity for rate switches.

Approximately one year later, [the complainant] discovered that the arrangement fees and interest rate had been lowered significantly in 2016, and he had not been informed of this due to his previous relationship manager leaving [Bank X].

[The complainant] complained to [Bank X], and subsequently CIFO when that complaint was not upheld, because he felt that, had he been informed of the changes in charges and rates, he would have refinanced the mortgage accordingly.

The case handler recommended upholding [the complainant's] complaint in part and awarded [the complainant] 50% of the total interest differential for the period from March 2016 to February 2017, less the arrangement fee of £1,797. The amount of compensation recommended by the case handler was therefore £5,948.83.

### **Subsequent submissions**

I note that [the complainant] agreed with the case handler's formula for calculating redress but did not agree with the time period applied. [The complainant] stressed his view that the calculation should be his monetary opportunity cost up to and including the date of recommendation. [The complainant] explained that he had been waiting to switch his mortgage to another provider but did not do so pending CIFO's opinion so as not to prejudice his case. While [the complainant] acknowledged this decision may have been his own error in judgement, [the complainant] still felt the calculation should include the period subsequent to February 2017 and the rates available at [Bank X].

[The complainant] also added that, because he had paid a large sum to fix the mortgage with [Bank X], he was hesitant to switch the mortgage to another provider. When mortgage rates dropped at [Bank X] so did the arrangement fee, and [the complainant] believed this would make a mortgage switch much more viable. In [the complainant's] view, his relationship manager would have been considering the potential mark-up which could be earned and the variable fee pricing when he was offered his initial deal, despite [Bank X's] claim that the arrangement fee was part of the standard charges.

### **Findings**

#### ***Lack of information given to [the complainant] about the mortgage rates***

The variable interest rates between February 2016 and February 2017 were as follows:

Feb-16	4.29%	
Mar-16	2.99%	
Apr-16	2.99%	
May-16	2.99%	
Jun-16	2.99%	
Jul-16	2.99%	
Aug-16	2.99%	Bank of England change
Sep-16	2.74%	
Oct-16	2.74%	
Nov-16	2.74%	
Dec-16	2.74%	
Jan-17	2.74%	
Feb-17	2.74%	

The [Bank X] interest rate drop in March 2016 is the relevant consideration as [the complainant] received the benefit of the September 2016 Bank of England rate decrease.

It is apparent from the previous emails [the complainant] had exchanged with his relationship manager that he was interested in the possibility of changing his interest rate. In an email exchange of 26 October 2015, [the Bank X Relationship Manager] wrote to [the complainant] as follows:

*"Good afternoon [the complainant],*

*I am afraid that I am [sic] still searching for a response with regards to rates.*

*I will come back to you tomorrow..."*

[The complainant] replied:

*"Ok thanks. I m [sic] hearing there is some serious competition out there now."*

After [the complainant's] email request for an update on 6 November 2015, [the Bank X Relationship Manager] replied on 9 November 2015 to advise that the bank could not change the rate on his mortgage. [The complainant] responded by email later that same day:

*“Ok. Thanks for trying.”*

Based on the above, I cannot conclude that [Bank X] was unaware of [the complainant’s] interest in changes to mortgage rates.

[Bank X] has made representations to the effect that no commitment was made to [the complainant], and only the possibility was raised of something occurring in the next calendar year. In addition, the bank suggested that the mortgage was not maintained on an advised basis and that there was no inducement.

In my view, however, a commitment was made by [Bank X] to [the complainant]. [The Bank X Relationship Manager] confirmed that if he heard more about rate switches in 2016, he would keep [the complainant] informed. There was a rate change in 2016 and [the complainant] was not kept informed.

Whilst I acknowledge it is not clear what [the complainant] would have done, the previous correspondence from October 2015 indicates on a balance of probabilities that he was interested in rate changes. [The complainant] did not have the opportunity to avail himself of the significant savings which would have followed as a result of the rate changes. In addition, despite a change in relationship manager, the bank did not contact [the complainant] for over one year after 1 December 2015.

As against this, [the complainant] presents as a knowledgeable and sophisticated customer who was watching for any movements in rates. This is supported by his claim to [the Bank X Relationship Manager] that he was hearing there was

*“...some serious competition out there...”.*

Despite this interest, [the complainant] did not follow up with [Bank X] to explore available options.

Furthermore, [the complainant] did not refinance with another bank even though he was aware of competitive options. I acknowledge that [the complainant] says he could have switched to another provider but was awaiting the outcome of CIFO’s investigation. As [the complainant] himself recognised, this was an error of judgement and, given the above factors, it would be reasonable to suggest that any loss could have been mitigated from the point where communication was re-established with the bank in early 2017.

Regarding the calculation of the loss, [Bank X] has informed me that the first rate change occurred on 23 March 2016. As [the complainant] had a variable rate mortgage, the Bank of England change between August and September 2016 would have been factored into his repayments automatically. In calculating redress, I have, therefore, factored in the change for five months from the end of March 2016 until February 2017.

### ***Arrangement fee and agent compensation***

With regard to the arrangement fee and agent compensation issues, raised by [the complainant] after he received the case handler's conclusions, [Bank X] has advised that the arrangement fee would be payable on any mortgage rate switch. [Bank X] has not acted unreasonably by specifying that an arrangement fee should be paid in these circumstances. If [the complainant] was taking advantage of the economic benefits of a new mortgage, I do not find it unreasonable that there would be costs associated with securing a new mortgage.

I do not find that the agent compensation raised by [the complainant] is relevant to this decision nor inconsistent with general industry practice.

### **Final decision**

My final decision is that I uphold the complaint in part.

[Bank X] should compensate [the complainant] with £5,948.83, representing 50% of the total interest differential for the period from March 2016 to February 2017 (the total was £15,491.66), less the arrangement fee of £1,797.

[The complainant] must confirm whether he accepts this decision 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 **11 February 2019**. The decision 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 decision 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 11 February 2019, 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 decision may become binding after the deadline. I will advise [the complainant] of the status of the decision once the deadline has passed.

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

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 11<sup>th</sup> January 2019